

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH90029-RK-31 (03/09)

Short Title: No Discriminatory Purpose in Death Penalty. (Public)

Sponsors: Representatives Burr, Stevens, Ingle, and Stam (Primary Sponsors).

Referred to:

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

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

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

17 The General Assembly of North Carolina enacts:

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

20 "Article 101.

21 "North Carolina Racial Justice Act.

22 **"§ 15A-2010. North Carolina Racial Justice Act.**

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

25 **"§ 15A-2011. Proof of racial discrimination.**

26 (a) A finding that race was the basis of the decision to seek or impose a death sentence
27 may be established if the court finds that the State acted with discriminatory purpose in seeking
28 the death penalty or in selecting the jury that sentenced the defendant, or one or more of the
29 jurors acted with discriminatory purpose in the guilt-innocence or sentencing phases of the
30 defendant's trial. ~~race was a significant factor in decisions to seek or impose the sentence of~~
31 ~~death in the county, the prosecutorial district, the judicial division, or the State at the time the~~
32 ~~death sentence was sought or imposed.~~

33 (b) ~~Evidence relevant to establish a finding that race was a significant factor in~~
34 ~~decisions to seek or impose the sentence of death in the county, the prosecutorial district, the~~
35 ~~judicial division, or the State at the time the death sentence was sought or imposed may include~~



1 ~~statistical evidence or other evidence, including, but not limited to, sworn testimony of~~
2 ~~attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal~~
3 ~~justice system or both, that, irrespective of statutory factors, one or more of the following~~
4 ~~applies:~~

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

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

14 (c) ~~The defendant has the burden of proving that there was discriminatory purpose race~~
15 ~~was a significant factor in decisions to seek or impose in seeking or imposing the sentence of~~
16 ~~death death in the defendant's case. in the county, the prosecutorial district, the judicial~~
17 ~~division, or the State at the time the death sentence was sought or imposed. The State may offer~~
18 ~~evidence in rebuttal of the claims or evidence of the defendant, defendant, including statistical~~
19 ~~evidence. The court may consider evidence of the impact upon the defendant's trial of any~~
20 ~~program the purpose of which is to eliminate race as a factor in seeking or imposing a sentence~~
21 ~~of death.~~

22 "**§ 15A-2012. Hearing procedure.**

23 (a) ~~The defendant shall state with particularity how the evidence supports a claim that~~
24 ~~there was discriminatory purpose race was a significant factor in decisions to seek or impose~~
25 ~~the sentence of death in the defendant's case. county, the prosecutorial district, the judicial~~
26 ~~division, or the State at the time the death sentence was sought or imposed.~~

- 27 (1) ~~The claim shall be raised by the defendant at the pretrial conference required~~
28 ~~by Rule 24 of the General Rules of Practice for the Superior and District~~
29 ~~Courts or in postconviction proceedings pursuant to Article 89 of Chapter~~
30 ~~15A of the General Statutes.~~
- 31 (2) ~~The court shall schedule a hearing on the claim and shall prescribe a time for~~
32 ~~the submission of evidence by both parties.~~
- 33 (3) ~~If the court finds that there was discriminatory purpose race was a significant~~
34 ~~factor in decisions to seek or impose the sentence of death in the defendant's~~
35 ~~case, county, the prosecutorial district, the judicial division, or the State at~~
36 ~~the time the death sentence was sought or imposed, the court shall order that~~
37 ~~a death sentence not be sought, or that the death sentence imposed by the~~
38 ~~judgment shall be vacated and that the defendant receive a new sentencing~~
39 ~~hearing. resentenced to life imprisonment without the possibility of parole.~~

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

45 (c) ~~Except as specifically stated in subsections (a) and (b) of this section, the The~~
46 ~~procedures and hearing on the motion seeking relief from a death sentence upon the ground that~~
47 ~~there was discriminatory purpose race was a significant factor in decisions to seek or impose~~
48 ~~the sentence of death in the defendant's case county, the prosecutorial district, the judicial~~
49 ~~division, or the State at the time the death sentence was sought or imposed shall follow and~~
50 ~~comply with G.S. 15A 1420, 15A 1421, and 15A 1422. Chapter 15A of the General Statutes."~~

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

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

9 **SECTION 4.** Nothing in this act is intended to amend or modify either the
10 statutory or common law applicable to trial or postconviction proceedings in capital cases that
11 existed prior to July 11, 2009.

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