

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

H.B. 719
Apr 28, 2021
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40439-ML-10A

Short Title: Repeal Death Penalty.

(Public)

Sponsors: Representative K. Smith.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE DEATH PENALTY AND TO PROVIDE THAT ALL CURRENT
3 PRISONERS SENTENCED TO DEATH SHALL BE RESENTENCED TO LIFE
4 IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 7A-450(b1) is repealed.

7 SECTION 2. G.S. 7A-498.8(b)(5) reads as rewritten:

8 "(b) The appellate defender shall perform such duties as may be directed by the Office of
9 Indigent Defense Services, including:

10 ...

11 (5) Recruiting qualified members of the private bar who are willing to provide
12 representation in ~~State and~~ federal death penalty postconviction proceedings."

13 SECTION 3. G.S. 14-7.2 reads as rewritten:

14 "§ 14-7.2. Punishment.

15 When any person is charged by indictment with the commission of a felony under the laws
16 of the State of North Carolina and is also charged with being an habitual felon as defined in
17 G.S. 14-7.1, he must, upon conviction, be sentenced and punished as an habitual felon, as in this
18 Chapter provided, except in those cases where ~~the death penalty or a life sentence is imposed.~~"

19 SECTION 4. G.S. 14-7.8 reads as rewritten:

20 "§ 14-7.8. Punishment.

21 When a person is charged by indictment with the commission of a violent felony and is also
22 charged with being a violent habitual felon as defined in G.S. 14-7.7, the person must, upon
23 conviction, be sentenced in accordance with this ~~Article, except in those cases where the death
24 penalty is imposed.~~ Article."

25 SECTION 5. G.S. 14-7.12 reads as rewritten:

26 "§ 14-7.12. Sentencing of violent habitual felons.

27 A person who is convicted of a violent felony and of being a violent habitual felon must,
28 upon ~~conviction (except where the death penalty is imposed), conviction,~~ conviction, be sentenced to life
29 imprisonment without parole. Life imprisonment without parole means that the person will spend
30 the remainder of the person's natural life in prison. The sentencing judge may not suspend the
31 sentence and may not place the person sentenced on probation. Sentences for violent habitual
32 felons imposed under this Article shall run consecutively with and shall commence at the
33 expiration of any other sentence being served by the person."

34 SECTION 6. G.S. 14-17(a) reads as rewritten:

35 "(a) A murder which shall be perpetrated by means of a nuclear, biological, or chemical
36 weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment,



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1 starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which
2 shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex
3 offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a
4 deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person
5 who commits such murder shall be punished with ~~death or imprisonment~~ in the State's prison for
6 life without parole as the court shall determine pursuant to ~~G.S. 15A-2000, except that any such~~
7 ~~person who was under 18 years of age at the time of the murder shall be punished in accordance~~
8 ~~with Part 2A of Article 81B of Chapter 15A of the General Statutes."~~

9 **SECTION 7.** G.S. 15-176.1 is repealed.

10 **SECTION 8.** Article 17A and Article 19 of Chapter 15 of the General Statutes are
11 repealed.

12 **SECTION 9.** G.S. 15A-268(a6) reads as rewritten:

13 "(a6) The evidence described by subsection (a1) of this section shall be preserved for the
14 following period:

- 15 (1) ~~For conviction resulting in a sentence of death, until execution.~~
- 16 (2) For conviction resulting in a sentence of life without parole, until the death of
17 the convicted person.
- 18 (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary,
19 robbery, arson or burning, for which a Class B1-E felony punishment is
20 imposed, the evidence shall be preserved during the period of incarceration
21 and mandatory supervised release, including sex offender registration
22 pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases
23 where the person convicted entered and was convicted on a plea of guilty, in
24 which case the evidence shall be preserved for the earlier of three years from
25 the date of conviction or until released.
- 26 (4) Biological evidence collected as part of a criminal investigation of any
27 homicide or rape, in which no charges are filed, shall be preserved for the
28 period of time that the crime remains unsolved.
- 29 (5) A custodial agency in custody of biological evidence unrelated to a criminal
30 investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of
31 this subsection may dispose of the evidence in accordance with the rules of
32 the agency.
- 33 (6) Notwithstanding the retention requirements in subdivisions (1) through (5) of
34 this subsection, at any time after collection and prior to or at the time of
35 disposition of the case at the trial court level, if the evidence collected as part
36 of the criminal investigation is of a size, bulk, or physical character as to
37 render retention impracticable or should be returned to its rightful owner, the
38 State may petition the court for retention of samples of the biological evidence
39 in lieu of the actual physical evidence. After giving any defendant charged in
40 connection with the case an opportunity to be heard, the court may order that
41 the collecting agency take reasonable measures to remove or preserve for
42 retention portions of evidence likely to contain biological evidence related to
43 the offense through cuttings, swabs, or other means consistent with Crime
44 Laboratory minimum guidelines in a quantity sufficient to permit DNA testing
45 before returning or disposing of the evidence."

46 **SECTION 10.** G.S. 15A-734 reads as rewritten:

47 **"§ 15A-734. Arrest without a warrant.**

48 The arrest of a person may be lawfully made also by any peace officer or a private person,
49 without a warrant, upon reasonable information that the accused stands charged in the courts of
50 a state with a crime punishable by ~~death or imprisonment~~ for a term exceeding one year, but
51 when so arrested the accused must be taken before a judge or magistrate with all practicable

1 speed, and complaint must be made against him under oath setting forth the ground for the arrest
2 as in G.S. 15A-733; and thereafter his answer shall be heard as if he had been arrested on a
3 warrant."

4 **SECTION 11.** G.S. 15A-736 reads as rewritten:

5 **"§ 15A-736. Bail in certain cases; conditions of bond.**

6 Unless the offense with which the prisoner is charged is shown to be an offense punishable
7 by ~~death or~~ life imprisonment under the laws of the state in which it was committed, a judge or
8 magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties,
9 and in such sum as he deems proper, conditioned for his appearance before him at a time specified
10 in such bond, and for his surrender, to be arrested upon the warrant of the Governor of this State."

11 **SECTION 12.** G.S. 15A-1201(b) reads as rewritten:

12 "(b) Waiver of Right to Jury Trial. – A defendant accused of any criminal offense ~~for~~
13 ~~which the State is not seeking a sentence of death~~ in superior court may, knowingly and
14 voluntarily, in writing or on the record in the court and with the consent of the trial judge, waive
15 the right to trial by jury. When a defendant waives the right to trial by jury under this section, the
16 jury is dispensed with as provided by law, and the whole matter of law and fact, to include all
17 factors referred to in G.S. 20-179 and subsections (a1) and (a3) of G.S. 15A-1340.16, shall be
18 heard and judgment given by the court. If a motion for joinder of co-defendants is allowed, there
19 shall be a jury trial unless all defendants waive the right to trial by jury, or the court, in its
20 discretion, severs the case."

21 **SECTION 13.** Part 2 of Article 81B of Chapter 15A of the General Statutes is
22 amended by adding a new section to read:

23 **"§ 15A-1340.13A. Death penalty abolished.**

24 Notwithstanding any other provision of law, no crime shall be punishable by death."

25 **SECTION 14.** G.S. 15A-1340.17(c) reads as rewritten:

26 "(c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart
27 Described. – The authorized punishment for each class of offense and prior record level is as
28 specified in the chart below. Prior record levels are indicated by the Roman numerals placed
29 horizontally on the top of the chart. Classes of offense are indicated by the letters placed vertically
30 on the left side of the chart. Each cell on the chart contains the following components:

- 31 (1) A sentence disposition or dispositions: "C" indicates that a community
32 punishment is authorized; "I" indicates that an intermediate punishment is
33 authorized; "A" indicates that an active punishment is authorized; and "Life
34 Imprisonment Without Parole" indicates that the defendant shall be
35 imprisoned for the remainder of the prisoner's natural life.
- 36 (2) A presumptive range of minimum durations, if the sentence of imprisonment
37 is neither aggravated or mitigated; any minimum term of imprisonment in that
38 range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an
39 aggravated or mitigated sentence is appropriate. The presumptive range is the
40 middle of the three ranges in the cell.
- 41 (3) A mitigated range of minimum durations if the court finds pursuant to
42 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in
43 such a case, any minimum term of imprisonment in the mitigated range is
44 permitted. The mitigated range is the lower of the three ranges in the cell.
- 45 (4) An aggravated range of minimum durations if the court finds pursuant to
46 G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in
47 such a case, any minimum term of imprisonment in the aggravated range is
48 permitted. The aggravated range is the higher of the three ranges in the cell.

49 PRIOR RECORD LEVEL

50						
51	I	II	III	IV	V	VI

	0-1 Pt	2-5 Pts	6-9 Pts	10-13 Pts	14-17 Pts	18+ Pts		
1								
2	A	Life Imprisonment With Parole or Without Parole, or Death, as Established by Statute						
3	A	A	A	A	A	A	DISPOSITION	
4		240-300	276-345	317-397	365-456	Life Imprisonment	Aggravated	
5						Without Parole		
6	B1	192-240	221-276	254-317	292-365	336-420	386-483 PRESUMPTIVE	
7		144-192	166-221	190-254	219-292	252-336	290-386 Mitigated	
8	A	A	A	A	A	A	DISPOSITION	
9		157-196	180-225	207-258	238-297	273-342	314-393 Aggravated	
10	B2	125-157	144-180	165-207	190-238	219-273	251-314 PRESUMPTIVE	
11		94-125	108-144	124-165	143-190	164-219	189-251 Mitigated	
12	A	A	A	A	A	A	DISPOSITION	
13		73-92	83-104	96-120	110-138	127-159	146-182 Aggravated	
14	C	58-73	67-83	77-96	88-110	101-127	117-146 PRESUMPTIVE	
15		44-58	50-67	58-77	66-88	76-101	87-117 Mitigated	
16	A	A	A	A	A	A	DISPOSITION	
17		64-80	73-92	84-105	97-121	111-139	128-160 Aggravated	
18	D	51-64	59-73	67-84	78-97	89-111	103-128 PRESUMPTIVE	
19		38-51	44-59	51-67	58-78	67-89	77-103 Mitigated	
20	I/A	I/A	A	A	A	A	DISPOSITION	
21		25-31	29-36	33-41	38-48	44-55	50-63 Aggravated	
22	E	20-25	23-29	26-33	30-38	35-44	40-50 PRESUMPTIVE	
23		15-20	17-23	20-26	23-30	26-35	30-40 Mitigated	
24	I/A	I/A	I/A	A	A	A	DISPOSITION	
25		16-20	19-23	21-27	25-31	28-36	33-41 Aggravated	
26	F	13-16	15-19	17-21	20-25	23-28	26-33 PRESUMPTIVE	
27		10-13	11-15	13-17	15-20	17-23	20-26 Mitigated	
28	I/A	I/A	I/A	I/A	A	A	DISPOSITION	
29		13-16	14-18	17-21	19-24	22-27	25-31 Aggravated	
30	G	10-13	12-14	13-17	15-19	17-22	20-25 PRESUMPTIVE	
31		8-10	9-12	10-13	11-15	13-17	15-20 Mitigated	
32	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION	
33		6-8	8-10	10-12	11-14	15-19	20-25 Aggravated	
34	H	5-6	6-8	8-10	9-11	12-15	16-20 PRESUMPTIVE	
35		4-5	4-6	6-8	7-9	9-12	12-16 Mitigated	
36	C	C/I	I	I/A	I/A	I/A	DISPOSITION	
37		6-8	6-8	6-8	8-10	9-11	10-12 Aggravated	
38	I	4-6	4-6	5-6	6-8	7-9	8-10 PRESUMPTIVE	
39		3-4	3-4	4-5	4-6	5-7	6-8 Mitigated"	

SECTION 15. G.S. 15A-1415 reads as rewritten:

"§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.

(a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. ~~In a capital case, a postconviction motion for appropriate relief shall be filed within 120 days from the latest of the following:~~

- ~~(1) The court's judgment has been filed, but the defendant failed to perfect a timely appeal;~~
- ~~(2) The mandate issued by a court of the appellate division on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of~~

~~certiorari to the United States Supreme Court has expired without a petition being filed;~~

~~(3) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina;~~

~~(4) Following the denial of discretionary review by the Supreme Court of North Carolina, the United States Supreme Court denied a timely petition for writ of certiorari seeking review of the decision on direct appeal by the North Carolina Court of Appeals;~~

~~(5) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina or North Carolina Court of Appeals, but subsequently left the defendant's conviction and sentence undisturbed; or~~

~~(6) The appointment of postconviction counsel for an indigent capital defendant.~~

...

(c) Notwithstanding the time limitations herein, a defendant at any time after verdict may by a motion for appropriate relief, raise the ground that evidence is available which was unknown or unavailable to the defendant at the time of trial, which could not with due diligence have been discovered or made available at that time, including recanted testimony, and which has a direct and material bearing upon ~~the defendant's eligibility for the death penalty or the defendant's guilt or innocence.~~ A motion based upon such newly discovered evidence must be filed within a reasonable time of its discovery.

...."

SECTION 16. G.S. 15A-1419(e) reads as rewritten:

"(e) For the purposes of subsection (b) of this section, a fundamental miscarriage of justice only results if:

(1) The defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying ~~offense; or~~ offense.

~~(2) The defendant establishes by clear and convincing evidence that, but for the error, no reasonable fact finder would have found the defendant eligible for the death penalty.~~

~~A defendant raising a claim of newly discovered evidence of factual innocence or ineligibility for the death penalty, otherwise barred by the provisions of subsection (a) of this section or G.S. 15A-1415(e), may only show a fundamental miscarriage of justice by proving by clear and convincing evidence that, in light of the new evidence, if credible, no reasonable juror would have found the defendant guilty beyond a reasonable doubt or eligible for the death penalty."~~

SECTION 17. Subchapter XV of Chapter 15A of the General Statutes is repealed.

SECTION 18. G.S. 90-1.1(5) reads as rewritten:

"(5) The practice of medicine or surgery. – Except as otherwise provided by this subdivision, the practice of medicine or surgery, for purposes of this Article, includes any of the following acts:

a. Advertising, holding out to the public, or representing in any manner that the individual is authorized to practice medicine in this State.

b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other individual.

c. Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual, including the management of pregnancy or parturition.

- 1 d. Offering or undertaking to perform any surgical operation on any
2 individual.
- 3 e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of
4 Osteopathy," "Doctor of Osteopathic Medicine," "Physician,"
5 "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any
6 combination thereof in the conduct of any occupation or profession
7 pertaining to the prevention, diagnosis, or treatment of human disease
8 or condition, unless the designation additionally contains the
9 description of or reference to another branch of the healing arts for
10 which the individual holds a valid license in this State or the use of the
11 designation "Doctor" or "Physician" is otherwise specifically
12 permitted by law.
- 13 f. The performance of any act, within or without this State, described in
14 this subdivision by use of any electronic or other means, including the
15 Internet or telephone.

16 ~~The administration of required lethal substances or any assistance whatsoever~~
17 ~~rendered with an execution under Article 19 of Chapter 15 of the General~~
18 ~~Statutes does not constitute the practice of medicine or surgery."~~

19 **SECTION 19.** G.S. 90-85.38(b) reads as rewritten:

20 "(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend,
21 revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a).
22 ~~The administration of required lethal substances or any assistance whatsoever rendered with an~~
23 ~~execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice~~
24 ~~of pharmacy under this Article, and any assistance rendered with an execution under Article 19~~
25 ~~of Chapter 15 of the General Statutes shall not be the cause for disciplinary action under this~~
26 ~~Article."~~

27 **SECTION 20.** G.S. 90-171.20(4) reads as rewritten:

28 "(4) "Nursing" is a dynamic discipline which includes the assessing, caring,
29 counseling, teaching, referring and implementing of prescribed treatment in
30 the maintenance of health, prevention and management of illness, injury,
31 disability or the achievement of a dignified death. It is ministering to;
32 assisting; and sustained, vigilant, and continuous care of those acutely or
33 chronically ill; supervising patients during convalescence and rehabilitation;
34 the supportive and restorative care given to maintain the optimum health level
35 of individuals, groups, and communities; the supervision, teaching, and
36 evaluation of those who perform or are preparing to perform these functions;
37 and the administration of nursing programs and nursing services. ~~For purposes~~
38 ~~of this Article, the administration of required lethal substances or any~~
39 ~~assistance whatsoever rendered with an execution under Article 19 of Chapter~~
40 ~~15 of the General Statutes does not constitute nursing."~~

41 **SECTION 21.** The Attorney General shall, on behalf of each person convicted of a
42 capital offense and sentenced to death on or before the effective date of this section, petition the
43 court in which the person was convicted to resentence the person pursuant to this section. Upon
44 hearing the petition, the court shall order that the death sentence imposed by the judgment be
45 vacated and the defendant resentenced to life imprisonment without the possibility of parole.

46 **SECTION 22.** This act is effective when it becomes law and applies to any person
47 sentenced to death before, on, or after that date.