

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

H

2

HOUSE BILL 40
Second Edition Engrossed 2/8/23

Short Title: Prevent Rioting and Civil Disorder. (Public)

Sponsors: Representatives Moore, Sauls, Miller, and Willingham (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary 2, if favorable, Rules, Calendar, and Operations of the House

February 2, 2023

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE PENALTIES FOR RIOTING OR INCITING RIOTING THAT CAUSES DAMAGE TO PROPERTY, SERIOUS BODILY INJURY, OR DEATH AND ASSAULTING EMERGENCY PERSONNEL DURING A RIOT OR STATE OF EMERGENCY; TO ALLOW RECOVERY OF TREBLE DAMAGES FOR PROPERTY DAMAGE OR PERSONAL INJURY CAUSED BY RIOTING OR LOOTING; AND TO REQUIRE PRETRIAL RELEASE CONDITIONS FOR RIOTING AND LOOTING OFFENSES TO BE DETERMINED BY A JUDGE AND TO DIRECT THE DEPARTMENT OF JUSTICE TO DEVELOP MODEL LAW ENFORCEMENT AGENCY PROTEST RESPONSE AND ENGAGEMENT POLICIES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-288.2 reads as rewritten:

"§ 14-288.2. Riot; inciting to riot; punishments.

(a) A riot is a public disturbance involving an assemblage of three or more persons which by disorderly and violent conduct, or the imminent threat of disorderly and violent conduct, results in injury or damage to persons or property or creates a clear and present danger of injury or damage to persons or property.

(b) Any person who willfully engages in a riot is guilty of a Class 1 misdemeanor.

(c) Any person who willfully engages in a riot is guilty of a Class H felony, if:

(1) ~~In the course and as a result of the riot there is property damage in excess of fifteen hundred dollars (\$1,500) or serious bodily injury; or~~

(2) ~~Such participant in the riot has in his possession felony if in the course of the riot the person brandishes any dangerous weapon or uses a dangerous substance.~~

(c1) Any person who willfully engages in a riot is guilty of a Class F felony if in the course of the riot the person causes property damage in excess of two thousand five hundred dollars (\$2,500) or serious bodily injury.

(c2) Any person who willfully engages in a riot is guilty of a Class E felony if in the course of the riot the person causes a death.

(d) Any person who willfully incites or urges another to engage in a riot, so that as a result of such inciting or urging a riot occurs or a clear and present danger of a riot is created, is guilty of a ~~Class I~~ Class A1 misdemeanor.

(e) Any person who willfully incites or urges another to engage in a riot, and such inciting or urging is a contributing cause of a riot in which there is property damage in excess of ~~fifteen~~



* H 4 0 - V - 2 *

1 ~~hundred dollars (\$1,500) two thousand five hundred dollars (\$2,500) or serious bodily injury,~~
2 ~~shall be punished as a Class F felon, guilty of a Class E felony.~~

3 (e1) Any person who willfully incites or urges another to engage in a riot, and such inciting
4 or urging causes a death, shall be guilty of a Class D felony.

5 (f) Any person whose person or property is injured by reason of a violation of this section
6 may sue for and recover from the violator three times the actual damages sustained, as well as
7 court costs and attorneys' fees.

8 (g) Mere presence alone without an overt act is not sufficient to sustain a conviction
9 pursuant to this section."

10 **SECTION 2.** G.S. 14-288.6 is amended by adding a new subsection to read:

11 "(c) Any person whose person or property is injured by reason of a violation of this section
12 may sue for and recover from the violator three times the actual damages sustained, as well as
13 court costs and attorneys' fees."

14 **SECTION 3.** G.S. 14-288.9 reads as rewritten:

15 **"§ 14-288.9. Assault on emergency personnel; punishments.**

16 (a) An assault upon emergency personnel is an assault upon any person coming within
17 the definition of "emergency personnel" which is committed in an area:

18 (1) In which a declared state of emergency exists; or

19 (2) Within the immediate vicinity of which a riot is occurring or is imminent.

20 (b) The term "emergency personnel" includes law-enforcement officers, firemen,
21 ambulance attendants, utility workers, doctors, nurses, members of the North Carolina National
22 Guard, and other persons lawfully engaged in providing essential services or otherwise
23 discharging or attempting to discharge his or her official duties during the emergency.

24 (c) Any person who commits an assault ~~causing physical injury~~ upon emergency
25 personnel is guilty of a ~~Class I felony.~~ Class H felony.

26 (d) Any person who commits an assault upon emergency personnel with or through the
27 use of any dangerous weapon or substance shall be punished as a Class F felon.

28 (e) Any person who commits an assault upon emergency personnel causing serious
29 bodily injury to the emergency personnel is guilty of a Class E felony.

30 (f) Any person who commits an assault upon emergency personnel causing death to the
31 emergency personnel is guilty of a Class D felony."

32 **SECTION 4.** Article 26 of Chapter 15A of the General Statutes is amended by
33 adding a new section to read:

34 **"§ 15A-534.8. Rioting or looting; bail and pretrial release.**

35 (a) In all cases in which the defendant is charged with a violation of G.S. 14-288.2 or
36 G.S. 14-288.6, the judicial official who determines the conditions of pretrial release shall be a
37 judge. The judge shall direct a law enforcement officer or a district attorney to provide a criminal
38 history report for the defendant and shall consider the criminal history when setting conditions
39 of release. After setting conditions of release, the judge shall return the report to the providing
40 agency or department. No judge shall unreasonably delay the determination of conditions of
41 pretrial release for the purpose of reviewing the defendant's criminal history report. The
42 following provisions shall apply in addition to the provisions of G.S. 15A-534:

43 (1) Upon a determination by the judge that the immediate release of the defendant
44 will pose a danger of injury to persons and upon a determination that the
45 execution of an appearance bond as required by G.S. 15A-534 will not
46 reasonably assure that such injury will not occur, a judge may retain the
47 defendant in custody for a reasonable period of time while determining the
48 conditions of pretrial release.

49 (2) A judge may order the defendant to stay away from specific locations or
50 property where the offense occurred. This condition may be imposed in
51 addition to requiring that the defendant execute a secured appearance bond.

1 (3) Should the defendant be mentally ill and dangerous to himself or herself or
2 others, or a substance abuser and dangerous to himself or herself or others, the
3 provisions of Article 5 of Chapter 122C of the General Statutes shall apply.

4 (b) A defendant may be retained in custody not more than 24 hours from the time of arrest
5 without a determination being made under this section by a judge. If a judge has not acted
6 pursuant to this section within 24 hours of arrest, the magistrate shall act under the provisions of
7 this section."

8 **SECTION 4.1.** Nothing in this Act shall be construed as intended to prevent or
9 prohibit an individual's right to his or her exercise of free speech or the right to peaceable
10 assembly.

11 **SECTION 4.5.(a)** The Department of Justice, in consultation with the Department
12 of Public Safety, the North Carolina Criminal Justice Education and Training Standards
13 Commission, and the North Carolina Sheriffs' Education and Training Standards Commission,
14 shall develop model law enforcement agency protest response and engagement policies.

15 **SECTION 4.5.(b)** The Department of Justice shall report the model policies
16 developed pursuant to subsection (a) of this section to the Joint Legislative Oversight Committee
17 on Justice and Public Safety no later than March 1, 2024.

18 **SECTION 4.5.(c)** This section is effective when it becomes law.

19 **SECTION 5.** This act becomes effective December 1, 2023, and applies to offenses
20 committed on or after that date.