

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 619

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

Sponsors: Representatives Speciale and Pittman (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 10, 2013

A BILL TO BE ENTITLED

AN ACT TO DIRECT THE ATTORNEY GENERAL TO BRING AN ACTION TO DETERMINE WHETHER SPECIFIC PROVISIONS IN THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012 ARE UNCONSTITUTIONAL AND ESTABLISHING PROTECTIONS FOR THE CITIZENS OF NORTH CAROLINA IN THE EVENT A COURT RULES THE NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2012 IS UNCONSTITUTIONAL.

The General Assembly of North Carolina enacts:

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

"Article 9.

"Protection Against Suspension of Rights.

"§ 147-100. Legislative findings.

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

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

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

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

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



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

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

7 **"§ 147-101. Duty of Attorney General.**

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

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

18 **"§ 14-277.6. Unlawful to implement NDAA in North Carolina.**

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

21 (1) Arrest or capture any person in North Carolina "under the law of war."

22 (2) Actually subject any person in North Carolina to "disposition under the law
23 of war."

24 (3) Use deadly force "under the law of war" against any person in North
25 Carolina or intentionally subject any person in North Carolina to targeted
26 killing.

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

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

33 (1) Arrest.

34 (2) Capture.

35 (3) Detention under the law of war.

36 (4) Disposition under the law of war.

37 (5) Law of war.

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

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