

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

**SESSION LAW 2001-470
HOUSE BILL 1468**

AN ACT TO PROVIDE CRIMINAL PENALTIES FOR THE KNOWING MANUFACTURE, ASSEMBLY, POSSESSION, STORAGE, TRANSPORTATION, SALE, PURCHASE, DELIVERY, OR ACQUISITION OF NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPONS OF MASS DESTRUCTION, TO PROVIDE CRIMINAL PENALTIES FOR THE USE OR ATTEMPTED USE OF NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPONS OF MASS DESTRUCTION, TO PROVIDE CRIMINAL PENALTIES FOR THE FALSE REPORTING OF A NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPON OF MASS DESTRUCTION, TO PROVIDE CRIMINAL PENALTIES FOR THE PERPETRATION OF A HOAX BY THE USE OF A FALSE NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPON OF MASS DESTRUCTION, AND TO PROVIDE THAT MURDER BY MEANS OF A NUCLEAR, BIOLOGICAL, OR CHEMICAL WEAPON IS FIRST DEGREE MURDER.

The General Assembly of North Carolina enacts:

SECTION 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"Article 36B.

"Nuclear, Biological, or Chemical Weapons of Mass Destruction.

"§ 14-288.21. Unlawful manufacture, assembly, possession, storage, transportation, sale, purchase, delivery, or acquisition of a nuclear, biological, or chemical weapon of mass destruction; exceptions; punishment.

(a) Except as otherwise provided in this section, it is unlawful for any person to knowingly manufacture, assemble, possess, store, transport, sell, offer to sell, purchase, offer to purchase, deliver or give to another, or acquire a nuclear, biological, or chemical weapon of mass destruction.

(b) This section does not apply to:

- (1) Persons listed in G.S. 14-269(b) with respect to any activities lawfully engaged in while carrying out their duties.
- (2) Persons under contract with, or working under the direction of, the United States, the State of North Carolina, or any agency of either government, with respect to any activities lawfully engaged in under their contracts or pursuant to lawful direction.
- (3) Persons lawfully engaged in the development, production, manufacture, assembly, possession, transport, sale, purchase, delivery or acquisition of any biological agent, disease organism, toxic or poisonous chemical, radioactive substance or their immediate precursors, for preventive, protective, or other peaceful purposes.
- (4) Persons lawfully engaged in accepted agricultural, horticultural, or forestry practices; aquatic weed control; or structural pest and rodent control, in a manner approved by the federal, State, county, or local agency charged with authority over such activities.

(c) The term 'nuclear, biological, or chemical weapon of mass destruction', as used in this Article, means any of the following:

- (1) Any weapon, device, or method that is designed or has the capability to cause death or serious injury through the release, dissemination, or impact of:
 - a. Radiation or radioactivity;
 - b. A disease organism; or
 - c. Toxic or poisonous chemicals or their immediate precursors.
- (2) Any substance that is designed or has the capability to cause death or serious injury and:
 - a. Contains radiation or radioactivity;
 - b. Is or contains toxic or poisonous chemicals or their immediate precursors; or
 - c. Is or contains one or more of the following:
 1. Any select agent that is a microorganism, virus, bacterium, fungus, rickettsia, or toxin listed in Appendix A of Part 72 of Title 42 of the Code of Federal Regulations.
 2. Any genetically modified microorganisms or genetic elements from an organism on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, shown to produce or encode for a factor associated with a disease.
 3. Any genetically modified microorganisms or genetic elements that contain nucleic acid sequences coding for any of the toxins listed on Appendix A of Part 72 of Title 42 of the Code of Federal Regulations, or their toxic submits.

The term 'nuclear, biological, or chemical weapon of mass destruction' also includes any combination of parts or substances either designed or intended for use in converting any device or substance into any nuclear, biological, or chemical weapon of mass destruction or from which a nuclear, biological, or chemical weapon of mass destruction may be readily assembled or created.

(d) Any person who violates any provision of this section is guilty of a Class B1 felony.

"§ 14-288.22. Unlawful use of a nuclear, biological, or chemical weapon of mass destruction; punishment.

(a) Any person who unlawfully and willfully injures another by the use of a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class A felony and shall be sentenced to life imprisonment without parole.

(b) Any person who attempts, solicits another, or conspires to injure another by the use of a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class B1 felony.

(c) Any person who for the purpose of violating any provision of this Article, deposits for delivery or attempts to have delivered, a nuclear, biological, or chemical weapon of mass destruction by the United States Postal Service or other public or private business engaged in the delivery of mail, packages, or parcels is guilty of a Class B1 felony.

"§ 14-288.23. Making a false report concerning a nuclear, biological, or chemical weapon of mass destruction; punishment; restitution.

(a) Any person who, by any means of communication to any person or group of persons, makes a report, knowing or having reason to know the report is false, that causes any person to reasonably believe that there is located at any place or structure whatsoever any nuclear, biological, or chemical weapon of mass destruction is guilty of a Class D felony.

(b) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from disruption of the normal activity that would have otherwise occurred but for the false report, pursuant to Article 81C of Chapter 15A of the General Statutes.

(c) For purposes of this section, the term 'report' shall include making accessible to another person by computer.

"§ 14-288.24. Perpetrating hoax by use of false nuclear, biological, or chemical weapon of mass destruction; punishment; restitution.

(a) Any person who, with intent to perpetrate a hoax, conceals, places, or displays any device, object, machine, instrument, or artifact, so as to cause any person reasonably to believe the same to be a nuclear, biological, or chemical weapon of mass destruction is guilty of a Class D felony.

(b) The court may order a person convicted under this section to pay restitution, including costs and consequential damages resulting from disruption of the normal activity that would have otherwise occurred but for the hoax, pursuant to Article 81C of Chapter 15A of the General Statutes."

SECTION 2. G.S. 14-17 reads as rewritten:

"§ 14-17. Murder in the first and second degree defined; punishment.

A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life without parole. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000. All other kinds of murder, including that which shall be proximately caused by the unlawful distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of opium, or cocaine or other substance described in G.S. 90-90(1)d., when the ingestion of such substance causes the death of the user, shall be deemed murder in the second degree, and any person who commits such murder shall be punished as a Class B2 felon."

SECTION 3. G.S. 14-288.8(c) reads as rewritten:

"(c) The term 'weapon of mass death and destruction' includes:

(1) Any ~~explosive, incendiary, poison gas or radioactive material~~: explosive or incendiary:

a. Bomb; or

b. Grenade; or

c. Rocket having a propellant charge of more than four ounces; or

d. Missile having an explosive or incendiary charge of more than one-quarter ounce; or

e. Mine; or

f. Device similar to any of the devices described above; or

(2) Any type of weapon (other than a shotgun or a shotgun shell of a type particularly suitable for sporting purposes) which will, or which may be readily converted to, expel a projectile by the action of an explosive or other propellant, and which has any barrel with a bore of more than one-half inch in diameter; or

- (3) Any firearm capable of fully automatic fire, any shotgun with a barrel or barrels of less than 18 inches in length or an overall length of less than 26 inches, any rifle with a barrel or barrels of less than 16 inches in length or an overall length of less than 26 inches, any muffler or silencer for any firearm, whether or not such firearm is included within this definition. For the purposes of this section, rifle is defined as a weapon designed or redesigned, made or remade, and intended to be fired from the ~~shoulder~~shoulder; or
- (4) Any combination of parts either designed or intended for use in converting any device into any weapon described above and from which a weapon of mass death and destruction may readily be ~~assembled~~assembled.
- (5) ~~Radioactive material, which means any solid, liquid or gas which emits or may emit ionizing radiation spontaneously or which becomes capable of producing radiation or nuclear particles when controls or triggering mechanisms of any associated device are operable.~~

The term 'weapon of mass death and destruction' does not include any device which is neither designed nor redesigned for use as a weapon; any device, although originally designed for use as a weapon, which is redesigned for use as a signaling, pyrotechnic, line-throwing, safety, or similar device; surplus ordnance sold, loaned, or given by the Secretary of the Army pursuant to the provisions of section 4684(2), 4685, or 4686 of Title 10 of the United States Code; or any other device which the Secretary of the Treasury finds is not likely to be used as a weapon, is an antique, or is a rifle which the owner intends to use solely for sporting purposes, in accordance with Chapter 44 of Title 18 of the United States Code."

SECTION 4. G.S. 143-34.1(a1) as enacted by S.L. 2001-424, Section 32.19A.(a) reads as rewritten:

"(a1) A department, institution, or other agency of State government may establish new receipt-supported positions only after prior consultation with the Joint Legislative Commission on Governmental Operations. This subsection shall not apply to work-order funded positions in the Department of Transportation that are created for the purpose of highway ~~construction or construction~~, to positions at The University of North Carolina or its constituent ~~institutions-institutions~~, or to positions established by the Governor to expand the State's capabilities in dealing with the threat of terrorism in the event of an emergency or other exigent circumstances."

SECTION 5. This act is effective when it becomes law and applies to offenses committed on or after that date. Prosecutions for offenses occurring before the effective date of this act are not abated or affected by this act, and the statutes that would be applicable but for this act remain applicable to those prosecutions.

In the General Assembly read three times and ratified this the 27th day of November, 2001.

s/ Beverly E. Perdue
President of the Senate

s/ James B. Black
Speaker of the House of Representatives

s/ Michael F. Easley
Governor

Approved 11:20 a.m. this 28th day of November, 2001