



HOUSE BILL 40: Prevent Rioting and Civil Disorder.

2023-2024 General Assembly

Committee: Senate Rules and Operations of the Senate	Date: March 8, 2023
Introduced by: Reps. Moore, Sauls, Miller, Willingham	Prepared by: Robert Ryan*
Analysis of: Second Edition	Staff Attorney

OVERVIEW: *House Bill 40 would make the following changes:*

- *Clarify that active conduct is required for criminal prosecution of riot offenses.*
- *Increase some penalties for current offenses and create new offenses related to rioting.*
- *Authorize a specific civil action for injury to person or property stemming from rioting, looting or trespass during an emergency.*
- *Include members of the National Guard in a prohibition on certain assaults on emergency personnel.*
- *Increase the penalty for certain assaults on emergency personnel.*
- *Create requirements for bail and pretrial release for defendants charged with rioting, and looting or trespass during an emergency.*

CURRENT LAW: G.S. 14-288.2 prohibits riot and inciting a riot, and provides the following criminal penalties:

- Class 1 misdemeanor: Willfully engaging in a riot, or willfully inciting a riot.
- Class H felony: Willfully engaging in a riot if it results in either (i) property damage of \$1,500 or more or serious bodily harm, or (ii) if the participant has a dangerous weapon or substance in the participant's possession.
- Class F felony: Willfully inciting or urging another to engage in a riot that is a contributing cause of a riot resulting in property damage in excess of \$1,500 or serious bodily injury.

G.S. 14-288.9 prohibits assault on emergency personnel and provides the following criminal penalties:

- Class I felony: An assault on emergency personnel causing physical injury.
- Class F felony: An assault on emergency personnel committed with a dangerous weapon or substance.

G.S. 14-288.6 prohibits looting and trespass during an emergency.

G.S. 14-34.5 provides the following criminal penalties for certain assaults on emergency personnel:

- Class D felony: An assault on a law enforcement officer with a firearm is a Class D felony.
- Class E felony: An assault with a firearm on a member of the North Carolina National Guard.

G.S. 14-34.2 provides that an assault with a firearm or any other deadly weapon on an officer or employee of the State or any political subdivision of the State, is a Class F felony.

Jeffrey Hudson
Director



Legislative Analysis
Division
919-733-2578

House Bill 40

Page 2

Article 26 of Chapter 15A of the General Statutes provides the process for setting pretrial release conditions for defendants.

BILL ANALYSIS:

Section 1 would:

- Clarify active conduct is required for criminal prosecution of certain riot offenses.
- Increase willfully engaging in a riot if it results in property damage of \$2,500 or more, or serious bodily injury, from a Class H felony to a Class F felony.
- Create a new Class E felony for willfully engaging in a riot if in the course of and as a result of the riot, there is a death.
- Increase willfully inciting or urging another to engage in a riot that results in a riot, from a Class 1 misdemeanor to a Class A1 misdemeanor.
- Revise the law related to inciting a riot so that if the incited riot causes property damage of \$2,500 or more the conduct would be punished as a Class E felony.
- Create a new Class D felony for willfully inciting a riot if that inciting is a contributing cause of a riot in which a death results.

Sections 1 and 2 would authorize specific civil actions for the criminal conduct of rioting, looting or trespass during an emergency, and outlines the possible monetary recovery in that action.

Section 3 would:

- Add members of the North Carolina National Guard to the definition of emergency personnel in the criminal prohibition on certain assaults on emergency personnel.
- Remove physical injury as an element of the existing Class I felony assault on emergency personnel, and increase the penalty to a Class H felony.
- Create a new Class E felony for an assault upon emergency personnel causing serious bodily injury.
- Create a new Class D felony for an assault upon emergency personnel causing death.

Section 4 would:

- Establish additional requirements for bail and pretrial release conditions for a defendant charged with rioting or looting which are similar to the conditions placed on defendants charged with domestic violence.
- Require that a judge determine the conditions of pretrial release for a defendant charged with rioting or looting, unless 24 hours have elapsed, at which time a magistrate could determine the conditions.

Section 4.1 would clarify that this act shall not be construed to prevent or prohibit an individual's First Amendment rights.

Section 4.5 would require the Department of Justice to develop model law enforcement agency protest response and engagement policies.

EFFECTIVE DATE: The bill would become effective December 1, 2023, and would apply to offenses committed on or after that date.

**Susan Sitze, staff attorney with the Legislative Analysis Division, substantially contributed to this summary.*