

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

SESSION LAW 2009-464
SENATE BILL 461

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.

The General Assembly of North Carolina enacts:

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

"Article 101.

"North Carolina Racial Justice Act.

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

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

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

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

(b) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed may include statistical evidence or other evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal justice system or both, that, irrespective of statutory factors, one or more of the following applies:

- (1) Death sentences were sought or imposed significantly more frequently upon persons of one race than upon persons of another race.



- (2) Death sentences were sought or imposed significantly more frequently as punishment for capital offenses against persons of one race than as punishment of capital offenses against persons of another race.
- (3) Race was a significant factor in decisions to exercise peremptory challenges during jury selection.

A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as contained in G.S. 8C-1.

(c) The defendant has the burden of proving that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of the claims or evidence of the defendant, including statistical evidence. 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.

"§ 15A-2012. Hearing procedure.

(a) The defendant shall state with particularity how the evidence supports a claim that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.

- (1) The claim shall be raised by the defendant at the pretrial conference required by Rule 24 of the General Rules of Practice for the Superior and District Courts or in postconviction proceedings pursuant to Article 89 of Chapter 15A of the General Statutes.
- (2) The court shall schedule a hearing on the claim and shall prescribe a time for the submission of evidence by both parties.
- (3) If the court finds that race was a significant factor in decisions to seek or impose the sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed, the court shall order that a death sentence not be sought, or that the death sentence imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment without the possibility of parole.

(b) Notwithstanding any other provision or time limitation contained in Article 89 of Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death sentence upon the ground that racial considerations played a significant part in the decision to seek or impose a death sentence by filing a motion seeking relief.

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

SECTION 2. This act is effective when it becomes law and applies retroactively. For persons under a death sentence imposed before the effective date of this act, motions under this act shall be filed within one year of the effective date of this act; for persons whose death sentence is imposed on or after the effective date of this act, motions shall be filed as provided in this act.

In the General Assembly read three times and ratified this the 6th day of August, 2009.

s/ Marc Basnight
President Pro Tempore of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 11:40 a.m. this 11th day of August, 2009