

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 461*

Short Title: North Carolina Racial Justice Act. (Public)

Sponsors: Senators McKissick; Atwater, Berger of Franklin, Boseman, Clodfelter, Dorsett, Foriest, Graham, Jones, Kinnaird, Malone, Nesbitt, Shaw, and Vaughan.

Referred to: Judiciary I.

March 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL
3 SENTENCES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Chapter 15A of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 101.

8 "North Carolina Racial Justice Act.

9 **"§ 15A-2010. North Carolina Racial Justice Act.**

10 No person shall be subject to or given a sentence of death, or shall be executed pursuant to
11 any judgment that was sought or obtained on the basis of race.

12 **"§ 15A-2011. Proof of racial discrimination.**

13 (a) A finding that race was the basis of the decision to seek or impose a death sentence
14 may be established if the court finds that race was a significant factor in decisions to seek or
15 impose the sentence of death in the county, the prosecutorial district, or the State at large at the
16 time the death sentence was sought or imposed.

17 (b) Evidence relevant to establish a finding that race was a significant factor in
18 decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the
19 State at large at the time the death sentence was sought or imposed may include statistical
20 evidence or other evidence, including, but not limited to, sworn testimony of attorneys,
21 prosecutors, law enforcement officers, jurors, or other members of the criminal justice system
22 or both, that irrespective of statutory factors, death sentences were sought or imposed
23 significantly more frequently:

24 (1) Upon persons of one race than upon persons of another race, or as
25 punishment for capital offenses against persons of one race than as
26 punishment of capital offenses against persons of another race, or that race
27 was a significant factor in decisions to exercise peremptory challenges
28 during jury selection; and

29 (2) That the State is unable to justify the racial disparities demonstrated by the
30 defendant by identifying other, legitimate sentencing considerations that
31 when tested statistically, adequately explain the apparent racial disparities.

32 (c) The defendant has the burden of proving that race was a significant factor in
33 decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the
34 State at large at the time the death sentence was sought or imposed. The State may offer
35 evidence in rebuttal of the claims or evidence of the defendant. The State may rebut a statistical
36 showing of statewide racial disparities by introducing statistical evidence or other evidence



1 demonstrating that no racial discrimination occurred in the county or the prosecutorial district
2 at the time the death penalty was sought or imposed. The court may consider evidence of any
3 program, implemented prior to the defendant's trial for the purpose of eliminating racial
4 disparities, in its evaluation of whether the State has adequately addressed those disparities.

5 **"§ 15A-2012. Hearing procedure.**

6 (a) The defendant shall state with particularity how the evidence supports a claim that
7 race was a significant factor in decisions to seek or impose the sentence of death in the county,
8 the prosecutorial district, or the State at large at the time the death sentence was sought or
9 imposed. The claim shall be raised by the defendant at the pretrial conference or in
10 postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe
11 a time for the submission of evidence by both parties. If the court finds that race was a
12 significant factor in decisions to seek or impose the sentence of death in the county, the
13 prosecutorial district, or the State at large at the time the death sentence was sought or imposed,
14 the court shall order that a death sentence shall not be sought, or that the death sentence
15 imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment
16 without the possibility of parole.

17 (b) Notwithstanding any other provision or time limitation contained in Article 89 of
18 Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death
19 sentence upon the ground that racial considerations played a significant part in the decision to
20 seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed
21 within one year of the effective date of this act.

22 Except as specifically stated in subsections (a) and (b) of this section, the procedures and
23 hearing on the motion seeking relief from a death sentence upon the ground that race was a
24 significant factor in decisions to seek or impose the sentence of death in the county, the
25 prosecutorial district, or the State at large at the time the death sentence was sought or imposed,
26 shall follow and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

27 **SECTION 2.** This act is effective when it becomes law and applies retroactively.