

**GENERAL ASSEMBLY OF NORTH CAROLINA**  
**SESSION 2007**

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**HOUSE BILL 788**

Short Title: Racial Discrimination Vacate Death Sentence. (Public)

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Sponsors: Representatives Earle, Glazier, Harrison, Parmon (Primary Sponsors); Alexander, Cunningham, Fisher, Hall, Insko, Lucas, Luebke, Wainwright, and Weiss.

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Referred to: Judiciary II.

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March 15, 2007

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT RACIAL DISCRIMINATION IS A PERMISSIBLE  
GROUNDS FOR APPEAL AT ANY TIME IN A CAPITAL CASE AS  
RECOMMENDED BY THE HOUSE INTERIM STUDY COMMITTEE ON  
CAPITAL PUNISHMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 15A-1446(d) reads as rewritten:

"(d) Errors based upon any of the following grounds, which are asserted to have occurred, may be the subject of appellate review even though no objection, exception or motion has been made in the trial division.

- (1) Lack of jurisdiction of the trial court over the offense of which the defendant was convicted.
- (2) Lack of jurisdiction of the trial court over the person of the defendant.
- (3) The criminal pleading charged acts which, at the time they were committed, did not constitute a violation of criminal law.
- (4) The pleading fails to state essential elements of an alleged violation, as required by G.S. 15A-924(a)(5).
- (5) The evidence was insufficient as a matter of law.
- (6) The defendant was convicted under a statute that is in violation of the Constitution of the United States or the Constitution of North Carolina.
- (7) Repealed by Session Laws 1977, 2nd Sess., c. 1147, s. 28.
- (8) The conduct for which the defendant was prosecuted was protected by the Constitution of the United States or the Constitution of North Carolina.
- (9) Subsequent admission of evidence from a witness when there has been an improperly overruled objection to the admission of evidence on the

- 1 ground that the witness is for a specified reason incompetent or not  
2 qualified or disqualified.
- 3 (10) Subsequent admission of evidence involving a specified line of  
4 questioning when there has been an improperly overruled objection to  
5 the admission of evidence involving that line of questioning.
- 6 (11) Questions propounded to a witness by the court or a juror.
- 7 (12) Rulings and orders of the court, not directed to the admissibility of  
8 evidence during trial, when there has been no opportunity to make an  
9 objection or motion.
- 10 (13) Error of law in the charge to the jury.
- 11 (14) The court has expressed to the jury an opinion as to whether a fact is  
12 fully or sufficiently proved.
- 13 (15) The defendant was not present at any proceeding at which his presence  
14 was required.
- 15 (16) Error occurred in the entry of the plea.
- 16 (17) The form of the verdict was erroneous.
- 17 (18) The sentence imposed was unauthorized at the time imposed, exceeded  
18 the maximum authorized by law, was illegally imposed, or is  
19 otherwise invalid as a matter of law.
- 20 (19) A significant change in law, either substantive or procedural, applies to  
21 the proceedings leading to the defendant's conviction or sentence, and  
22 retroactive application of the changed legal standard is required.
- 23 (20) A sentence of death was imposed and there is evidence that racial  
24 discrimination occurred in:
- 25 a. The decision by the district attorney to seek the death penalty;  
26 b. The decision by the jury to impose the death penalty; or  
27 c. Any other portion of the trial or sentencing phase resulting in  
28 the imposition of the death penalty."

29 **SECTION 2.** This act becomes effective December 1, 2007, and applies to  
30 all appeals filed on or after that date.