

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011**

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**SENATE BILL 9\*  
Judiciary II Committee Substitute Adopted 2/7/11  
PROPOSED HOUSE COMMITTEE SUBSTITUTE S9-PCS85207-RK-64**

Short Title: No Discriminatory Purpose in Death Penalty.

(Public)

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Sponsors:

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Referred to:

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January 31, 2011

A BILL TO BE ENTITLED  
AN ACT TO REFORM THE RACIAL JUSTICE ACT OF 2009 TO BE CONSISTENT WITH  
THE UNITED STATES SUPREME COURT'S RULING IN MCCLESKEY V. KEMP.

Whereas, intentional racial discrimination is a violation of a defendant's right to the equal protection of the law, as guaranteed by the Fourteenth Amendment to the Constitution of the United States and Section 19 of Article I of the North Carolina Constitution; and

Whereas, in 1987, the United States Supreme Court held in McCleskey v. Kemp that (i) a statistical study which showed that the death penalty was more often imposed in Georgia on black defendants and killers of white victims than on white defendants and killers of black victims did not establish that Georgia enacted or maintained the death penalty because of anticipated racially discriminatory effect in violation of equal protection, (ii) the statistical study was insufficient to support an inference that any of the decision makers in the defendant's case acted with discriminatory purpose, and (iii) to prevail in a discrimination claim under the equal protection clause, a capital defendant must prove that decision makers in the defendant's case acted with discriminatory purpose; and

Whereas, Article 101 of Chapter 15A of the General Statutes allows statistical evidence of a type that the United States Supreme Court found to be insufficient to raise an inference that a state's capital sentencing laws were discriminatory as to an individual defendant's case; and

Whereas, the policy of the State has been to ensure that no death penalty shall be sought or imposed for any discriminatory purpose and there existed in the North Carolina Rules of Criminal Procedure, prior to the enactment of Article 101 of Chapter 15A of the General Statutes, substantial procedural rights to safeguard a capital defendant's constitutional rights to equal protection of the laws and a trial and sentencing free from racial discrimination, and which required the defendant to show that the decision makers in the defendant's case acted with discriminatory purpose; and

Whereas, it is the intent of the General Assembly to clarify the language in Article 101 of Chapter 15A of the General Statutes, to reflect the burden on the defendant is to show that the decision makers in the defendant's case acted with discriminatory purpose, and to clarify that this burden existed prior to the passage of Article 101 of Chapter 15A of the General Statutes; Now, therefore,

The General Assembly of North Carolina enacts:



\* S 9 - P C S 8 5 2 0 7 - R K - 6 4 \*

1 SECTION 1. Article 101 of Chapter 15A of the General Statutes reads as  
2 rewritten:

3 "Article 101.

4 "North Carolina Racial Justice Act.

5 **"§ 15A-2010. North Carolina Racial Justice Act.**

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

8 **"§ 15A-2011. Proof of racial discrimination.**

9 (a) ~~At trial or upon a motion for appropriate relief filed pursuant to Article 89 of~~  
10 ~~Chapter 15A of the General Statutes, A~~ a finding that race was the basis of the decision to seek  
11 or impose a death sentence may be established if the court finds that the State acted with  
12 discriminatory purpose in seeking the death penalty or in selecting the jury that sentenced the  
13 defendant, or one or more of the jurors acted with discriminatory purpose in the guilt-innocence  
14 or sentencing phases of the defendant's trial. race was a significant factor in decisions to seek or  
15 impose the sentence of death in the county, the prosecutorial district, the judicial division, or  
16 the State at the 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, the~~  
19 ~~judicial division, or the State at the time the death sentence was sought or imposed may include~~  
20 ~~statistical evidence or other evidence, including, but not limited to, sworn testimony of~~  
21 ~~attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal~~  
22 ~~justice system or both, that, irrespective of statutory factors, one or more of the following~~  
23 ~~applies:~~

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

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

33 (c) The defendant has the burden of proving that there was discriminatory purpose ~~race~~  
34 ~~was a significant factor in decisions to seek or impose in seeking or imposing the sentence of~~  
35 ~~death death in the defendant's case. in the county, the prosecutorial district, the judicial~~  
36 ~~division, or the State at the time the death sentence was sought or imposed. The State may offer~~  
37 ~~evidence in rebuttal of the claims or evidence of the defendant, defendant. including statistical~~  
38 ~~evidence. The court may consider evidence of the impact upon the defendant's trial of any~~  
39 ~~program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence~~  
40 ~~of death.~~

41 **"§ 15A-2012. Hearing procedure.**

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

- 46 (1) ~~The claim shall be raised by the defendant at the pretrial conference required~~  
47 ~~by Rule 24 of the General Rules of Practice for the Superior and District~~  
48 ~~Courts or in postconviction proceedings pursuant to Article 89 of Chapter~~  
49 ~~15A of the General Statutes.~~
- 50 (2) ~~The court shall schedule a hearing on the claim and shall prescribe a time for~~  
51 ~~the submission of evidence by both parties.~~

1           (3)     ~~If the court finds that race was a significant factor in decisions to seek or~~  
2           ~~impose the sentence of death in the county, the prosecutorial district, the~~  
3           ~~judicial division, or the State at the time the death sentence was sought or~~  
4           ~~imposed, the court shall order that a death sentence not be sought, or that the~~  
5           ~~death sentence imposed by the judgment shall be vacated and the defendant~~  
6           ~~resentenced to life imprisonment without the possibility of parole.~~

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

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

16           **SECTION 2.** This act supersedes and nullifies the provisions of Article 101A of  
17    Chapter 15A of the General Statutes that existed prior to the effective date of this act and which  
18    are repealed by this act, including the holding of pretrial, trial, or postconviction hearings based  
19    upon the prior provisions of Article 101A of Chapter 15A of the General Statutes.

20           **SECTION 3.** If any provision of this act or its application is held invalid, the  
21    invalidity does not affect other provisions or applications of this act that can be given effect  
22    without the invalid provisions or application, and to this end the provisions of this act are  
23    severable.

24           **SECTION 4.** Nothing in this act is intended to amend or modify either the  
25    statutory or common law applicable to trial or postconviction proceedings in capital cases that  
26    existed prior to July 11, 2009. Consequently, this act does not change any provision in Article  
27    89 of Chapter 15A of the General Statutes concerning the procedure for the filing of motions  
28    for appropriate relief in capital cases, including the deadlines and grounds upon which a motion  
29    may be filed. This act, in addition to the nullification of hearings based upon the prior  
30    provisions of Article 101A of the General Statutes, as explained in Section 2 of this act, is  
31    intended only to clarify the law that existed prior to the passage of Article 101A of Chapter  
32    15A of the General Statutes, and add terminology used by the United States Supreme Court in  
33    1987. Specifically, this act does not provide, allow, or authorize any hearings in addition to  
34    those already authorized under laws applicable to capital trial procedure or Article 89 of  
35    Chapter 15A of the General Statutes, and a capital defendant who filed a trial motion alleging  
36    discrimination, or a motion for appropriate relief alleging discrimination, prior to or following  
37    the effective date of Article 101A of Chapter 15A of the General Statutes is not entitled or  
38    authorized to file any further pleadings based upon this act, including a claim that the decision  
39    makers in the defendant's case acted with a discriminatory purpose, whether the defendant's  
40    prior motion included a discrimination claim or not, nor does it authorize any hearing on any  
41    claim of discrimination that may have been waived.

42           **SECTION 5.** This act is effective when it becomes law and applies to all capital  
43    trials held prior to, on, or after the effective date of this act and to all capital defendants  
44    sentenced to the death penalty prior to, on, or after the effective date of this act.