

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 529*
Committee Substitute Favorable 5/31/05

Short Title: Suspend Executions for Two Years.

(Public)

Sponsors:

Referred to:

March 9, 2005

A BILL TO BE ENTITLED
AN ACT TO SUSPEND EXECUTIONS FOR TWO YEARS WHILE CONDUCTING
A STUDY ON ISSUES RELATING TO THE DEATH SENTENCE.

Whereas, factors that may affect the fair and impartial administration of the death penalty include the following:

- (1) The adequacy of counsel for those on death row in all stages of capital cases and a risk of executing the innocent due to problems with counsel appointed prior to the enactment of current guidelines and qualifications.
- (2) The potential effect of the locale of a crime on the probability that a prosecutor decides to try a homicide as a capital case.
- (3) Proportionality in the use of the death penalty, including the relationship between death sentences and individual culpability for the crimes.
- (4) Possible prosecutorial misconduct.
- (5) Possible discrimination in death penalty sentencing based on either the victim's race or the defendant's race as well as possible discrimination with regard to other aspects of capital case processing; and

Whereas, the Final Report to the 2001 General Assembly by the Legislative Research Commission's Study on Capital Punishment – Mentally Retarded and Race Basis included a recommendation that there be a suspension of executions while matters relating to the imposition of the death penalty are further studied; Now, therefore, The General Assembly of North Carolina enacts:

SECTION 1. Notwithstanding G.S. 15-194, the Secretary of Correction shall not set a date for any execution sooner than two years from the effective date of this act. During that period, the study authorized by Section 2 of this act shall be undertaken and the results reported to the General Assembly.

SECTION 2.(a) There is created a Study Commission on Capital Punishment. The Commission shall consist of 15 members appointed as follows:

- 1 (1) Five Senators appointed by the President Pro Tempore of the Senate.
- 2 (2) Five Representatives appointed by the Speaker of the House of
- 3 Representatives.
- 4 (3) Five members of the public appointed by the Governor.

5 In the course of its study, the Commission shall consult with representatives of victims,
6 law enforcement, or other interested parties.

7 **SECTION 2.(b)** The Commission shall consider and report on:

- 8 (1) The adequacy of counsel in all stages of capital cases and the
- 9 sufficiency of guidelines for the appointment and performance of such
- 10 counsel appointed prior to the enactment of current guidelines and
- 11 qualifications.
- 12 (2) The process for judicial review of the merits of constitutional claims in
- 13 State postconviction and federal habeas corpus proceedings.
- 14 (3) Any disproportionate racial impact from any aspect of capital case
- 15 processing.
- 16 (4) Whether there is discrimination in capital sentencing on the basis of
- 17 the victim's or the defendant's race.
- 18 (5) Prosecutorial misconduct as a factor in the imposition of the death
- 19 penalty.
- 20 (6) The presence of innocent persons on death row.
- 21 (7) Any other appropriate or relevant subject.

22 **SECTION 2.(c)** The Speaker of the House of Representatives shall appoint a
23 cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the
24 Commission. The Commission may meet at any time upon the joint call of the cochairs.
25 Vacancies on the Commission shall be filled by the same appointing authority as made
26 the initial appointment.

27 The Commission, while in the discharge of its official duties, may exercise all
28 powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The
29 Commission may contract for professional, clerical, or consultant services as provided
30 by G.S. 120-32.02.

31 Subject to the approval of the Legislative Services Commission, the
32 Commission may meet in the Legislative Building or the Legislative Office Building.
33 The Legislative Services Commission, through the Legislative Services Officer, shall
34 assign professional staff to assist the Commission in its work. The House of
35 Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff
36 to the Commission, and the expenses relating to the clerical employees shall be borne
37 by the Commission. Members of the Commission shall receive subsistence and travel
38 expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

39 **SECTION 2.(d)** The Commission shall submit an interim report to the 2007
40 Regular Session of the General Assembly on the Commission's findings and
41 recommendations, which may include any statutory changes necessary to implement the
42 recommendations. The Commission shall make a final report to the 2008 Regular
43 Session of the 2007 General Assembly and shall terminate upon the earlier of the filing

1 of its final report or the convening of the 2008 Regular Session of the 2007 General
2 Assembly.

3 **SECTION 2.(e)** Of the funds appropriated to the General Assembly, the
4 Legislative Services Commission shall allocate funds for the expenses of the
5 Commission established by this section.

6 **SECTION 3.** Notwithstanding the suspension of executions in Section 1
7 above, nothing in this act shall prevent the prosecution of capital cases at trial or appeal,
8 nor the imposition of a sentence of death during the period of suspension of executions.

9 **SECTION 4.** This act is effective when it becomes law and applies only to
10 cases in which a death sentence was imposed prior to January 1, 2005.