

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE DRH70244-MM-55 (03/20)

Short Title: Protection Against Suspension of Rights. (Public)

Sponsors: Representative Speciale.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO DIRECT THE ATTORNEY GENERAL TO BRING AN ACTION TO  
3 DETERMINE WHETHER SPECIFIC PROVISIONS IN THE NATIONAL DEFENSE  
4 AUTHORIZATION ACT FOR FISCAL YEAR 2012 ARE UNCONSTITUTIONAL AND  
5 ESTABLISHING PROTECTIONS FOR THE CITIZENS OF NORTH CAROLINA IN  
6 THE EVENT A COURT RULES THE NATIONAL DEFENSE AUTHORIZATION ACT  
7 FOR FISCAL YEAR 2012 IS UNCONSTITUTIONAL.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Chapter 147 of the North Carolina General Statutes is amended by  
10 adding a new Article to read:

11 "Article 9.

12 "Protection Against Suspension of Rights.

13 "§ 147-100. Legislative findings.

14 (1) Section 9 of Article I of the United States Constitution states that the "privilege of  
15 the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion,  
16 the public safety may require it." The right of habeas corpus is also specifically protected in  
17 Sec. 21 of Article I of the North Carolina Constitution.

18 (2) The Fifth Amendment to the United States Constitution states that "[n]o person shall  
19 be held to answer for a capital or otherwise infamous crime, unless on a presentment or  
20 indictment of a grand jury." The same right is protected by Sec. 22 of Article I of the North  
21 Carolina Constitution.

22 (3) The Sixth Amendment to the United States Constitution states that in all criminal  
23 prosecutions, "the accused shall enjoy the right to a speedy and public trial, by an impartial  
24 jury." The same rights are protected by Sec. 23 and Sec. 24 of the North Carolina Constitution.

25 (4) Congress enacted the National Defense Authorization Act for Fiscal Year 2012  
26 (NDAA) which authorizes the President of the United States to use war powers, the "law of  
27 war," and martial law in the United States and its territories over any person, including citizens  
28 or lawful resident aliens of the United States anywhere in the world who are not in the military  
29 forces.

30 (5) Any action taken pursuant to the NDAA against persons located in North Carolina  
31 poses a serious threat to the individual rights conferred by both the United States Constitution  
32 and the North Carolina Constitution; in particular, the right to a writ of habeas corpus, the right  
33 to a criminal indictment, and the right to a public jury trial.

34 (6) Pursuant to G.S. 114-2(8)a., the Attorney General has the authority to institute and  
35 originate proceedings before courts on behalf of the State and its citizens in matters affecting  
36 the public interest.



1       (7) The individual rights of residents of North Carolina that are threatened by actions  
2 taken in North Carolina pursuant to the NDAA are precious and the protection in advance of  
3 any suspension thereof is a matter of vital public interest to the State and its citizens.

4 **"§ 147-101. Duty of Attorney General.**

5       The North Carolina Attorney General shall commence an action in a court of competent  
6 jurisdiction and seek a judicial determination as to whether the National Defense Authorization  
7 Act for Fiscal Year 2012 as written or applied has the effect of suspending the right of habeas  
8 corpus, and denying the right to an indictment and to a public jury trial in criminal cases, which  
9 rights are guaranteed to the residents of the State by the Constitutions of both the United States  
10 and the State of North Carolina."

11       **SECTION 2.** Effective upon a final judgment finding that the National Defense  
12 Authorization Act for Fiscal Year 2012 is unconstitutional and entered pursuant to  
13 G.S. 147-101, as enacted by Section 1 of this act, Article 35 of Chapter 14 of the North  
14 Carolina General Statutes is amended by adding a new section to read:

15 **"§ 14-277.6. Unlawful to implement NDAA in North Carolina.**

16       (a) It shall be unlawful for any person to do any of the following under color of  
17 authority granted by the National Defense Authorization Act for Fiscal Year 2012:

- 18           (1) Arrest or capture any person in North Carolina "under the law of war."  
19           (2) Actually subject any person in North Carolina to "disposition under the law  
20 of war."  
21           (3) Use deadly force "under the law of war" against any person in North  
22 Carolina or intentionally subject any person in North Carolina to targeted  
23 killing.

24       (b) Subsection (a) of this section does not prohibit the application of the Uniform Code  
25 of Military Justice (UCMJ), including military detention and trial, in cases arising in the land or  
26 naval forces, or in the militia, when in actual service in time of war or public danger to  
27 discipline service members who may have violated the UCMJ and law of war.

28       (c) As used in this section, the following terms shall have the same meaning as in  
29 section 1021(c) of the National Defense Authorization Act for Fiscal Year 2012:

- 30           (1) Arrest.  
31           (2) Capture.  
32           (3) Detention under the law of war.  
33           (4) Disposition under the law of war.  
34           (5) Law of war.

35       (d) Any person who violates subsection (a) of this section shall be prosecuted under this  
36 Chapter for any applicable offense such as false imprisonment, assault, kidnapping, or  
37 homicide."

38       **SECTION 3.** This act is effective when it becomes law.