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SENATE BILL 461\*  
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Short Title: North Carolina Racial Justice Act.

(Public)

Sponsors:

Referred to:

March 9, 2009

A BILL TO BE ENTITLED

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.

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, or the judicial division 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, or the judicial division 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.



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

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

8           (c) The defendant has the burden of proving that race was a significant factor in  
9 decisions to seek or impose the sentence of death in the county, the prosecutorial district, or the  
10 judicial division at the time the death sentence was sought or imposed. The State may offer  
11 evidence in rebuttal of the claims or evidence of the defendant. The court may consider  
12 evidence of any program implemented prior to the defendant's trial for the purpose of  
13 eliminating racial disparities in its evaluation of whether the State has adequately addressed  
14 those disparities.

15 **"§ 15A-2012. Hearing procedure.**

16           (a) The defendant shall state with particularity how the evidence supports a claim that  
17 race was a significant factor in decisions to seek or impose the sentence of death in the county,  
18 the prosecutorial district, or the judicial division at the time the death sentence was sought or  
19 imposed. The claim shall be raised by the defendant at the pretrial conference or in  
20 postconviction proceedings. The court shall schedule a hearing on the claim and shall prescribe  
21 a time for the submission of evidence by both parties. If the court finds that race was a  
22 significant factor in decisions to seek or impose the sentence of death in the county, the  
23 prosecutorial district, or the judicial division at the time the death sentence was sought or  
24 imposed, the court shall order that a death sentence not be sought, or that the death sentence  
25 imposed by the judgment shall be vacated and the defendant resentenced to life imprisonment  
26 without the possibility of parole.

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

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

37           **SECTION 2.** Article 19 of Chapter 15 of the General Statutes is amended by  
38 adding a new section to read:

39 **"§ 15-188.1. Health care professional assistance.**

40           (a) Any assistance rendered with an execution under this Article by any licensed health  
41 care professional, including, but not limited to, physicians, nurses, and pharmacists shall not be  
42 cause for any disciplinary or corrective measures by any board, commission, or other authority  
43 created by the State or governed by State law which oversees or regulates the practice of health  
44 care professionals, including, but not limited to, the North Carolina Medical Board, the North  
45 Carolina Board of Nursing, and the North Carolina Board of Pharmacy.

46           (b) The infliction of the punishment of death by administration of the required lethal  
47 substances under this Article shall not be construed to be the practice of medicine."

48           **SECTION 3.** G.S. 15-188 reads as rewritten:

49 **"§ 15-188. Manner and place of execution.**

50           In accordance with G.S. 15-187, the mode of executing a death sentence must in every case  
51 be by administering to the convict or felon a lethal quantity of an ultrashort-acting barbiturate

1 in combination with a chemical paralytic agent until the convict or felon is dead; and when any  
2 person, convict or felon shall be sentenced by any court of the State having competent  
3 jurisdiction to be so executed, the punishment shall only be inflicted within a permanent death  
4 chamber which the superintendent of the State penitentiary is hereby authorized and directed to  
5 provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The  
6 superintendent of the State penitentiary shall also cause to be provided, in conformity with this  
7 ~~Article and approved by the Governor and Council of State, Article,~~ the necessary appliances  
8 for the infliction of the punishment of death and qualified personnel to set up and prepare the  
9 injection, administer the preinjections, insert the IV catheter, and to perform other tasks  
10 required for this procedure in accordance with the requirements of this Article."

11 **SECTION 4.** G.S. 15-194 reads as rewritten:

12 **"§ 15-194. Time for execution.**

13 In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the  
14 sentencing judge need not specify the date and time the execution is to be carried out by the  
15 Department of Correction. The Secretary of Correction shall immediately schedule a date for  
16 the execution of the original death sentence not less than 30 days nor more than 60 days from  
17 the date of receiving written notification from the Attorney General of North Carolina or the  
18 district attorney who prosecuted the case of any one of the following:

- 19 (1) The United States Supreme Court has filed an opinion upholding the  
20 sentence of death following completion of the initial State and federal  
21 postconviction proceedings, if any;
- 22 (2) The mandate issued by the Supreme Court of North Carolina on direct  
23 appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's  
24 death sentence and the time for filing a petition for writ of certiorari to the  
25 United States Supreme Court has expired without a petition being filed;
- 26 (3) The capital defendant, if indigent, failed to timely seek the appointment of  
27 counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for  
28 appropriate relief as required by G.S. 15A-1415(a);
- 29 (4) The superior court denied the capital defendant's motion for appropriate  
30 relief, but the capital defendant failed to file a timely petition for writ of  
31 certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App.  
32 P. 21(f);
- 33 (5) The Supreme Court of North Carolina denied the capital defendant's petition  
34 for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was  
35 granted, upheld the capital defendant's death sentence, but the capital  
36 defendant failed to file a timely petition for writ of certiorari to the United  
37 States Supreme Court; or
- 38 (6) Following State postconviction proceedings, if any, the capital defendant  
39 failed to file a timely petition for writ of habeas corpus in the appropriate  
40 federal district court, or failed to timely appeal or petition an adverse habeas  
41 corpus decision to the United States Court of Appeals for the Fourth Circuit  
42 or the United States Supreme Court.

43 The Secretary shall not schedule the date for the execution to occur within 30 days of any other  
44 scheduled execution. The Secretary shall send a certified copy of the document fixing the date  
45 to the clerk of superior court of the county in which the case was tried or, if venue was  
46 changed, in which the defendant was indicted. The certified copy shall be recorded in the  
47 minutes of the court. The Secretary shall also send certified copies to the capital defendant, the  
48 capital defendant's attorney, the district attorney who prosecuted the case, and the Attorney  
49 General of North Carolina."

50 **SECTION 5.** Section 1 of this act is effective when it becomes law and applies  
51 retroactively. The remainder of this act is effective when it becomes law.