

March 5, 2009

**S 461. NORTH CAROLINA RACIAL JUSTICE ACT (=H 472).** Filed 3/5/09. *TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES.* Identical to H 472, filed 3/5/09.

**Intro. by McKissick.**

GS 15A

May 13, 2009

**S 461. NORTH CAROLINA RACIAL JUSTICE ACT.** Filed 3/5/09. Senate committee substitute makes the following changes to 1st edition. Amends the proposed North Carolina Racial Justice Act by deleting all references to a finding or evidence that race was a significant factor in the decision to seek or impose the death sentence in the state at large and substituting those references with a finding or evidence that race was a significant factor in any prosecutorial district immediately contiguous to the boundaries of the prosecutorial district in question. Deletes that relevant evidence may include that the state is unable to justify the racial disparities demonstrated by the defendant by identifying other, legitimate sentencing considerations that, when tested statistically, adequately explain the apparent racial disparities to establish the finding. Adds that a juror's testimony must be consistent with Rule 606(b) of the NC Rules of Evidence, as contained in GS 8C-1. Makes organizational and technical changes.

May 13, 2009

**S 461. NC RACIAL JUSTICE ACT.** Filed 3/5/09. Senate amendment makes the following changes to 2nd edition. Changes the title to *AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL SENTENCES, TO ENSURE THAT ASSISTANCE RENDERED BY ANY HEALTH CARE PROFESSIONAL IN THE PROCESS OF A LAWFUL EXECUTION BY THE STATE DOES NOT RESULT IN DISCIPLINARY OR CORRECTIVE ACTION BY ANY STATE AUTHORIZED BOARD OR AUTHORITY, TO EXCLUDE THE ADMINISTRATION OF CONTROLLED SUBSTANCES USED IN AN EXECUTION FROM THE PRACTICE OF MEDICINE, TO REMOVE THE REQUIREMENT THAT THE GOVERNOR AND COUNCIL OF STATE APPROVE THE NECESSARY APPLIANCES AND QUALIFIED PERSONNEL FOR THE INFLICTION OF THE PUNISHMENT OF DEATH, AND TO PROHIBIT THE SECRETARY OF CORRECTION FROM SCHEDULING MORE THAN ONE EXECUTION WITHIN A 30 DAY PERIOD.* Enacts new GS 15-188.1 to specify that assistance rendered by a licensed health care professional in the execution of a person sentenced to death may not be the basis for any disciplinary measures by a health care licensing agency, and that the infliction of the death penalty by lethal injection is not to be construed as the practice of medicine. Amends GS 15-188 to delete requirement that Governor and Council of State approve the appliances and personnel to carry out executions. Amends GS 15-194 to provide that Secretary of Correction is not to schedule an execution within 30 days of any other execution.

May 14, 2009

**S 461. NORTH CAROLINA RACIAL JUSTICE ACT.** Filed 3/5/09. Senate amendment makes the following changes to 2nd edition. Amends proposed new GS 15A-2011 and GS 15A-2012 by deleting the phrase "any prosecutorial district immediately contiguous to the boundaries of that prosecutorial district" wherever it appears and inserting the phrase "the judicial division." Deletes in proposed GS 15A-2011(c) that the state may rebut a statistical showing of racial disparities in the specified area by introducing statistical evidence or other evidence demonstrating that there was no racial discrimination with regard to the decision to seek or impose a death sentence in the county or prosecutorial district at the time the death penalty was sought or imposed.

June 9, 2009

**S 461. NORTH CAROLINA RACIAL JUSTICE ACT.** Filed 3/5/09. House committee substitute makes the following changes to 3rd edition. Amends proposed Article 101 of GS Chapter 15A by adding that, under the act, a defendant may base a claim upon evidence (and a court may establish a finding) that race was a significant factor in decisions to seek or impose the sentence

of death in the *state*, in addition to county, prosecutorial district, or judicial division, at the time the death sentence was sought or imposed.

In proposed GS 15A-2011, allows the State to offer statistical evidence in rebuttal of the defendant's claims or evidence. Provides that the court may consider evidence of the impact upon the defendant's trial of any program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence of death (was, evidence of any program implemented prior to the defendant's trial for the purpose of eliminating racial disparities in its evaluation of whether the State has adequately addressed those disparities). Also makes a technical change.

In proposed GS 15A-2012, deletes that a motion must be filed within one year of the effective date of this act.

Deletes proposed GS 15-188.1 (Health care professional assistance), which specified that assistance rendered by a licensed health care professional in the execution of a person sentenced to death may not be the basis for any disciplinary measures by a health care licensing agency and that the infliction of the death penalty by lethal injection is not to be construed as the practice of medicine. Also deletes amendments to (1) GS 15-188, which eliminated the requirement that the Governor and the Council of State approve the appliances and personnel to carry out executions and (2) GS 15-194, which prohibited the Secretary of Correction from scheduling an execution within 30 days of any other execution.

Provides that for persons (1) under a death sentence imposed before the effective date of the act, motions under this act must be filed within one year of the effective date of the act and (2) whose death sentence is imposed on or after the effective date of the act, motions must be filed as provided by the act.

*Changes the title to AN ACT TO PROHIBIT SEEKING OR IMPOSING THE DEATH PENALTY ON THE BASIS OF RACE; TO ESTABLISH A PROCESS BY WHICH RELEVANT EVIDENCE MAY BE USED TO ESTABLISH THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY WITHIN THE COUNTY, THE PROSECUTORIAL DISTRICT, THE JUDICIAL DIVISION, OR THE STATE, TO IDENTIFY TYPES OF EVIDENCE THAT MAY BE CONSIDERED BY THE COURT WHEN CONSIDERING WHETHER RACE WAS A BASIS FOR SEEKING OR IMPOSING THE DEATH PENALTY, INCLUDING STATISTICAL EVIDENCE, AND TO AUTHORIZE THE DEFENDANT TO RAISE THIS CLAIM AT THE PRETRIAL CONFERENCE OR IN POSTCONVICTION PROCEEDINGS; TO PROVIDE THAT THE DEFENDANT HAS THE BURDEN OF PROVING THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY AND TO PROVIDE THAT THE STATE MAY OFFER EVIDENCE TO REBUT THE CLAIMS OR EVIDENCE OF THE DEFENDANT AND IN DOING SO TO USE STATISTICAL EVIDENCE AS WELL AS ANY OTHER EVIDENCE THE COURT DEEMS RELEVANT AND MATERIAL; TO PROVIDE THAT IF RACE IS FOUND TO BE A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY THE DEATH SENTENCE SHALL BE VACATED AND THE DEFENDANT RESENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES RETROACTIVELY, THAT MOTIONS UNDER THIS ACT FOR THOSE CURRENTLY UNDER A DEATH SENTENCE SHALL BE FILED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT, AND THAT MOTIONS FOR THOSE WHOSE DEATH SENTENCE IS IMPOSED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT SHALL BE FILED AS PROVIDED IN THIS ACT.*

June 30, 2009

**S 461. NORTH CAROLINA RACIAL JUSTICE ACT.** Filed 3/5/09. House committee substitute makes the following changes to 4th edition. Makes clarifying and technical changes only.

August 18, 2009

**SL 2009-464 (S 461). NORTH CAROLINA RACIAL JUSTICE ACT. AN ACT TO PROHIBIT SEEKING OR IMPOSING THE DEATH PENALTY ON THE BASIS OF RACE; TO ESTABLISH A PROCESS BY WHICH RELEVANT EVIDENCE MAY BE USED TO ESTABLISH THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY WITHIN**

THE COUNTY, THE PROSECUTORIAL DISTRICT, THE JUDICIAL DIVISION, OR THE STATE, TO IDENTIFY TYPES OF EVIDENCE THAT MAY BE CONSIDERED BY THE COURT WHEN CONSIDERING WHETHER RACE WAS A BASIS FOR SEEKING OR IMPOSING THE DEATH PENALTY, INCLUDING STATISTICAL EVIDENCE, AND TO AUTHORIZE THE DEFENDANT TO RAISE THIS CLAIM AT THE PRETRIAL CONFERENCE OR IN POSTCONVICTION PROCEEDINGS; TO PROVIDE THAT THE DEFENDANT HAS THE BURDEN OF PROVING THAT RACE WAS A SIGNIFICANT FACTOR IN SEEKING OR IMPOSING THE DEATH PENALTY AND TO PROVIDE THAT THE STATE MAY OFFER EVIDENCE TO REBUT THE CLAIMS OR EVIDENCE OF THE DEFENDANT AND IN DOING SO TO USE STATISTICAL EVIDENCE AS WELL AS ANY OTHER EVIDENCE THE COURT DEEMS RELEVANT AND MATERIAL; TO PROVIDE THAT IF RACE IS FOUND TO BE A SIGNIFICANT FACTOR IN THE IMPOSITION OF THE DEATH PENALTY, THE DEATH SENTENCE SHALL BE VACATED AND THE DEFENDANT RESENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE; TO PROVIDE THAT THIS ACT IS EFFECTIVE WHEN IT BECOMES LAW AND APPLIES RETROACTIVELY, THAT MOTIONS UNDER THIS ACT FOR THOSE CURRENTLY UNDER A DEATH SENTENCE SHALL BE FILED WITHIN ONE YEAR OF THE EFFECTIVE DATE OF THIS ACT, AND THAT MOTIONS FOR THOSE WHOSE DEATH SENTENCE IS IMPOSED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT SHALL BE FILED AS PROVIDED IN THIS ACT. Summarized in *Daily Bulletin* 3/5/09, 5/13/09, 5/14/09, 6/9/09, and 6/30/09. Enacted August 11, 2009. Effective August 11, 2009, and applies retroactively.