

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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SENATE BILL 461\*  
Judiciary I Committee Substitute Adopted 5/12/09

Short Title: North Carolina Racial Justice Act.

(Public)

Sponsors:

Referred to:

March 9, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE FAIR AND RELIABLE IMPOSITION OF CAPITAL  
3 SENTENCES.

4 The General Assembly of North Carolina enacts:

5 SECTION 1. Chapter 15A of the General Statutes is amended by adding a new  
6 Article to read:

7 "Article 101.

8 "North Carolina Racial Justice Act.

9 **"§ 15A-2010. North Carolina Racial Justice Act.**

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

12 **"§ 15A-2011. Proof of racial discrimination.**

13 (a) A finding that race was the basis of the decision to seek or impose a death sentence  
14 may be established if the court finds that race was a significant factor in decisions to seek or  
15 impose the sentence of death in the county, the prosecutorial district, or any prosecutorial  
16 district immediately contiguous to the boundaries of that prosecutorial district at the time the  
17 death sentence was sought or imposed.

18 (b) Evidence relevant to establish a finding that race was a significant factor in  
19 decisions to seek or impose the sentence of death in the county, the prosecutorial district, or any  
20 prosecutorial district immediately contiguous to the boundaries of that prosecutorial district at  
21 the time the death sentence was sought or imposed may include statistical evidence or other  
22 evidence, including, but not limited to, sworn testimony of attorneys, prosecutors, law  
23 enforcement officers, jurors, or other members of the criminal justice system or both, that  
24 irrespective of statutory factors one or more of the following applies:

25 (1) Death sentences were sought or imposed significantly more frequently upon  
26 persons of one race than upon persons of another race.

27 (2) Death sentences were sought or imposed significantly more frequently as  
28 punishment for capital offenses against persons of one race than as  
29 punishment of capital offenses against persons of another race.

30 (3) Race was a significant factor in decisions to exercise peremptory challenges  
31 during jury selection.

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

34 (c) The defendant has the burden of proving that race was a significant factor in  
35 decisions to seek or impose the sentence of death in the county, the prosecutorial district, or any  
36 prosecutorial district immediately contiguous to the boundaries of that prosecutorial district at  
37 the time the death sentence was sought or imposed. The State may offer evidence in rebuttal of



1 the claims or evidence of the defendant. The State may rebut a statistical showing of racial  
2 disparities in any prosecutorial district immediately contiguous to the boundaries of the  
3 prosecutorial district in which the trial was held is to be held by introducing statistical evidence  
4 or other evidence demonstrating that there was no racial discrimination with regard to the  
5 decision to seek or impose a sentence of death in the county or the prosecutorial district at the  
6 time the death penalty was sought or imposed. The court may consider evidence of any  
7 program implemented prior to the defendant's trial for the purpose of eliminating racial  
8 disparities in its evaluation of whether the State has adequately addressed those disparities.

9 **"§ 15A-2012. Hearing procedure.**

10 (a) The defendant shall state with particularity how the evidence supports a claim that  
11 race was a significant factor in decisions to seek or impose the sentence of death in the county,  
12 the prosecutorial district, or any prosecutorial district immediately contiguous to the boundaries  
13 of that prosecutorial district at the time the death sentence was sought or imposed. The claim  
14 shall be raised by the defendant at the pretrial conference or in postconviction proceedings. The  
15 court shall schedule a hearing on the claim and shall prescribe a time for the submission of  
16 evidence by both parties. If the court finds that race was a significant factor in decisions to seek  
17 or impose the sentence of death in the county, the prosecutorial district, or any prosecutorial  
18 district immediately contiguous to the boundaries of that prosecutorial district at the time the  
19 death sentence was sought or imposed, the court shall order that a death sentence not be sought,  
20 or that the death sentence imposed by the judgment shall be vacated and the defendant  
21 resentenced to life imprisonment without the possibility of parole.

22 (b) Notwithstanding any other provision or time limitation contained in Article 89 of  
23 Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death  
24 sentence upon the ground that racial considerations played a significant part in the decision to  
25 seek or impose a death sentence by filing a motion seeking relief. The motion shall be filed  
26 within one year of the effective date of this act.

27 Except as specifically stated in subsections (a) and (b) of this section, the procedures and  
28 hearing on the motion seeking relief from a death sentence upon the ground that race was a  
29 significant factor in decisions to seek or impose the sentence of death in the county, the  
30 prosecutorial district, or any prosecutorial district immediately contiguous to the boundaries of  
31 that prosecutorial district at the time the death sentence was sought or imposed, shall follow  
32 and comply with G.S. 15A-1420, 15A-1421, and 15A-1422."

33 **SECTION 2.** This act is effective when it becomes law and applies retroactively.