

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 740

Short Title: Ending NC's Involvement in Torture. (Public)

Sponsors: Representatives Insko, Harrison, and Meyer (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 16, 2019

A BILL TO BE ENTITLED

AN ACT TO CREATE THE STATUTORY CRIMINAL OFFENSES OF TORTURE AND ENFORCED DISAPPEARANCE; TO ADD THESE OFFENSES TO THOSE FOR WHICH AN INVESTIGATIVE GRAND JURY MAY BE CONVENED; TO PROVIDE THAT THE ATTORNEY GENERAL HAS CONCURRENT JURISDICTION WITH THE DISTRICT ATTORNEYS OF THIS STATE TO PROSECUTE CERTAIN VIOLATIONS OF THE CRIMINAL LAWS OF THIS STATE; TO PROHIBIT THE STATE FROM CONTRACTING WITH A VENDOR THAT HAS AN OFFICER, A DIRECTOR, OR AN OWNER WHO HAS BEEN CONVICTED OF A TORTURE OR ENFORCED DISAPPEARANCE OFFENSE; TO PROHIBIT THE PROVIDING OF STATE FUNDS TO A NON-STATE ENTITY THAT HAS AN OFFICER, A DIRECTOR, OR AN OWNER WHO HAS BEEN CONVICTED OF A TORTURE OR ENFORCED DISAPPEARANCE OFFENSE; AND TO PROHIBIT LOANS OR GRANTS OF STATE FUNDS TO AIRPORTS THAT HAVE NOT ESTABLISHED AND IMPLEMENTED A POLICY PROHIBITING THE USE OF THE AIRPORT FOR ACTIVITIES THAT VIOLATE THE LAW AGAINST TORTURE AND ENFORCED DISAPPEARANCE.

The General Assembly of North Carolina enacts:

PART I. ESTABLISH OFFENSES OF TORTURE AND ENFORCED DISAPPEARANCE

SECTION 1.(a) Article 8 of Chapter 14 of the General Statutes is amended by adding the following new section:

"§ 14-34.11. Torture; enforced disappearance.

(a) Definitions. – The following definitions apply in this section:

- (1) Enforced disappearance of person. – The arrest, detention, or abduction of a person by, or with the authorization, support, or acquiescence of, a governmental body or a political organization, followed by a refusal to acknowledge that deprivation of freedom or give information on the fate or whereabouts of the person.
- (2) Official capacity. – Acting at the instruction of, on behalf of, or with the authority of a governmental body.
- (3) Public official. – Any person elected by the public, appointed or hired by a governmental body, or acting for or on the behalf of a governmental body.
- (4) Torture. – Any act by which serious pain or suffering, whether physical or mental, is intentionally inflicted on a person for purposes such as obtaining from the person or from a third person information or a confession, punishing



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1 the person for an act he or she or a third person has committed or is suspected
2 of having committed, or intimidating or coercing the person or a third person,
3 or for any reason based on discrimination of any kind, when the pain or
4 suffering is inflicted by or at the instigation of or with the consent or
5 acquiescence of a public official or other person acting in an official capacity.

6 (b) Offense of Torture. – Unless the conduct is covered under some other provision of
7 law requiring greater punishment, a person who commits the offense of torture is guilty of a Class
8 E felony.

9 (c) Offense of Enforced Disappearance. – Unless the conduct is covered under some
10 other provision of law requiring greater punishment, a person who commits the offense of
11 enforced disappearance is guilty of a Class F felony.

12 (d) Jurisdiction. – There is jurisdiction over the conduct prohibited in this section if the
13 alleged offender meets any of the following requirements:

14 (1) Committed the offense in the State of North Carolina.

15 (2) Committed an act in furtherance of a conspiracy to commit an offense under
16 this section within the State of North Carolina even though other conduct
17 occurred outside of the State of North Carolina or part of the conspiracy was
18 formulated outside of the State of North Carolina.

19 (3) Entered into the conspiracy to commit an offense under this section within the
20 State of North Carolina even though part of the conspiracy was formulated
21 outside of the State of North Carolina or conduct in furtherance of the
22 conspiracy was performed outside of the State of North Carolina.

23 (e) Additional Penalty. – In addition to any other punishment imposed by the court, a
24 firm or corporation convicted of any offense under this section shall be punished by a fine of not
25 less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000)
26 and its charter and right to do business in the State shall be forfeited."

27 **SECTION 1.(b)** This section becomes effective December 1, 2019, and applies to
28 offenses committed on or after that date.

29
30 **PART II. TORTURE OR ENFORCED DISAPPEARANCE OFFENSE/ALLOW**
31 **CONVENING OF INVESTIGATIVE GRAND JURY AND CONCURRENT**
32 **JURISDICTION TO PROSECUTE CRIMES**

33 **SECTION 2.(a)** G.S. 15A-622 reads as rewritten:

34 "**§ 15A-622. Formation and organization of grand juries; other preliminary matters.**

35 ...

36 (h) ~~A~~Except as otherwise provided in subsections (i) and (i1) of this section, a written
37 petition for convening of grand jury under this section may be filed by the district attorney, the
38 district attorney's designated assistant, or a special prosecutor requested pursuant to
39 G.S. 114-11.6, with the approval of a committee of at least three members of the North Carolina
40 Conference of District Attorneys, and with the concurrence of the Attorney General, with the
41 Clerk of the North Carolina Supreme Court. The Chief Justice shall appoint a panel of three
42 judges to determine whether to order the grand jury convened. A grand jury under this section
43 may be convened if the three-judge panel determines that:

44 (1) The petition alleges the commission of or a conspiracy to commit a violation
45 of G.S. 90-95(h) or G.S. 90-95.1, any part of which violation or conspiracy
46 occurred in the county where the grand jury sits, and that persons named in
47 the petition have knowledge related to the identity of the perpetrators of those
48 crimes but will not divulge that knowledge voluntarily or that such persons
49 request that they be allowed to testify before the grand jury; and

50 (2) The affidavit sets forth facts that establish probable cause to believe that the
51 crimes specified in the petition have been committed and reasonable grounds

1 to suspect that the persons named in the petition have knowledge related to
2 the identity of the perpetrators of those crimes.

3 The affidavit shall be based upon personal knowledge or, if the source of the information and
4 basis for the belief are stated, upon information and belief. The panel's order convening the grand
5 jury as an investigative grand jury shall direct the grand jury to investigate the crimes and persons
6 named in the petition, and shall be filed with the Clerk of the North Carolina Supreme Court. A
7 grand jury so convened retains all powers, duties, and responsibilities of a grand jury under this
8 Article. The contents of the petition and the affidavit shall not be disclosed. Upon receiving a
9 petition under this subsection, the Chief Justice shall appoint a panel to determine whether the
10 grand jury should be convened as an investigative grand jury.

11 A grand jury authorized by this subsection may be convened from an existing grand jury or
12 grand juries authorized by subsection (b) of this section or may be convened as an additional
13 grand jury to an existing grand jury or grand juries. Notwithstanding subsection (b) of this
14 section, grand jurors impaneled pursuant to this subsection shall serve for a period of 12 months,
15 and, if an additional grand jury is convened, 18 persons shall be selected to constitute that grand
16 jury. At any time for cause shown, the presiding superior court judge may excuse a juror
17 temporarily or permanently, and in the latter event the court may impanel another person in place
18 of the juror excused.

19 ...

20 (i1) Upon the filing of a written petition by the district attorney or the Attorney General,
21 an investigative grand jury shall be convened if the petition alleges the commission of, attempt
22 to commit or solicitation to commit, or a conspiracy to commit, a violation of G.S. 14-34.11. A
23 grand jury convened under this subsection retains all powers, duties, and responsibilities of a
24 grand jury under this Article. The contents of the petition shall not be disclosed. A grand jury
25 authorized by this subsection may be convened from an existing grand jury or grand juries
26 authorized by subsection (b) of this section or may be convened as an additional grand jury to an
27 existing grand jury or grand juries. Notwithstanding subsection (b) of this section, grand jurors
28 impaneled pursuant to this subsection shall serve for a period of 12 months, and, if an additional
29 grand jury is convened, 18 persons shall be selected to constitute that grand jury. At any time for
30 cause shown, the presiding superior court judge may excuse a juror temporarily or permanently,
31 and in the latter event the court may impanel another person in place of the juror excused.

32 (j) Any grand juror who serves the full term of service under subsection ~~(b)~~ or ~~(b)~~,
33 subsection ~~(h)~~ ~~(h)~~, or subsection (i1) of this section shall not be required to serve again as a grand
34 juror or as a juror for a period of six years."

35 **SECTION 2.(b)** G.S. 15A-623(h) reads as rewritten:

36 "(h) If a grand jury is convened pursuant to ~~G.S. 15A-622(h)~~, ~~subsections (h) or (i1) of~~
37 ~~G.S. 15A-622~~, notwithstanding subsection (d) of this section, a prosecutor shall be present to
38 examine witnesses, and a court reporter shall be present and record the examination of witnesses.
39 The record shall be transcribed. If the prosecutor determines that it is necessary to compel
40 testimony from the witness, he may grant use immunity to the witness. The grant of use immunity
41 shall be given to the witness in writing by the prosecutor and shall be signed by the prosecutor.
42 The written grant of use immunity shall also be read into the record by the prosecutor and shall
43 include an explanation of use immunity as provided in G.S. 15A-1051. A witness shall have the
44 right to leave the grand jury room to consult with his counsel at reasonable intervals and for a
45 reasonable period of time upon the request of the witness. Notwithstanding subsection (e) of this
46 section, the record of the examination of witnesses shall be made available to the examining
47 prosecutor, and he may disclose contents of the record to other investigative or law-enforcement
48 officers, the witness or his attorney to the extent that the disclosure is appropriate to the proper
49 performance of his official duties. The record of the examination of a witness may be used in a
50 trial to the extent that it is relevant and otherwise admissible. Further disclosure of grand jury

1 proceedings convened pursuant to this act may be made upon written order of a superior court
2 judge if the judge determines disclosure is essential:

- 3 (1) To prosecute a witness who appeared before the grand jury for contempt or
4 perjury; or
- 5 (2) To protect a defendant's constitutional rights or statutory rights to discovery
6 pursuant to G.S. 15A-903.

7 Upon the convening of the investigative grand jury pursuant to ~~approval by the three judge~~
8 ~~panel, subsection (h) of G.S. 15A-622,~~ the district attorney shall subpoena the witnesses. The
9 subpoena shall be served by the investigative grand jury officer, who shall be appointed by the
10 court. The name of the person subpoenaed and the issuance and service of the subpoena shall not
11 be disclosed, except that a witness so subpoenaed may divulge that information.

12 Upon the convening of the investigative grand jury pursuant to subsection (i1) of
13 G.S. 15A-622, the district attorney, or the Attorney General as applicable, shall subpoena the
14 witnesses. Additionally, the district attorney, or the Attorney General as applicable, may issue a
15 subpoena duces tecum to compel a witness or other entity to produce any books, papers,
16 documents, data, or other objects the subpoena designates that relate to the investigation. The
17 subpoenas shall be served by the investigative grand jury officer, who shall be appointed by the
18 court. The name of the person subpoenaed and the issuance and service of the subpoena shall not
19 be disclosed, except that a witness so subpoenaed may divulge that information. Any
20 information, records, or data reported or obtained pursuant to a subpoena duces tecum authorized
21 under this subsection shall be confidential and shall not be disclosed unless in connection with a
22 criminal case related to the subpoenaed materials.

23 The presiding superior court judge shall hear any matter concerning the investigative grand
24 jury in camera to the extent necessary to prevent disclosure of its existence. The court reporter
25 for the investigative grand jury shall be present and record and transcribe the in camera
26 proceeding. The transcription of any in camera proceeding and a copy of all subpoenas and other
27 process shall be returned to the Chief Justice or to such member of the three-judge panel as the
28 Chief Justice may designate, to be filed with the Clerk of the North Carolina Supreme Court. The
29 subpoena to compel the attendance of a witness shall otherwise be subject to the provisions of
30 G.S. 15A-801 and Article 43 of Chapter 15A. The subpoena duces tecum shall otherwise be
31 subject to the provisions of G.S. 15A-802. When an investigative grand jury has completed its
32 investigation of the crimes alleged in the petition, the investigative functions of the grand jury
33 shall be dissolved and such investigation shall cease. The District Attorney shall file a notice of
34 dissolution of the investigative functions of the grand jury with the Clerk of the North Carolina
35 Supreme Court."

36 **SECTION 2.(c)** G.S. 114-2 reads as rewritten:

37 "**§ 114-2. Duties.**

38 Pursuant to Section 7(2) of Article III of the North Carolina Constitution, it shall be the duty
39 of the Attorney General:

40 ...

- 41 (11) Notwithstanding any provision of law to the contrary, to have concurrent
42 jurisdiction with the district attorneys of this State to prosecute any violation
43 of Chapter 14 of the General Statutes revealed by the investigation of a grand
44 jury convened pursuant to G.S. 15A-622(i1)."

45 **SECTION 2.(d)** This section becomes effective December 1, 2019, and applies to
46 offenses committed on or after that date.

47 48 **PART III. PROHIBIT CONTRACTING WITH VENDORS CONVICTED OF** 49 **TORTURE OR ENFORCED DISAPPEARANCE OFFENSE**

50 **SECTION 3.(a)** G.S. 143-59.2 reads as rewritten:

51 "**§ 143-59.2. Certain vendors prohibited from contracting with State.**

1 (a) Ineligible Vendors. – A vendor is not entitled to enter into a contract for goods or
2 services with any department, institution, or agency of the State government subject to the
3 provisions of this Article if the vendor meets either of the following criteria:

4 (1) ~~any~~ Any officer or director of the vendor, or any owner if the vendor is an
5 unincorporated business entity, within 10 years immediately prior to the date
6 of the bid solicitation, has been convicted of any violation of Chapter 78A of
7 the General Statutes or the Securities Act of 1933 or the Securities Exchange
8 Act of 1934.

9 (2) Any officer or director of the vendor, or any owner if the vendor is an
10 unincorporated business entity, has been convicted of a violation of
11 G.S. 14-34.11 or any federal or international law related to the abduction and
12 extrajudicial transfer of a person from one country to another.

13 (b) Vendor Certification. – The Secretary of Administration shall require each vendor
14 submitting a bid or contract to certify that none of its officers, directors, or owners of an
15 unincorporated business entity ~~has~~ have been convicted of (i) any violation referenced in
16 subdivision (1) of subsection (a) of this section within 10 years immediately prior to the date of
17 the bid solicitation. ~~solicitation~~ or (ii) any violation referenced in subdivision (2) of subsection
18 (a) of this section. Any person who submits a certification required by this subsection known to
19 be false shall be guilty of a Class I felony.

20 (c) Void Contracts. – A contract entered into in violation of this section is void. A
21 contract that is void under this section may continue in effect until an alternative can be arranged
22 when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the
23 continuation is approved by the Secretary of Administration. Approval of continuation of
24 contracts under this subsection shall be given for the minimum period necessary to protect the
25 public health or welfare."

26 **SECTION 3.(b)** This act becomes effective December 1, 2019, and applies to
27 contracts entered into on or after that date.

28 29 **PART IV. NON-STATE ENTITIES CONVICTED OF TORTURE OR ENFORCED** 30 **DISAPPEARANCE OFFENSE/NO STATE FUNDS**

31 **SECTION 4.(a)** Article 6 of Chapter 143C of the General Statutes is amended by
32 adding a new section to read:

33 **"§ 143C-6-22.5. Certain non-State entities prohibited from receiving State funds.**

34 (a) Ineligible Non-State Entities. – A non-State entity is not eligible to receive any State
35 funds if any officer or director of the non-State entity, or any owner if the non-State entity is an
36 unincorporated business entity, has been convicted of a violation of G.S. 14-34.11 or any federal
37 or international law related to the abduction and extrajudicial transfer of a person from one
38 country to another.

39 (b) Certification. – Prior to granting any funds to a non-State entity, a State agency shall
40 require the non-State entity to certify that none of its officers, directors, or owners of an
41 unincorporated business entity have been convicted of any violation referenced in subsection (a)
42 of this section."

43 **SECTION 4.(b)** This act becomes effective December 1, 2019, and applies to funds
44 granted or otherwise disbursed on or after that date.

45 46 **PART V. AIRPORTS/REQUIRE REPORTING AND DEVELOPMENT OF POLICY** 47 **PROHIBITING TENANTS FROM PARTICIPATING IN OR COMMITTING** 48 **TORTURE OR ENFORCED DISAPPEARANCE OFFENSE**

49 **SECTION 5.(a)** G.S. 63-68 reads as rewritten:

50 **"§ 63-68. Limitations on State financial aid.**

1 Grants and loans of funds authorized by this Article shall be subject to the following
2 conditions and limitations:

3 ...

4 (7) The Department of Transportation shall not loan or grant any State funds to
5 an airport until the airport has established and implemented a policy
6 prohibiting the use of the airport for any activities that violate G.S. 14-34.11
7 or any federal or international law related to the abduction and extrajudicial
8 transfer of a person from one country to another. Additionally,
9 notwithstanding any provision of law to the contrary, no permit shall be issued
10 or renewed by the State or a local government to or for an airport that has
11 failed to establish and implement a policy prohibiting the use of the airport for
12 any activities that violate G.S. 14-34.11 or any federal or international law
13 related to the abduction and extrajudicial transfer of a person from one country
14 to another.

15 The Department of Transportation shall develop rules and regulations to
16 define rural airports."

17 **SECTION 5.(b)** Article 6 of Chapter 63 of the General Statutes is amended by
18 adding a new section to read:

19 **"§ 63-59. Report on use of airport for transportation of persons detained by the federal**
20 **government.**

21 Except as otherwise prohibited under federal law, any person using an airport subject to this
22 Article for the transportation of a person arrested or detained by the federal government shall
23 submit a report on the transportation to the Department of Justice no less than 10 days prior to
24 the date of transportation. The report shall include information deemed sufficient by the
25 Department for it to determine whether the transportation violates the provisions of
26 G.S. 14-34.11."

27 **SECTION 5.(c)** The Department of Justice shall establish rules for implementing
28 G.S. 63-59, as enacted by subsection (b) of this section, including the types of information that
29 will be required to be provided.

30 **SECTION 5.(d)** Subsection (a) of this section becomes effective December 1, 2019,
31 and applies to loans or grants of funds on or after that date. Subsection (b) of this section becomes
32 effective December 1, 2019, and applies to the use of airports on or after that date. The remainder
33 of this section becomes effective December 1, 2019.

34 **PART VI. EFFECTIVE DATE**

35 **SECTION 6.** Except as otherwise provided, this act becomes effective December 1,
36 2019.
37