

GENERAL ASSEMBLY OF NORTH CAROLINA
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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 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.



* S 4 6 1 - P C S 5 5 4 5 5 - R K - 7 9 *

1 **"§ 15A-2010. North Carolina Racial Justice Act.**

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

4 **"§ 15A-2011. Proof of racial discrimination.**

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

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

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

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

25 (c) The defendant has the burden of proving that race was a significant factor in
26 decisions to seek or impose the sentence of death in the county, the prosecutorial district, the
27 judicial division, or the State at the time the death sentence was sought or imposed. The State
28 may offer evidence in rebuttal of the claims or evidence of the defendant, including statistical
29 evidence. The court may consider evidence of the impact upon the defendant's trial of any
30 program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence
31 of death.

32 **"§ 15A-2012. Hearing procedure.**

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

- 37 (1) The claim shall be raised by the defendant at the pretrial conference required
38 by Rule 24 of the General Rules of Practice for the Superior and District
39 Courts or in postconviction proceedings pursuant to Article 89 of Chapter
40 15A of the General Statutes.
41 (2) The court shall schedule a hearing on the claim and shall prescribe a time for
42 the submission of evidence by both parties.
43 (3) If the court finds that race was a significant factor in decisions to seek or
44 impose the sentence of death in the county, the prosecutorial district, the
45 judicial division, or the State at the time the death sentence was sought or
46 imposed, the court shall order that a death sentence not be sought, or that the
47 death sentence imposed by the judgment shall be vacated and the defendant
48 resentenced to life imprisonment without the possibility of parole.

49 (b) Notwithstanding any other provision or time limitation contained in Article 89 of
50 Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death

1 sentence upon the ground that racial considerations played a significant part in the decision to
2 seek or impose a death sentence by filing a motion seeking relief.

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

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