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International Treaties and Customary International Law

a. International Treaties

- Geneva Conventions of 1949 and Their Additional Protocols—75 U.N.T.S. 135. Signed Dec. 8, 1949, Ratified Dec. 31, 1974.
 - Common Article 3
 - In the case of armed conflict not of an international character occurring in the territory of one of the High Contracting Parties, each Party to the conflict shall be bound to apply, as a minimum, the following provisions:
 - (1) Persons taking no active part in the hostilities, including members of the armed forces who have
 - Art. 32
 - The High Contracting Parties specifically agree that each of the is prohibited from taking any measure of such a character as to cause the physical suffering or extermination of protected persons in their hands. This prohibition applies not only to murder, torture, corporal punishment, mutilation and medical or scientific experiments not necessitated by the medical treatment of a protected person, but also to any other measures of brutality whether applied by civilian or military agents.
 - Art. 33
 - No protected person may be punished for an offence he or she has not personally committed. Collective penalties and likewise all measures of intimidation or of terrorism are prohibited.
Pillage is prohibited.
Reprisals against protected persons and their property are prohibited.
 - Art. 50
 - Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the Convention: willful killing, torture, or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.
 - Applicable to North Carolina? (yes, add language re: signed and ratified, Supremacy Clause
 - Remedies
 - Art. 147
 - Grave breaches to which the preceding Article relates shall be those involving any of the following acts, if committed against persons or property protected by the present Convention: willful killing, torture or inhuman treatment, including biological experiments, willfully causing great suffering or serious injury to body or health, unlawful deportation or transfer or unlawful confinement of a protected person to serve in the forces of a hostile Power, or willfully depriving a protected person of the rights of fair and regular trial prescribed in the present Convention, taking of hostages and extensive destruction and appropriation of property, not justified by military necessity and carried out unlawfully and wantonly.
 - Art. 148
 - No High Contracting Party shall be allowed to absolve itself of any other High Contracting Party of any liability incurred by itself or by another High Contracting Party in respect of breaches referred to in the preceding Article.

- International Covenant on Civil and Political Rights (ICCPR) 999 U.N.T.S. 171 (1966).
 - Relevant Articles: 2, 5, 7, 9, 10, 50,
 - Art. 2
 - Art. 2.2
 - Art. 2.3 Each State Party to the present Covenant undertakes:
 - (a) To ensure that any person whose rights or freedoms as herein recognized are violated shall have an effective remedy, notwithstanding that the violation has been committed by persons acting in an official capacity;
 - (b) To ensure that any person claiming such a remedy shall have his right thereto determined by competent judicial, administrative or legislative authorities, or by any other competent authority provided for by the legal system of the State, and to develop the possibilities of judicial remedy;
 - (c) To ensure that the competent authorities shall enforce such remedies when granted.
 - Art. 5
 - 5.1 Nothing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant.
 - 5.2 There shall be no restriction upon or derogation from any of the fundamental human rights recognized or existing in any State Party to the present Covenant pursuant to law, conventions, regulations or custom on the pretext that the present Covenant does not recognize such rights or that it recognizes them to a lesser extent.
 - Art. 7
 - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation
 - Art. 9
 - 9.1 Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.
 - 9.2 Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.
 - 9.3 Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.
 - 9.4 Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that the court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful.
 - 9.5 Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.
 - Art. 10

- 10.1 All persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person.
- 10.2 (a) Accused persons shall, save in exceptional circumstances, be segregated from convicted persons and shall be subject to separate treatment appropriate to their status as unconvicted persons.
- (b) Accused juvenile persons shall be separated from adults and brought as speedily as possible for adjudication.
- 10.3 The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from adults and be accorded treatment appropriate to their age and legal status.
- Art. 50
 - The provisions of the present Covenant shall extend to all parts of federal States without any limitation or exceptions.
- Applicable to North Carolina?
 - Yes, United States signed and ratified.
https://treaties.un.org/Pages/ViewDetails.aspx?src=IND&mtmsg_no=IV-4&chapter=4&clang=en
 - U.S. Constitution
 - Supremacy Clause: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.
- Convention Against Torture (CAT) 1465 U.N.T.S. 85 (1984)
 - Relevant Articles.1, 2, 3, 4, 5, 6, 7, 11, 12, 13, 14, 15, 16,
 - Part I
 - Art. 1
 - 1. For the purposes of this Convention, the term “torture” means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession, punishment him for an act he or a third person has committed, or for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.
 - 2. This article is without prejudice to any international instrument or national legislation which does or may contain provisions of wider application.
 - Art. 2
 - 1. Each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction
 - 2. No exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.
 - 3. An order from a superior officer or a public authority may not be invoked as a justification of torture.
 - Art. 3

- 1.No State Party shall expel, return (“refouler”) or extradite a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.
- 2. For the purposes of determining whether there are such grounds, the competent authorities shall take into account all relevant considerations including, where applicable, the existence in the State concerned of a consistent pattern of gross, flagrant or mass violations of human rights.
- Art. 4
 - 1. Each State Party shall ensure that all acts of torture are offences under its criminal law. The same shall apply to an attempt to commit torture and to an act by any person which constitutes complicity or participation in torture.
 - 2. Each State Party shall make these offences punishable by appropriate penalties which take into account their grave nature.
- Art. 5
 - 1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences referred to in article 4 in the following cases:
 - (a) When the offences are committed in any territory under its jurisdiction or on board a ship or aircraft registered in that State;
 - (b) When the alleged offender is a national of that State;
 - (c) When the victim is a nation of that State if that State considers it appropriate.
 - 2. Each State Party shall likewise take such measures as may be necessary to establish its jurisdiction over such offences in cases where the alleged offender is present in any territory under its jurisdiction and it does not extradite him pursuant to article 8 to any of the States mentioned in paragraph I of this article.
 - 3. This Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.
- Art. 6
 - 1. Upon being satisfied, after an examination of information available to it, that the circumstances so warrant, any State Party in whose territory a person alleged to have committed any offence referred to in article 4 is present shall take him into custody or take other legal measures to ensure his presence. The custody and other legal measures shall be as provided in the law of that State but may be continued only for such time as is necessary to enable any criminal or extradition proceedings to be instituted.
 - 2. Such State shall immediately make a preliminary inquiry into the facts.
 - 3. Any person in custody pursuant to paragraph I of this article shall be assisted in communicating immediately with the nearest appropriate representative of the State of which he is a national, or, if he is a stateless person, with the representative of the State where he usually resides.
 - 4. When a State, pursuant to this article, has taken a person into custody, it shall immediately notify the States referred to in article 5, paragraph 1, of the fact that such person is in custody and of the circumstances which warrant his detention. The State which makes the preliminary inquiry contemplated in paragraph 2 of this article shall promptly report its findings to the said States and shall indicate whether it intends to exercise jurisdiction.
- Art. 7

- 1. The State Party in the territory under whose jurisdiction a person alleged to have committed any offence referred to in article 4 is found shall in the cases contemplated in article 5, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution.
- 2. These authorities shall take their decision in the same manner as in the case of any ordinary offence of a serious nature under the law of that State. In the cases referred to in article 5, paragraph 2, the standards of evidence required for prosecution and conviction shall in no way be less stringent than those which apply in the cases referred to in article 5, paragraph 1.
- 3. Any person regarding whom proceedings are brought in connection with any of the offences referred to in article 4 shall be guaranteed fair treatment at all stages of the proceedings.
- Art. 11
 - Each State Party shall keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment in any territory under its jurisdiction, with a view to preventing any cases of torture.
- Art. 12
 - Each State Party shall ensure that its competent authorities proceed to a prompt and impartial investigation, wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.
- Art. 13
 - Each State Party shall ensure that any individual who alleges he has been subjected to torture in any territory under its jurisdiction has the right to complain to, and have his case promptly and impartially examined by, its competent authorities. Steps shall be taken to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation as a consequence of his complaint or any evidence given.
- Art. 14
 - 1. Each State Party shall ensure in its legal system that the victim of an act of torture obtains redress and has an enforceable right to fair and adequate compensation, including the means for as full rehabilitation as possible. In the event of the death of the victim as a result of an act of torture, his dependents shall be entitled to compensation.
 - 2. Nothing in this article shall affect any right of the victim or other persons to compensation which may exist under national law.
- Art. 15
 - Each State Party shall ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings, except against a person accused of torture as evidence that the statement was made.
- Art. 16
 - 1. Each State Party shall undertake to prevent in any territory under its jurisdiction other acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined acquiescence of a public official or other person acting in an official capacity. In particular, the obligations contained in articles 10, 11, 12 and 13 shall apply with the substitution for references to torture of references to other forms of cruel, inhuman or degrading treatment or punishment.

- 2. The provisions of this Convention are without prejudice to the provisions of any other international instrument or national law which prohibits cruel, inhuman or degrading treatment or punishment or which relates to extradition or expulsion.
- Applicable to North Carolina?
 - Yes, US ratified CAT in October of 1994, and the Convention became active on November 20, 1994. US “made a declaration pursuant to article 21, paragraph 1, recognizing the competence of the Committee against Torture, on a reciprocal basis, to receive and consider a State party’s claims that another State party is not fulfilling its obligations under the Convention.” Consideration of Reports Submitted by United Nations, State Parties Under Article 19 of the Convention, Oct. 15, 1999. <https://www.state.gov/documents/organization/100296.pdf>.
 - United States Reservation (conditioned its ratification on the following reservation): “[T]he United States considers itself bound by the obligation under Article 16 to prevent “cruel, inhuman or degrading treatment or punishment”, only insofar as the term “cruel, inhuman or degrading treatment or punishment” means the cruel, unusual and inhumane treatment or punishment prohibited by the Fifth, Eighth and/or Fourteenth Amendments to the Constitution of the United States.” Para. 302, pg. 65. “Although the Eighth Amendment’s protections against cruel and unusual punishment apply only to those subject to “punishment” within the Amendment’s meaning, the Fourth Amendment protects all individuals against unreasonable intrusions upon their bodily integrity and security of person. In *Graham v. Connor*, 490 U.S. 386 (1989), the U.S. Supreme Court held that an arrestee’s claims that arresting officers used excessive force resulting in injury or death implicated the Fourth Amendment: “all claims that law enforcement officers have used excessive force - deadly or not - in the course of an arrest, investigatory stop, or other ‘seizure’ of a free citizen should be analysed under the Fourth Amendment and its ‘reasonableness’ standard, rather than under a ‘substantive due process’ standard”. *Id.* at 395. Excessive force in effecting an arrest may violate the individual’s Fourth Amendment right even where probable cause for arrest exists. *Tennessee v. Garner*, 471 U.S. 1 (1985).”
 - This is the only relevant reservation for CAT
 - Supremacy Clause: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.
 - Attaching entire US report on CAT, for its usefulness in connecting US Constitutional law to CAT
 - Federal Statutes that were enacted to “domesticate” CAT
 - Federal Torture Statutes
 - 18 U.S.C § 2340
 - “The Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) was enacted to implement Art. 3 of CAT.

b. Customary International Law

- Universal Declaration of Human Right (UDHR) U.N. Doc. A/810 at 71 (1948)
 - Relevant Articles: 3, 5, 6, 8, 10, 11, 14, 30
 - Art. 3
 - Everyone has the right to life, liberty and security of person
 - Art. 5

- No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment
- Art. 6
 - Everyone has the right to recognition everywhere as a person before the law.
- Art. 8
 - Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law
- Art. 9
 - No one shall be subjected to arbitrary arrest, detention or exile
- Art. 10
 - Everyone is entitled in full equality to a fair and public hearing by an independent and impartial tribunal, in the determination of his rights and obligations and of any criminal charge against him.
- Art. 11
 - (1) Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defense.
 - (2) No one shall be held guilty of any penal offence on account of any act or omission which did not constitute a penal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the penal offence was committed.
- Art. 14
 - (1) Everyone has the right to seek and to enjoy in other countries asylum from persecution.
 - (2) This right may not be invoked in the case of prosecutions genuinely arising from non-political crimes or from acts contrary to the purposes and principles of the United Nations.
- Art. 30
 - Nothing in this Declaration may be interpreted as implying for any State, group or person any right to engage in any activity or to perform any act aimed at the destruction of any of the rights and freedoms set forth herein.
- Applicable to North Carolina?
 - Yes, through customary international law.
- Vienna Convention of the Law of Treaties, 1155 U.N.T.S. 331, 8 I.L.M. 679 (1969)
 - Relevant Articles: 3, 4, 18, 26, 28, 29, 31
 - Art. 3. International Agreements Not Within the Scope of the Present Convention
 - The fact that the present Convention does not apply to international agreements concluded between States and other subjects of international law or between such other subjects of international law, or to international agreements not in written form, shall not affect:
 - (a) the legal force of such agreements;
 - (b) The application to them of any of the rules set forth in the present Convention to which they would be subject under international law independently of the Convention;
 - (c) The application of the Convention to the relations of States as between themselves under international agreements to which other subjects of international law are also parties.
 - Art. 4. Non-retroactivity of the present Convention
 - Without prejudice to the application of any rules set forth in the present Convention to which treaties would be subject under international law independently of the Convention, the Convention applies only to treaties which

are concluded by States after the entry into force of the present Convention with regard to such States.

- Art. 18
 - A State is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
 - (a) It has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it shall have made its intention clear not to become a party to the treaty; or
 - (b) It has expressed its consent to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed.
- Art. 19
 - A state may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
 - (a) The reservation is prohibited by the treaty;
 - (b) The treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
 - (c) In cases not falling under sub-paragraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty.
- Art. 20
 - 1. A reservation expressly authorized by a treaty does not require any subsequent acceptance by the other contracting States unless the treaty so provides.
 - 2. When it appears from the limited number of the negotiating States and the object and purpose of a treaty that the application of the treaty in its entirety between all the parties is an essential condition of the consent of each one to be bound by the treaty, a reservation requires acceptance by all the parties.
 - 3. When a treaty is a constituent instrument of an international organization and unless it otherwise provides, a reservation requires the acceptance of the competent organ of that organization.
 - 4. In cases not falling under the preceding paragraphs and unless the treaty otherwise provides:
 - (a) Acceptance by another contracting State of a reservation constitutes the reserving State a party to the treaty in relation to that other State if or when the treaty is in force for those States;
 - (b) An objection by another contracting State to a reservation does not preclude the entry into force of the treaty as between the objecting and reserving States unless a contrary intention is definitely expressed by the objecting State;
 - (c) An act expressing a State's consent to be bound by the treaty and containing a reservation is effective as soon as at least one other contracting State has accepted the reservation.
 - 5. For the purposes of paragraphs 2 and 4 and unless the treaty otherwise provides, a reservation is considered to have been accepted by a State if it shall have raised no objection to the reservation by the end of a period of twelve months after it was notified of the reservation or by the date on which it expressed its consent to be bound by the treaty, whichever is later.
- Art. 26
 - Every treaty in force is binding upon the parties to it and must be performed by them in good faith.
- Art. 28
 - Unless a different intention appears from the treaty or is otherwise established, its provisions do not bind a party in relation to any act or fact which took place or

any situation which ceased to exist before the date of the entry into force of the treaty with respect to that party.

- Art. 29
 - Unless a different intention appears from the treaty or is otherwise established, a treaty is binding upon each party in respect of its entire territory.
- Art. 31
 - 1. A treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in light of its object and purpose.
 - 2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:
 - (a) Any agreement relating to the treaty which was made between all the parties in connection with the conclusion of the treaty;
 - (b) Any instrument which was made by one or more parties in connection with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.
 - (3) There shall be taken into account, together with the context:
 - (a) Any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions;
 - (b) Any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation;
 - (c) Any relevant rules of international law applicable in the relations between the parties.
 - (4) A special meaning shall be given to a term if it is established that the parties so intended.
- Applicable to North Carolina?
- The US has signed the Vienna Convention, but the Senate has not given its advice and consent. The US, however, “considers many of the provisions of the Vienna Convention on the Law of Treaties to constitute customary international law on the law of treaties.” <https://www.state.gov/s/l/treaty/faqs/70139.htm>.

“Multilateral treaties, like the human rights treaties, usually provide for signature subject to ratification, acceptance or approval. In such cases, the act of signing does not impose legal obligations on the State. However, signature does indicate the State’s intention to take steps to be bound by the treaty at a later date. In other words, signature is a preparatory step on the way to ratification. Signature also creates an obligation to refrain in good faith from acts that would defeat the object and purpose of the treaty.
- UN Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) U.N. Doc. A/RES/40/33 (May 13, 1977).
 - Part I-Rules of General Application
 - Basic Principle
 - (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.
 - (2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.
 - Discipline and Punishment
 - Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.
 - (28)(1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

- (29) The following shall always be determined by the law or by the regulation of the competent administrative authority:
 - (a) Conduct constituting a disciplinary offence;
 - (b) The types and duration of punishment which may be inflicted;
 - (c) The authority competent to impose such punishment.
- (30) (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.
- (2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.
- (3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.
- (31) Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.
- (32)(1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.
- (2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.
- (3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.
- Instruments of Restraint
 - 33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackers, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:
 - (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
 - (b) On medical grounds by direction of the medical officer;
 - (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.
 - 34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.
- Information to and complaints by prisoners
 - 35.
 - (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.
 - (2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

- 36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.
- (2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.
- (3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.
- (4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.
- Contact with the outside world
 - 37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.
 - 38 (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.
 - (2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.
- Notification of death, illness, transfer, etc.
 - 44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.
 - (3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.
- Removal of Prisoners
 - 45(1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.
 - (2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.
 - (3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.
- Part II—Rules Applicable to Special Categories
 - (A) Prisoners Under Sentence
 - Guiding Principles
 - 56. The guiding principles hereafter are intended to show the spirit in which penal institutions should be administered and the purposes at which they should aim, in accordance with the declaration made under Preliminary Observation 1 of the present text.

- 57. Imprisonment and other measures which result in cutting off an offender from the outside world are afflictive by the very fact of taking from the person the right of self-determination by depriving him of his liberty. Therefore, the prison system shall not, except as incidental to justifiable segregation or the maintenance of discipline, aggravate the suffering inherent in such a situation.
- 58. The purpose and justification of a sentence of imprisonment or a similar measure deprivative of liberty is ultimately to protect society against crime. This end can only be achieved if the period of imprisonment is used to ensure, so far as possible, that upon his return to society the offender is not only willing but able to lead a law-abiding and self-supporting life.
- 59. To this end, the institution should utilize all the remedial, education, moral, spiritual and other forces and forms of assistance which are appropriate and available, and should seek to apply them according to the individual treatment needs of the prisoners.
- 60. (1) The regime of the institution should seek to minimize any differences between prison life and life at liberty which tend to lessen the responsibility of the prisoners or the respect due to their dignity as human beings.
- (2) Before the completion of the sentence, it is desirable that the necessary steps be taken to ensure for the prisoner a gradual return to life in society. This aim may be achieved, depending on the case, by a pre-release
- (C) Prisoners under arrest or awaiting trial
 - 84(1) Persons arrested or imprisoned by reason of a criminal charge against them, who are detained either in police custody or in prison custody (jail) but have not yet been tried and sentenced, will be referred to as “untried prisoners” hereinafter in these rules.
 - (2) Unconvicted prisoners are presumed to be innocent and shall be treated as such.
 - (3) Without prejudice to legal rules for the protection of individual liberty or prescribing the procedure to be observed in respect of untried prisoners, these prisoners shall benefit by a special regime which is described in the following rules in its essential requirements only.
- (E) Persons Arrested or Detained Without Charge
 - 95. Without prejudice to the provisions of article 9 of the International Covenant on Civil and Political Rights, persons arrested or imprisoned without charge shall be accorded the same protection as that accorded under Part I and part II, section C. Relevant provisions of Part II, section A, shall likewise be applicable where their application may be conducive to the benefit of this special group of persons in custody, provide that no measures shall be taken implying re-education or rehabilitation is in any way appropriate to persons not convicted of any criminal offence.
- Applicable to North Carolina?
 - No, only UN rules, not adopted or ratified by US; however, may be informative and/or influential.
- Penalties?
 - None

Federal & Domestic Law

c. The Federal Torture Statute of 1994 (18 U.S.C. § 2340-2340A) (1994)

- § 2340. Definitions
 - As used in this chapter—
 - (1) “torture” means an act committed by a person acting under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;
 - (2) “severe mental pain or suffering” means the prolonged mental harm caused by or resulting from—
 - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (C) the threat of imminent death; or
 - (D) the threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality; and
 - (3) “United States” means the several States of the United States, the District of Columbia, and the commonwealths, territories, and possessions of the United States.
 - § 2340A. Torture
 - (a) Offense. —Whoever outside the United States commits or attempts to commit torture shall be fined under this title or imprisoned not more than 20 years, or both, and if death results to any person from conduct prohibited by this subsection, shall be punished by death or imprisoned for any term of years or for life.
 - (b) Jurisdiction. —There is jurisdiction over the activity prohibited in subsection (a) if—
 - (1) the alleged offender is a national of the United States; or
 - (2) the alleged offender is present in the United States, irrespective of the nationality of the victim or alleged offender.
 - (c) Conspiracy. —A person who conspires to commit an offense under this section shall be subject to the same penalties (other than the penalty of death) as the penalties prescribed for the offense, the commission of which was the object of the conspiracy.
 - § 2340B. Exclusive Remedies
 - Nothing in this chapter shall be construed as precluding the application of State or local laws on the same subject, nor shall anything in this chapter be construed as creating any substantive or procedural right enforceable by law by any party in any civil proceeding.
 - Applicable to North Carolina?
 - Yes, Federal law
 - Penalties?
 - Criminal per statute. § 2340B seems to indicate that there is not a private right of action under this statute. Victims may seek to pursue these protections through the Alien Tort Statute and other related statutes providing for relief.
- d. War Crimes Act of 1996 (18 U.S.C. § 2441) (1996)
- § 2441 War Crimes
 - (a) Offense—Whoever, whether inside or outside of the United States, commits a war crime, in any of the circumstances described in subsection (b), shall be fined under this title or imprisoned for life or any term of years, or both, and if death results to the victim, shall also be subject to the penalty of death.

- (b) Circumstances—The circumstances referred to in subsection (a) are that the person committing such war crime or the victim of such war crime is a member of the Armed Forces of the United States or a national of the United States (as defined in section 101 of the Immigration and Nationality Act).
- (c) Definition—As used in this section the term ‘war crime’ means any conduct—
 - (1) defined as a grave breach in any of the international conventions signed at Geneva 12 August 1949, or any protocol to such convention to which the United States is a party;
 - (2) prohibited by Article 23, 25, 27, or 28 of the Annex to The Hague Convention IV, Respecting the Laws and Customs of War on Land, signed 18 October 1907;
 - (3) which constitutes a grave breach of common Article 3 (as defined in subsection (d)) when committed in the context of and in association with an armed conflict not of an international character; or
 - (4) of a person who, in relation to an armed conflict and contrary to the provisions of the Protocol on Prohibitions or Restrictions on the Use of Mines, Booby-Traps and Other Devices as amended at Geneva on 3 May 1996 (Protocol II as amended on 3 May 1996), when the United States is a party to such Protocol, willfully kills or causes serious injury to civilians.
- (d) Common Article 3 Violations—
 - (1) Prohibited Conduct—In subsection (c)(3), the term “grave breach of common Article 3” means any conduct (such conduct constituting a grave breach of common Article 3 of the international conventions done at Geneva August 12, 1949), as follows:
 - (A) Torture—The act of a person who commits, or conspires or attempts to commit, an act specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control for the purpose of obtaining information or a confession, punishment, intimidation, coercion, or any reason based on discrimination of any kind.
 - (B) Cruel or Inhuman Treatment—The act of a person who commits, or conspires or attempts to commit, an act intended to inflict severe or serious physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions), including serious physical abuse, upon another within his custody or control.
 - [Omitting (C) Performing Biological Experiments]
 - (D) Murder—The act of a person who intentionally kills, or conspires or attempts to kill, or kills whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause.
 - (E) Mutilation or Maiming—The act of a person who intentionally injures, or conspires or attempts to injure, or injures whether intentionally or unintentionally in the course of committing any other offense under this subsection, one or more persons taking no active part in the hostilities, including those placed out of combat by sickness, wounds, detention, or any other cause, by disfiguring the person or persons by any mutilation thereof or by permanently disabling any member, limb, or organ of his body, without any legitimate medical or dental purpose.”

- (F) Intentionally Causing Serious Bodily Injury—The act of a person who intentionally causes, or conspires or attempts to cause, serious bodily injury to one or more persons, including lawful combatants, in violation of the law of war.
 - (G) Rape—The act of a person who forcibly or with coercion or threat of force wrongfully invades, or conspires or attempts to invade, the body of a person by penetrating, however slightly, the anal or genital opening of the victim with any part of the body of the accused, or with any foreign object.
 - (H) Sexual Assault or Abuse—The act of a person who forcibly or with coercion or threat of force engages, or conspires or attempts to engage, in sexual contact with one or more persons, or causes, or conspires or attempts to cause, one or more persons to engage in sexual contact.
 - (I) Taking Hostages—The act of a person who, having knowingly seized or detained one or more persons, threatens to kill, injure, or continue to detain such person or persons with the intent of compelling any nation, person other than the hostage, or group of persons to act or refrain from acting as an explicit or implicit condition for the safety or release of such person or persons.
 - (2) Definitions—In the case of an offense under subsection (a) by reason of subsection (c)(3)—
 - (A) the term “severe mental pain or suffering” shall be applied for purposes of paragraphs (1)(A) and (1)(B) in accordance with the meaning given that term in section 2340(a) of this title;
 - (B) the term “serious bodily injury” shall be applied for purposes of paragraph (1)(F) in accordance with the meaning given that term in section 113(b)(2) of this title;
 - (C) the term “sexual contact” shall be applied for purposes of paragraph (1)(G) in accordance with the meaning given that term in section 2246(3) of this title;
 - (D) the term “serious physical pain or suffering” shall be applied for purposes of paragraph (1)(B) as meaning bodily injury that involves—
 - (i) a substantial risk of death;
 - (ii) extreme physical pain;
 - (iii) a burn or physical disfigurement of a serious nature (other than cuts, abrasions, or bruises); or
 - (iv) significant loss or impairment of the function of a bodily member, organ, or mental faculty; and
 - (E) the term “serious mental pain or suffering” shall be applied for purposes of paragraph (1)(B) in accordance with the meaning given the term “severe mental pain or suffering” (as defined in section 2340(2) of this title), except that—
 - (i) the term “serious” shall replace the term “severe” where it appears; and
 - (ii) as to conduct occurring after the date of the enactment of the Military Commissions Act of 2006, the term “serious and non-transitory mental harm (which need not be prolonged)” shall replace the term “prolonged mental harm” where it appears.
 - (3) Inapplicability of Certain Provisions with Respect to Collateral Damage or Incident of Lawful Attack—The intent specified for the

conduct stated in subparagraphs (D), (E), and (F) or paragraph (1) precludes the applicability of those subparagraphs to an offense under subsection (a) by reasons of subsection (c)(3) with respect to—

- (A) collateral damage; or
- (B) death, damage, or injury incidence to a lawful attack
- Applicable to North Carolina?
 - Yes, federal law
- Penalties?
 - There appears to be no private right of action or remedy besides criminal conviction.
 - Victims may seek to pursue these protections through the Alien Tort Statute and other related statutes providing for relief. *See* *Kadic v. Karadzic*, 70 F.3d 232 (1995).
- e. Foreign Affairs Reform and Restructuring Act of 1998 (FARRA) (Pub. L. 105-277, Div. G., 122 Stat. 2681-761) (1998)
 - Incorporated in the notes of 8 USC § 1231 (<https://www.gpo.gov/fdsys/pkg/USCODE-2015-title8/pdf/USCODE-2015-title8-chap12-subchapII-partIV-sec1231.pdf>)
 - § 1231 Detention and Removal of Aliens Ordered Removed
 - United States Policy With Respect to Involuntary Return of Persons with Danger of Subjection to Torture
 - (a) Policy.—It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.
 - (b) Regulations—Not later than 120 days after the date of enactment of this Act [Oct. 21, 1998], the heads of the appropriate agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.
 - (c) Exclusion of Certain Aliens. —To the maximum extent consistent with the obligations of the United States under the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, the regulations described in subsection (b) shall exclude from the protection of such regulations aliens described in section 241(b)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1231(b)(3)(B)).
 - (d) Review and Construction.—Notwithstanding any other provision of law, and except as provided in the regulations described in subsection (b), no court shall have jurisdiction to review the regulations adopted to implement this section, and nothing in this section shall be construed as providing any court jurisdiction to consider or review claims raised under the Convention or this section, or any other determination made with respect to the application of the policy set forth in subsection (a), except as part of the review of a final order of removal pursuant to section 242 of the Immigration and Nationality Act (8 U.S.C. 1252).
 - (e) Authority to Detain. —Nothing in this section shall be construed as limiting the authority of the Attorney General to detain any person under any provision of law, including, but not limited to, any provision of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.].
 - (f) Definitions. —

- (1) Convention Defined. —In this section, the term ‘Convention’ means the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment, done at New York on December 10, 1984.
 - (2) Same Terms as in the Convention. —Except as otherwise provide, the terms used in this section have the meanings given those terms in the Convention, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention.
 - Applicable to North Carolina?
 - Yes, federal law
 - Penalties?
 - No private right of action established in (d) of FARRA.
- f. Alien Tort Statute (ATS)—28 U.S.C. § 1350 (1948) Revised after 1992 to incorporate Torture Victim Protection Act of 1991.
- The district courts shall have original jurisdiction of any civil action by an alien for a tort only, committed in violation of the law of nations or a treaty of the United States.
 - Incorporates Torture Victim Protection Act of 1991
 - Applicable to North Carolina?
 - Yes, federal law
 - Penalties? Private Right of Action?
 - The ATS incorporates the Torture Victim Protection Act of 1991, which establishes a civil action. Gives right to damages.
- g. Torture Victim Protection Act of 1991 (106 Stat. 73, Pub. Law 102-256) (1992) Incorporated into the Alien Tort Statute.
- § 2 Establishment of Civil Action
 - (a) Liability—An individual who, under actual or apparent authority, or color of law, of any foreign nation—
 - (1) subjects an individual to torture shall, in a civil action, be liable for damages to that individual; or
 - (2) subjects an individual to extrajudicial killing shall, in a civil action, be liable for damages to the individual’s legal representative, or to any person who may be a claimant in an action for wrongful death.
 - (b) Exhaustion of Remedies—A court shall decline to hear a claim under this section if the claimant has not exhausted adequate and available remedies in the place in which the conduct giving rise to the claim occurred.
 - (c) Statute of Limitations—No action shall be maintained under this section unless it is commenced within 10 years after the cause of action arose.
 - § 3 Definitions
 - (a) Extrajudicial Killing—For the purposes of this Act, the term “extrajudicial killing” means a deliberated killing not authorized by a previous judgment pronounced by a regularly constituted court affording all the judicial guarantees which are recognized as indispensable by civilized peoples. Such term, however, does not include any such killing that, under international law, is lawfully carried out under the authority of a foreign nation.
 - (b) Torture—For the purposes of this Act—
 - (1) the term “torture” means any act, directed against an individual in the offender’s custody or physical control, by which severe pain or suffering (other than pain or suffering arising only from or inherent in, or incidental to, lawful sanctions), whether physical or mental, is

intentionally inflicted on that individual for such purposes as obtaining from that individual or a third person information or a confession, punishing that individual for an act that individual or a third person has committed or is suspected of having committed, intimidating or coercing that individual or a third person, or for any reason based on discrimination of any kind; and

- (2) mental pain or suffering refers to prolonged mental harm caused by or resulting from—
 - (A) the intentional infliction or threatened infliction of severe physical pain or suffering;
 - (B) the administration or application, or threatened administration or application, of mind altering substances or other procedures calculated to disrupt profoundly the senses or the personality;
 - (C) the threat of imminent death; or
 - (D) the threat that another individual will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind altering substances or other procedures calculated to disrupt profoundly the senses or personality.
- Applicability to North Carolina/North Carolina Officials/Citizens
- Applicable to North Carolina?
 - Yes, federal law
- Penalties? Yes, and includes a private right of action? Yes, under the Alien Tort Statute

h. 42 USC 21D—Detainee Treatment—Codification of Detainee Treatment Act of 2005 (2005)

- § 2000dd. Prohibition on cruel, inhuman, or degrading treatment or punishment of persons under custody or control of the United States Government.
 - (a) In General: No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.
 - (b) Construction: Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.
 - (c) Limitation on supersedure: The provisions of this section shall not be superseded except by a provision of law enacted after December 30, 2005, which specifically repeals, modifies, or supersedes the provisions of this section.
 - (d) Cruel, inhuman, or degrading treatment or punishment defined: In this section, the term ‘cruel, inhuman, or degrading treatment or punishment’ means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment done at New York.
- Notes of Act
 - Sec. 3. Standards and Practices for Interrogation of Individuals in the Custody or Control of the United States in Armed Conflicts
 - (a) Common Article 3 Standards as a Minimum Baseline.
 - Consistent with the requirements of the Federal torture statute, 18 U.S.C. 2340-2340A, section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd, and the Convention Against Torture, Common Article 3, and other laws regulating the treatment and

interrogation of individuals detained in any armed conflict, such persons, such persons shall in all circumstances be treated humanely and shall not be subjected to violence to life and person (including murder of all kinds, mutilation, cruel treatment, and torture), nor to outrages upon person dignity (including humiliating and degrading treatment), whenever such individuals are in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency of the United States.

- (b) Interrogation Techniques and Interrogation-Related Treatment. Effective immediately, an individual in the custody or under the effective control of an officer, employee, or other agent of the United States Government, or detained within a facility owned, operated, or controlled by a department or agency of the United States, in any armed conflict, shall not be subjected to any interrogation technique or approach, or any treatment related to interrogation, that is not authorized by and listed in Army Field Manual 2–22.3 (Manual). Interrogation techniques, approaches, and treatments described in the Manual shall be implemented strictly in accord with the principles, processes, conditions, and limitations the Manual prescribes. Where processes required by the Manual, such as a requirement of approval by specified Department of Defense officials, are inapposite to a department or an agency other than the Department of Defense, such a department or agency shall use processes that are substantially equivalent to the processes the Manual prescribes for the Department of Defense. Nothing in this section shall preclude the Federal Bureau of Investigation, or other Federal law enforcement agencies, from continuing to use authorized, non-coercive techniques of interrogation that are designed to elicit voluntary statements and do not involve the use of force, threats, or promises.
- (c) Interpretations of Common Article 3 and the Army Field Manual. From this day forward, unless the Attorney General with appropriate consultation provides further guidance, officers, employees, and other agents of the United States Government may, in conducting interrogations, act in reliance upon Army Field Manual 2–22.3, but may not, in conducting interrogations, rely upon any interpretation of the law governing interrogation—including interpretations of Federal criminal laws, the Convention Against Torture, Common Article 3, Army Field Manual 2–22.3, and its predecessor document, Army Field Manual 34–52—issued by the Department of Justice between September 11, 2001, and January 20, 2009.
- Sec. 4. Prohibition of Certain Detention Facilities, and Red Cross Access to Detained Individuals
 - (a) CIA Detention. The CIA shall close as expeditiously as possible any detention facilities that it currently operates and shall not operate any such detention facility in the future.
 - (b) International Committee of the Red Cross Access to Detained Individuals. All departments and agencies of the Federal Government shall provide the International Committee of the Red Cross with notification of, and timely access to, any individual detained in any armed conflict in the custody or under the effective control of an officer, employee, or other agent of the United States Government or detained within a facility owned, operated, or controlled by a department or agency

of the United States Government, consistent with Department of Defense regulations and policies.

- Sec. 6. Construction with Other Laws. Nothing in this order shall be construed to affect the obligations of officers, employees, and other agents of the United States Government to comply with all pertinent laws and treaties of the United States governing detention and interrogation, including but not limited to: the Fifth and Eighth Amendments to the United States Constitution; the Federal torture statute, 18 U.S.C. 2340-2340A; the War Crimes Act [of 1996], 18 U.S.C. 2441; the Federal assault statute, 18 U.S.C. 113; the Federal maiming statute, 18 U.S.C. 2261A; articles 93, 124, 128, and 134 of the Uniform Code of Military Justice, 10 U.S.C. 893, 924, 928, and 934; section 1003 of the Detainee Treatment Act of 2005, 42 U.S.C. 2000dd; section 6(c) of the Military Commissions Act of 2006, Public Law 109-366; the Geneva Conventions; and the Convention Against Torture. Nothing in this order shall be construed to diminish any rights that any individual may have under these or other laws and treaties. **This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.**
 - § 2000dd-0. Additional prohibition on cruel, inhuman, or degrading treatment or punishment.
- (1) In General. No individual in the custody or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.
- (2) Cruel, inhuman, or degrading treatment or punishment defined. In this section, the term ‘cruel, inhuman, or degrading treatment or punishment’ means cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understandings to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or degrading Treatment or Punishment done at New York, December 10, 1984.
- (c) Compliance. The President shall take action to ensure compliance with this section, including through the establishment of administrative rules and procedures.
- Codification: Section was enacted as part of the Military Commissions Act of 2006, and not as part of the Detainee Treatment Act of 2005 which comprises this chapter.
- § 2000dd-1. Protection of the United States Government personnel engaged in authorized interrogations.
 - (a) Protection of United States Government Personnel. In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person, arising out of the office, employee, member of the Armed Forces, or other agent’s engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or

damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

- (b) Counsel. The United States Government shall provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution or investigation arising out of practices described in that subsection, whether before United States courts or agencies, foreign courts or agencies, or international courts or agencies, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10.
- Remedy
 - No remedy available per notes of § 2000dd—bolded above
- i. Detainee Treatment Act of 2005 (Pub. L. 109-148, 19 Stat. 2739)—Incorporated into 42 USC 21D
 - Title X—Matters Relating to Detainees
 - § 1002 Uniform Standards for the Interrogation of Persons Under the Detention of the Department of Defense
 - (a) In General-No person in the custody or under the effective control of the Department of Defense or under detention in a Department of Defense facility shall be subject to any treatment or technique of interrogation not authorized by and listed in the United States Army Field Manual on Intelligence Interrogation.
 - (b) Applicability- Subsection (a) shall not apply with respect to any person in the custody or under the effective control of the Department of Defense pursuant to a criminal law or immigration law of the United States.
 - (c) Construction- Nothing in this section shall be construed to affect the rights under the United States Constitution of any person in the custody or under the physical jurisdiction of the United States.
 - § 1003 Prohibition on Cruel, Inhuman, or Degrading Treatment or Punishment of Persons Under Custody or Control of the United States Government
 - (a) In General- No individual or under the physical control of the United States Government, regardless of nationality or physical location, shall be subject to cruel, inhuman, or degrading treatment or punishment.
 - (b) Construction- Nothing in this section shall be construed to impose any geographical limitation on the applicability of the prohibition against cruel, inhuman, or degrading treatment or punishment under this section.
 - (c) Limitation on Supersedure- The provisions of this section shall not be superseded, except by a provision of law enacted after the date of the enactment of this Act which specifically repeals, modifies, or supersedes the provisions of this section.
 - (d) Cruel, Inhuman, or Degrading Treatment or Punishment Defined- In this section, the term ‘cruel, inhuman, or degrading treatment or punishment’ means the cruel, unusual, and inhumane treatment or punishment prohibited by the Fifth, Eighth, and Fourteenth Amendments to the Constitution of the United States, as defined in the United States Reservations, Declarations and Understanding to the United Nations Convention Against Torture and Other Forms of Cruel, Inhuman or Degrading Treatment or Punishment done at New York, December 10, 1984.
 - § 1004 Protection of United States Government Personnel Engaged in Authorized Interrogations.
 - (a) Protection of the United States Government Personnel- In any civil action or criminal prosecution against an officer, employee, member of the Armed Forces, or other agent of the United States Government who is a United States person,

arising out of the officer, employee, member of the Armed Forces, or other agent's engaging in specific operational practices, that involve detention and interrogation of aliens who the President or his designees have determined are believed to be engaged in or associated with international terrorist activity that poses a serious, continuing threat to the United States, its interests, or its allies, and that were officially authorized and determined to be lawful at the time that they were conducted, it shall be a defense that such officer, employee, member of the Armed Forces, or other agent did not know that the practices were unlawful and a person of ordinary sense and understanding would not know the practices were unlawful. Good faith reliance on advice of counsel should be an important factor, among others, to consider in assessing whether a person of ordinary sense and understanding would have known the practices to be unlawful. Nothing in this section shall be construed to limit or extinguish any defense or protection otherwise available to any person or entity from suit, civil or criminal liability, or damages, or to provide immunity from prosecution for any criminal offense by the proper authorities.

- (b) Counsel- The United States Government may provide or employ counsel, and pay counsel fees, court costs, bail, and other expenses incident to the representation of an officer, employee, member of the Armed Forces, or other agent described in subsection (a), with respect to any civil action or criminal prosecution arising out of practices described in that subsection, under the same conditions, and to the same extent, to which such services and payments are authorized under section 1037 of title 10, United States Code.
- § 1005 Procedures for Status Review of Detainees Outside the United States
 - (a) Submittal of Procedures for Status Review of Detainees at Guantanamo Bay, Cuba, and in Afghanistan and Iraq-
 - (1) IN GENERAL- Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the Committee on Armed Services and the Committee on the Judiciary of the Senate and the Committee on Armed Services and the Committee on the Judiciary of the House of Representatives a report setting forth—
 - (A) the procedures of the Combatant Status Review Tribunals and the Administrative Review Boards established by direction of the Secretary of Defense that are in operation at Guantanamo Bay, Cuba, for determining the status of the detainees held at Guantanamo Bay or to provide an annual review to determine the need to continue to detain an alien who is a detainee; and
 - (B) the procedures in operation in Afghanistan and Iraq for a determination of the status of aliens detained in the custody or under the physical control of the Department of Defense in those countries.
 - (2) DESIGNATED CIVILIAN OFFICIAL
 - The procedures submitted to Congress pursuant to paragraph (1)(A) shall ensure that the official of the Department of Defense who is designated by the President or Secretary of Defense to be the final review authority within the Department of Defense with respect to decisions of any such tribunal or board (referred to as the 'Designated Civilian Official') shall be a civilian officer of the Department of Defense holding an office to which appointments are required by law to be made by the President, by and with the advice and consent of the Senate.
 - (3) CONSIDERATION OF NEW EVIDENCE- The procedures submitted under paragraph (1)(A) shall provide for periodic review of any new

evidence that may become available relating to the enemy combatant status of a detainee.

- (b) Consideration of Statements Derived with Coercion-
 - (1) ASSESSMENT- The procedures submitted to Congress pursuant to subsection (a)(1)(A) shall ensure that a Combatant Status Review Tribunal or Administrative Review Board, or any similar or successor administrative tribunal or board, in making a determination of status or disposition of any detainee under such procedures, shall, to the extent practicable, assess—
 - (A) whether any statement derived from or relating to such detainee was obtained as a result of coercion; and
 - (B) the probative value (if any) of any such statement.
 - APPLICABILITY- Paragraph (1) applies with respect to any proceeding beginning on or after the date of the enactment of this Act.
- (c) Report on Modification of Procedures- The Secretary of Defense shall submit to the committees specified in subsection (a)(1) a report on any modification of the procedures submitted under subsection (a). Any such report shall be submitted not later than 60 days before the date on which such modification goes into effect.
- (d) Annual Report-
 - (1) REPORT REQUIRED- The Secretary of Defense shall submit to Congress an annual report on the annual review process for aliens in the custody of the Department of Defense outside the United States. Each such report shall be submitted in unclassified form, with a classified annex, if necessary. The report shall be submitted not later than December 31 each year.
 - (2) ELEMENTS OF REPORT- Each such report shall include the following with respect to the year covered by the report:
 - (A) The number of detainees whose status was reviewed.
 - (B) The procedures used at each location.
- (e) Judicial Review of Detention of Enemy Combatants-
 - (1) IN GENERAL- Section 2241 of title 28, United States Code, is amended by adding at the end the following:
 - `(e) Except as provided in section 1005 of the Detainee Treatment Act of 2005, no court, justice, or judge shall have jurisdiction to hear or consider—
 - `(1) an application for a writ of habeas corpus filed by or on behalf of an alien detained by the Department of Defense at Guantanamo Bay, Cuba; or
 - `(2) any other action against the United States or its agents relating to any aspect of the detention by the Department of Defense of an alien at Guantanamo Bay, Cuba, who—
 - `(A) is currently in military custody; or
 - `(B) has been determined by the United States Court of Appeals for the District of Columbia Circuit in accordance with the procedures set forth in section 1005(e) of the Detainee Treatment Act of 2005 to have been properly detained as an enemy combatant.
 - (2) REVIEW OF DECISIONS OF COMBATANT STATUS REVIEW TRIBUNALS OF PROPRIETY OF DETENTION-
 - (A) IN GENERAL- Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any

final decision of a Combatant Status Review Tribunal than an alien is properly detained as an enemy combatant.

- (B) LIMITATION ON CLAIMS- The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to claims brought by or on behalf of an alien—
 - (i) who is, at the time a request for review by such court is filed, detained by the Department of Defense at Guantanamo Bay, Cuba; and
 - (ii) for whom a Combatant Status Review Tribunal has been conducted, pursuant to applicable procedures specified by the Secretary of Defense.
- (C) SCOPE OF REVIEW- The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit on any claims with respect to an alien under this paragraph shall be limited to the consideration of—
 - (i) whether the status determination of the Combatant Status Review Tribunal with regard to such alien was consistent with the standards and procedures specified by the Secretary of Defense for Combatant Status Review Tribunals (including the requirement that the conclusion of the Tribunal be supported by a preponderance of the evidence and allowing a rebuttable presumption in favor of the Government's evidence); and
 - (ii) to the extent the Constitution and laws of the United States are applicable, whether the use of such standards and procedures to make the determination is consistent with the Constitution and laws of the United States.
- (D) TERMINATION ON RELEASE FROM CUSTODY- The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit with respect to the claims of an alien under this paragraph shall cease upon the release of such alien from the custody of the Department of Defense.
- (3) REVIEW OF FINAL DECISIONS OF MILITARY COMMISSIONS-
 - (A) IN GENERAL- Subject to subparagraphs (B), (C), and (D), the United States Court of Appeals for the District of Columbia Circuit shall have exclusive jurisdiction to determine the validity of any final decision rendered pursuant to Military Commission Order No. 1, dated August 31, 2005 (or any successor military order)
 - (B) GRANT OF REVIEW- Review under this paragraph—
 - (i) with respect to a capital case or a case in which the alien was sentenced to a term of imprisonment of 10 years or more, shall as of right; or
 - (ii) with respect to any other case, shall be at the discretion of the United States Court of Appeals for the District of Columbia Circuit.
 - (C) LIMITATION ON APPEALS- The jurisdiction of the United States Court of Appeals for the District of Columbia Circuit under this paragraph shall be limited to an appeal brought by or on behalf of an alien—
 - (i) who was, at the time of the proceedings pursuant to the military order referred to in subparagraph (A), detained by the Department of Defense at Guantanamo Bay, Cuba; and

- (4) Article 3 of the Convention against Torture expressly prohibits sending a person to another State “where there are substantial grounds for believing that he would be in danger of being subjected to torture.” It further provides that in making such determinations, governments must take into account the existence of “a consistent pattern of gross, flagrant, or mass violations of human rights.”.
- (5) In order to discourage the use of torture in interrogation, Article 15 of the Convention against Torture requires all state Parties to “ensure that any statement which is established to have been made as a result of torture shall not be invoked as evidence in any proceedings.”.
- (6) The prohibition on torture and other ill treatment has been incorporated into the numerous international and regional human rights treaties, including—
 - (A) Article 7 of the International Covenant on Civil and Political Rights (ICCPR), ratified by 154 countries, including the United States in 1992;
 - (B) the Convention against Torture, ratified by 139 countries, including the United States in 1994;
 - (C) the American Convention on Human Rights;
 - (D) the European Convention for the Protection of Human Rights and Fundamental Freedoms; and
 - (E) the African Charter on Human and Peoples’ Rights.
- (7) The prohibition against torture and inhumane treatment is also fundamental to the laws governing the conduct of parties in armed conflicts, as enshrined in the Geneva Conventions of 1949 and their Protocols, which establish a duty to protect the life, health, and safety of civilians and other non-combatants, including soldiers who are captured or who have laid down their arms, prohibit “violence of life and person, in particular murder of all kinds, mutilation, cruel treatment, and torture”, “outrages upon personal dignity, in particular humiliating, and degrading treatment”, and prohibit the use of force to obtain information, stipulating that “No physical or moral coercion shall be exercised against protected persons, in particular to obtain information from them or from third parties.”.
- (8) The United States Government informed the United Nations in 1999 that in the United States, the use of torture “is categorically denounced as a matter of policy and as a tool of state authority . . . No official of the government, Federal, State, or local, civilian, or military, is authorized to commit or to instruct anyone else to commit torture. Nor may any official condone or tolerate torture in any form . . . Every act of torture within the meaning of the [Convention against Torture] is illegal under existing Federal and State law, and any individual who commits such an act is subject to penal sanctions as specified in criminal statutes.”.
- (9) In the United States, the practice of torture violates numerous provisions of the United States Constitution and its Bill of Rights, including the right under the Fourth Amendment to be free of unreasonable search or seizure, which encompasses the right not to be abused by the police, the right under the Fifth Amendment against self-incrimination, which encompasses the right to remain silent during interrogations, the guarantees of due process under the Fifth and the Fourteenth Amendments, which ensure fundamental fairness in criminal justice system, and the right under the Eighth Amendment to be free of cruel or unusual punishment.

- (10) In numerous cases, the United States Supreme Court has condemned the use of force amounting to torture or other forms of ill treatment during interrogations, including such practices as whipping, slapping, depriving a prisoner of food, water, or sleep, keeping a prisoner naked or in a small cell for prolonged periods, holding a gun to a prisoner's head, or threatening a prisoner with mob violence.
- (11) Section 2242(a) of the Foreign Affairs Reform and Restructuring Act of 1998 (Public Law 105–277; 8 U.S.C. 1231 note) state that “It shall be the policy of the United States not to expel, extradite, or otherwise effect the involuntary return of any person to a country in which there are substantial grounds for believing the person would be in danger of being subjected to torture, regardless of whether the person is physically present in the United States.”. To do otherwise would violate our obligations under Article 3 of the Convention Against Torture.
- (12) Transferring, rendering, removing, returning, or extraditing persons in the custody of the United States to any other country where torture or cruel, inhuman, or degrading treatment is commonly used in the detention and interrogation of individuals is inconsistent with international human rights law, including various human rights treaties ratified by the United States, the Constitutional protections against torture or inhuman treatment, and the values and principles upon which the United States was founded.
- (13) Recent practices have weakened the safeguards under applicable laws, such as the procedures under the immigration laws of the United States governing removals from the United States, and persons have been transferred from the custody of the United States to that of other governments entirely outside of any legal framework.
- (14) It is critically important that all transfers of individuals to other countries occur with full due process of law and in conformity with the obligations of the United States under article 3 of the Convention Against Torture.
- (15) The reliance on diplomatic or other assurances from a government that it will not torture or ill-treat a person returned to that government is an ineffective safeguard for protecting persons from torture or ill treatment. Such assurances from a government known to engage in systematic torture are inherently unreliable. There is strong evidence that governments such as those of Egypt, Syria, and Uzbekistan have violated such assurances they have provided.
- (16) The United Nation's leading expert on torture, the Special Rapporteur on Torture, recently examined the practice of rendition in situations that implicate the prohibition on returning persons to countries where they may face torture. The Special Rapporteur noted with concern that such practices appear to be on the rise over the past 3 years. After examining the growing use of diplomatic or other assurances described in paragraph (14), the Special Rapporteur stated that such assurances may not be used in circumstances where a country has a record of “systemic practice of torture”. In such cases, the individual's right not to be subjected to torture must be respected, and the individual may not be returned to that country.
- § 3 Transfer of Persons
 - (a) REPORTS TO CONGRESS. —Beginning 30 days after the date of the enactment of this Act and every 12 months thereafter, the Secretary of State shall complete and submit to the appropriate congressional

committees a list of countries where there are substantial grounds for believing that torture or cruel, inhuman, or degrading treatment is commonly used in the detention of or interrogation of individuals. The list shall be compiled on the basis on the basis of the information contained in the most recent annual report of the Secretary of State submitted to the speaker of the House of Representatives and the Committee on Foreign Relations of the Senate under Section 116(d) of the Foreign Assistance Act of 1961 (22 U.S.C. 2151n(d)).

- (b) Prohibition on Transferring Persons. —Any person who is imprisoned, detained, or held for transfer to another country by, or is otherwise in the custody of, a department, agency, or official of the United States Government, or any contractor of any such department or agency, may not be transferred, rendered, or returned—
 - (1) to a country included on the most recent list submitted under subsection (a), for the purpose of detention, interrogation, trial, or otherwise; or
 - (2) to any other country if there are substantial grounds to believe that the person will be transferred to a country included in the most recent list submitted under subsection (a)
- (c) Waivers—
 - (1) Authority. —The Secretary of State may waive the prohibition contained in subsection (b) with respect to the government of a country if the Secretary certifies to the appropriate congressional committees that—
 - (A) that government has ended the acts of torture or cruel, inhuman, or degrading treatment that were the basis for the inclusion of that country on the list; and
 - (B) there is in place a mechanism that assures the United States in a verifiable manner that a person transferred, rendered, or returned will not be tortured or subjected to cruel, inhuman, or degrading treatment in that country, including, at a minimum, immediate, unfettered, and continuing access, from the point of return, to each person by an independent humanitarian organization.
 - (2) Assurances Insufficient. —Written or verbal assurances made to the United States by the government of a country that persons transferred, rendered, or returned to the country will not be tortured or subjected to cruel, inhuman, or degrading treatment, are not sufficient to meet the requirements of paragraph (1)(B).
- (d) Treaty-Based Extradition Exemption. —
 - (1) The prohibition contained in subsection (b) shall not be construed to apply to the legal extradition of a person under a bilateral or multilateral extradition treaty if, prior to such extradition, that person has recourse to a court in the United States of competent jurisdiction to challenge the extradition on the basis that there are substantial grounds for believing that the person would be in danger of being subjected to torture or cruel, inhuman, or degrading treatment in the country requesting such extradition.
 - (2) Assurances Insufficient. —Written or verbal assurances made to the United States by the government of a country that persons transferred, rendered, or returned to the country will not be tortured or subjected to cruel, inhuman, or degrading treatment, are not sufficient basis for believing that the person would not be

in subjected to torture or cruel, inhuman, or degrading treatment in the country requesting such extradition pursuant to paragraph (1).

- § 4. Implementation of Obligation Not To Return to Risk of Torture
 - In General. —Section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (8 U.S.C. 1231 note) is amended by striking subsection (b) and inserting the following:
 - “(b) Regulations—
 - “(1) Issuance.—Not later than 120 after the date of the enactment of the Torture Outsourcing Prevention Act, the heads of the appropriate Government agencies shall prescribe regulations to implement the obligations of the United States under Article 3 of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations and provisos contained in the United States Senate resolution of ratification of the Convention.
 - “(2) Requirements of Regulations. —Regulations issued by the head of an agency under paragraph (1) shall set forth—
 - “(A) the responsibilities of the agency, its employees, and its contractors to comply, both within and outside of the United States, with the obligations of the United States under Article 3 of the Convention Against Torture referred to in paragraph (1); and
 - “(B) the process by which a person may raise and adjudicate an independent judicial forum a claim that his or her transfer would be in violation of Article 3 of the Convention Against Torture referred to in paragraph (1), including the process by which the individual being transferred can challenge any diplomatic or other assurances received from the government to which the individual would be returned that the individual will not be subjected to torture or ill treatment.
 - “(3) Definition.—For purposes of this subsection, the term ‘appropriate Government agencies’ means the intelligence community (as defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))), the Department of State, Defense, Homeland Security, and Justice, the United States Secret Service, the United States Marshals Service, and any other law enforcement, national security, intelligence, or homeland security agency which imprisons, detains, or transfers prisoners or detainee, or which otherwise takes or assumes custody of persons, or transfers person to another country.”.
 - (b) Existing Regulations. —
 - (1) In General. —The amendment made by subsection (a) does not nullify any regulations issued by an agency, before the effective date of this Act, under section 2242(b) of the Foreign Affairs Reform and Restructuring Act of 1998. In such a case, the agency shall amend such regulations to

comply with the amendment made by subsection (a) of this section.

- (2) Special Rule Concerning Immigration Laws.— Notwithstanding any other provision of this Act, or any amendment made by this Act, nothing in this Act shall be construed to affect immigration laws (as defined in section 101(a)(17) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(17))), or regulations issued pursuant to immigration laws, except that the Secretary of Homeland Security, not later than 120 days after the date of the enactment of this Act, shall revise the regulations issued by the Secretary to implement section 2242 of the Foreign Affairs Reforms and Restructuring Act of 1998 (8 U.S.C. 1231 note) so as to ensure that written or verbal assurances made by the government of a country that a person in immigration proceedings in the United States (including asylum proceedings) will not be tortured or subjected to cruel, inhuman, or degrading treatment if the person is removed by the United States to the country are not, standing alone, a sufficient basis for believing that the person would not be tortured or subjected to such treatment if the alien were removed to the country.

- § 5 Savings Clause

- Nothing in this Act or the amendments made by this Act shall be construed to eliminate, limit, or constrain in any way the rights that an individual has under the Convention Against Torture or any other applicable law.

- Applicable to North Carolina?

- Yes, federal law

- Penalties?

- None, this was never enacted

k. The INA of 1952 (8 U.S.C. § 1101) (1952)

- § 1231(a)(3) Detention, release, and removal of aliens ordered removed—Supervision after 90-day period

If the alien does not leave or is not removed within the removal period, the alien, pending removal, shall be subject to supervision under regulations prescribed by the Attorney General. The regulations shall include provisions requiring the alien—

(A) to appear before an immigration officer periodically for identification;

(B) to submit, if necessary, to a medical and psychiatric examination at the expense of the United States Government;

(C) to give information under oath about the alien's nationality, circumstances, habits, associations, and activities, and other information the Attorney General considers appropriate; and

(D) to obey reasonable written restrictions on the alien's conduct or activities that the Attorney General prescribes for the alien.

- 8 U.S.C. § 1182(a)(3)(E). Inadmissible aliens

- (a) Classes of aliens ineligible for visas or admission
 Except as otherwise provided in this chapter, aliens who are inadmissible under the following paragraphs are ineligible to receive visas and ineligible to be admitted to the United States:
 - (3) Security and related grounds
 - (E) Participants in Nazi persecution, genocide, or the commission of any act of torture or extrajudicial killing.
 - (iii) Commission of acts of torture or extrajudicial killings.
 Any alien who, outside the United States, has committed, ordered, incited, assisted, or otherwise participated in the commission of—
 - (I) any act of torture, as defined in section 2340 of title 18; or
 - (II) under color of law of any foreign nation, any extrajudicial killing, as defined in section 3(a) of the Torture Victim Protection Act of 1991 (28 U.S.C 1350 note),
 is inadmissible
- Applicable to North Carolina?
 - Yes, federal law
 - INA not applicable with regard to law's structure and penalties to this issue

Miscellaneous Protocols and Policies under Federal & Domestic Law

- l. Memorandum of Notification—Mentioned not cited (2001) No cite, as it was a covert memo, we can only cite to the Senate Report on the memo: S. REP. NO. 113-288
 - Title: Guidelines on Interrogations Conducted Pursuant to the Presidential Memorandum of Notification of 17 September 2001
 - (1) Permissible Interrogation Techniques
 - Unless otherwise approved by Headquarters, CIA officers and other personnel acting on behalf of CIA may use only Permissible Interrogation Techniques. Permissible Interrogation Techniques consist of both (a) Standard Techniques and (b) Enhanced Techniques
 - Standard Techniques are techniques that *do not* incorporate physical or substantial psychological pressure. These techniques include, but are not limited to, all lawful forms of questioning employed by US law enforcement and military interrogation personnel. Among Standard Techniques are the use of isolation, sleep deprivation not to exceed 72 hours, reduced caloric intake (so long as the amount is calculated to maintain the general health of the detainee), deprivation of reading material, use of loud music or white noise (at a decibel level calculated to avoid damage to the detainee's hearing), and the use of diapers for limited periods (generally not to exceed 72 hours,
 - Applicable to North Carolina?
 - Penalties?
- m. Army Field Manual Human Intelligence Collector Operations (FM 2-22.3, 2006)
 - M-1 Introduction. As part of the Army's efforts to gain actionable intelligence in the war on terrorism, HUMINT collectors may be authorized, in accordance with this appendix, to employ the separation interrogation technique, be exception, to meet unique and critical operational requirements. The purpose of separation is to deny the detainee the opportunity to communicate with other detainees in order to keep him from learning counter-resistance techniques or gathering new information to support a cover story; decreasing the detainee's resistance to interrogation. Separation, further described in

paragraphs M-2 and M-28, is the only restricted interrogation technique that may be authorized for use. Separation will only be used during the interrogation of specific unlawful enemy combatants for whom proper approvals have been granted in accordance with this appendix. However, separation may not be employed on detainees covered by Geneva Convention Relative to the Treatment of Prisoners of War (GPW), primarily enemy prisoners of war (EPWs). The separation technique will be used only at COCOM-approved locations. Separation may be employed in combination with authorized interrogation approaches—

- On specific unlawful enemy combatants
- To help overcome resistance and gain actionable intelligence
- To safeguard US and coalition forces
- To protect US interests.

North Carolina Law

n. North Carolina Constitution

- Art. I § 19—Law of the land; equal protection of the laws
 - No person shall be taken, imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner deprived of his life, liberty, or property, but by the law of the land. No person shall be denied the equal protection of the laws; nor shall any person be subjected to discrimination by the State because of race, color, religion, or national origin.

o. North Carolina General Statutes

- § 14-39—Kidnapping
 - (a) Any person who shall unlawfully confine, restrain, or remove from one place to another, any other person 16 years of age or over without the consent of such person, or any other person under the age of 16 years without the consent of a parent or legal custodian of such person, shall be guilty of kidnapping if such confinement, restraint or removal is for the purpose of:
 - (1) Holding such other person for a ransom or as a hostage or using such other person as a shield; or
 - (2) Facilitating the commission of any felony or facilitating flight of any person following the commission of a felony; or
 - (3) Doing serious bodily harm to or terrorizing the person so confined, restrained or removed or any other person; or
 - (4) Holding such other person in involuntary servitude in violation of G.S. 14-43.12.
 - (5) Trafficking another person with the intent that the other person be held in involuntary servitude or sexual servitude in violation of G.S. 14-43.11.
 - (6) Subjecting or maintaining such other person for sexual servitude in violation of G.S. 14-43.13
 - (b) There shall be two degrees of kidnapping as defined by subsection (a). If the person kidnapped either was not released by the defendant in a safe place or had been seriously injured or sexually assaulted, the offense is kidnapping in the first degree and is punishable as a Class C felony. If the person kidnapped was released in a safe place by the defendant and had not been seriously injured or sexually assaulted, the offense is kidnapping in the second degree and is punishable as a Class E felony.
 - (c) Any firm or corporation convicted of kidnapping shall be punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), and its charter and right to do business in the State of North Carolina shall be forfeited.

- § 14-32.4—Assault inflicting serious bodily injury; strangulation; penalties
 - (a) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts serious bodily injury is guilty of a Class F felony. “Serious bodily injury” is defined as bodily injury that creates a substantial risk of death, or that causes serious permanent disfigurement, coma, a permanent or protracted condition that causes extreme pain, or permanent or protracted loss or impairment of the function of any bodily member or organ, or that results in prolonged hospitalization.
 - (b) Unless the conduct is covered under some other provision of law providing greater punishment, any person who assaults another person and inflicts physical injury by strangulation is guilty of a Class H felony.
- § 14-29—Castration or other maiming without malice aforethought
 - If any person shall, on purpose and unlawfully, but without malice aforethought, cut, or slit the nose, bite or cut off the nose, or a lip or an ear, or disable any limb or member of any other person, or castrate any other person, or cut off, maim or disfigure any of the privy members of any other person, with intent to kill, maim, disfigure, disable or render impotent such person, the person so offending shall be punished as a Class E felon.
- Applicable to North Carolina?
 - YES.
- Penalties?
 - 14-39
 - Any firm or corporation convicted of kidnapping shall be punishable by a fine of not less than five thousand dollars (\$5,000) nor more than one hundred thousand dollars (\$100,000), and its charter and right to do business in the State of North Carolina shall be forfeited.
 - There does not appear to be any civil penalties for 14-29, and 14-32.4
 - Criminal penalties
 - 14-39: Class C Felony: Max punishment of 231 months
Class E Felony: Max punishment of 88 months
 - 14-29: Class E Felony: Max punishment of 88 months
 - 14-32.4: (a) Class F Felony: Max punishment of 59 months
(b) Class H Felony: Max punishment of 39 months

Bibliography

- Geneva Conventions
 - Assessing Recent Developments: Achieving Accountability for Torture
- International Covenant on Civil and Political Rights
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of Human Rights
 - Brief in Support of
 - Obligations and Obstacles
- Convention Against Torture
 - Assessing Recent Developments: Achieving Accountability for Torture
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
 - Brief in Support of
 - Obligations and Obstacles
- Universal Declaration of Human Rights
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of

- Brief in Support of
- Obligations and Obstacles
- Vienna Convention
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
 - Brief in Support of
 - Obligations and Obstacles

UN Standard Minimum Rules for the Treatment of Prisoners (The Nelson Mandela Rules) U.N. Doc. A/RES/40/33 (May 13, 1977).

- Federal Torture Statute of 1994. 18 U.S.C. § 2340-2340A
 - Assessing Recent Developments: Achieving Accountability for Torture
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
 - Brief in Support of
 - Obligations and Obstacles
- War Crimes Act of 1996
 - Assessing Recent Developments: Achieving Accountability for Torture
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
 - Brief in Support of
 - Obligations and Obstacles
- FARRA of 1998
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
 - Brief in Support of
 - Obligations and Obstacles
- Alien Tort Statute
 - Brief in Support of
 - Obligations and Obstacles
 - Understanding Accountability for Torture
- Torture Victim Protection Act of 1991
 - Understanding Accountability for Torture
- Detainee Treatment Act of 2005
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
 - Obligations and Obstacles
- Torture Outsourcing and Prevention Act
 - Understanding Accountability for Torture
 - A Call to Uphold the Core Universal Principles of Responsibility and Protection of
- Memorandum of Notification
 - Assessing Recent Developments: Achieving Accountability for Torture
- Army Field Manual
 - Assessing Recent Developments: Achieving Accountability for Torture
 - Understanding Accountability for Torture
- Effectiveness Memo
 - Assessing Recent Developments: Achieving Accountability for Torture
- North Carolina Statutes
 - Obligations and Obstacles