

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

D

SENATE BILL 416
Second Edition Engrossed 3/31/11
House Committee Substitute Favorable 6/6/12
PROPOSED HOUSE COMMITTEE SUBSTITUTE S416-CSRK-145 [v.7]

6/8/2012 1:22:35 PM

Short Title: Amend Death Penalty Procedures.

(Public)

Sponsors:

Referred to:

March 24, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND DEATH PENALTY PROCEDURES.
3 The General Assembly of North Carolina enacts:

4 **SECTION 1.** G.S. 15-188 reads as rewritten:

5 "**§ 15-188. Manner and place of execution.**

6 In accordance with G.S. 15-187, the mode of executing a death sentence must in every case
7 be by administering to the convict or felon a lethal quantity of an ultrashort-acting barbiturate
8 in combination with a chemical paralytic agent until the convict or felon is dead; and when any
9 person, convict or felon shall be sentenced by any court of the State having competent
10 jurisdiction to be so executed, the punishment shall only be inflicted within a permanent death
11 chamber which the superintendent of the State penitentiary is hereby authorized and directed to
12 provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The
13 superintendent of the State penitentiary shall also cause to be provided, in conformity with this
14 ~~Article Article, and approved by the Governor and Council of State,~~ the necessary appliances
15 for the infliction of the punishment of death and qualified personnel to set up and prepare the
16 injection, administer the preinjections, insert the IV catheter, and to perform other tasks
17 required for this procedure in accordance with the requirements of this Article."

18 **SECTION 2.** G.S. 15A-903 is amended by adding a new subsection to read:

19 "(e) In addition to any offense which may be charged for a violation under subsection (d)
20 of this section, a court may discipline or sanction the State for failure to comply with the
21 disclosures required by this section. In addition to any discipline or sanctions the court may
22 impose, the court shall continue the case for a sufficient time so that the defendant is not
23 prejudiced by a failure to comply with this section. The court shall be without authority to
24 declare a capital case as non-capital due to a failure to comply with the disclosures required by
25 this section."

26 **SECTION 3.** G.S. 15A-2004(b) reads as rewritten:

27 "(b) A sentence of death may not be imposed upon a defendant convicted of a capital
28 felony unless the State has given notice of its intent to seek the death penalty. Notice of intent
29 to seek the death penalty shall be given to the defendant and filed with the court on or before
30 the date of the pretrial conference in capital cases required by Rule 24 of the General Rules of
31 Practice for the Superior and District Courts, or the arraignment, whichever is later. A court
32 may discipline or sanction the State for failure to comply with the time requirements in Rule



* S 4 1 6 - C S R K - 1 4 5 - V - 7 *

24, but shall not declare a case as non-capital as a consequence of such failure. In addition to any discipline or sanctions the court may impose, the court shall continue the case for a sufficient time so that the defendant is not prejudiced by any delays in holding the hearing required by Rule 24."

SECTION 4. G.S. 15A-2011 reads as rewritten:

"§ 15A-2011. ~~Proof of racial discrimination.~~**discrimination; hearing procedure.**

(a) A finding that race was the basis of the decision to seek or impose a death sentence may be established if the court finds that race was a significant factor in decisions to seek or impose the death penalty in the defendant's case at the time the death sentence was sought or imposed. For the purposes of this section, "at the time the death sentence was sought or imposed" shall be defined as the period from 10 years prior to the commission of the offense to the date that is 2 years after the imposition of the death sentence. ~~sentence of death in the county, the prosecutorial district, the judicial division, or the State at the time the death sentence was sought or imposed.~~

(a1) It is the intent of this Article to provide for an amelioration of the death sentence. It shall be a condition for the filing and consideration of a motion under this Article that the defendant knowingly and voluntarily waives any objection to the imposition of a sentence to life imprisonment without parole based upon any common law, statutory law, or the federal or State constitutions that would otherwise require that the defendant be eligible for parole. The waiver shall be in writing, signed by the defendant, and included in the motion seeking relief under this Article. If the court determines that a hearing is required pursuant to subdivision (3) of subsection (f) of this section, the court shall make an oral inquiry of the defendant to confirm the defendant's waiver, which shall be part of the record. If the court grants relief under this Article, the judgment shall include a finding that the defendant waived any objection to the imposition of a sentence of life imprisonment without parole.

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

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

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

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

(d) Evidence relevant to establish a finding that race was a significant factor in decisions to seek or impose the sentence of death in the county or prosecutorial district at the time the death sentence was sought or imposed may include statistical evidence derived from

1 the county or prosecutorial district where the defendant was sentenced to death, or other
2 evidence, that either (1) the race of the defendant was a significant factor or (2) race was a
3 significant factor in decisions to exercise peremptory challenges during jury selection. The
4 evidence may include, but is not limited to, sworn testimony of attorneys, prosecutors, law
5 enforcement officers, judicial officials, jurors, or others involved in the criminal justice system.
6 A juror's testimony under this subsection shall be consistent with Rule 606(b) of the North
7 Carolina Rules of Evidence, as contained in G.S. 8C-1.

8 (e) Statistical evidence alone is insufficient to establish that race was a significant factor
9 under this Article. The State may offer evidence in rebuttal of the claims or evidence of the
10 defendant, including, but not limited to, statistical evidence.

11 (f) In any motion filed under this Article, the defendant shall state with particularity
12 how the evidence supports a claim that race was a significant factor in decisions to seek or
13 impose the sentence of death in the defendant's case in the county or prosecutorial district at the
14 time the death sentence was sought or imposed.

15 (1) The claim shall be raised by the defendant at the pretrial conference required
16 by the General Rules of Practice for the Superior and District Courts or in
17 postconviction proceedings pursuant to Article 89 of Chapter 15A of the
18 General Statutes.

19 (2) If the court finds that the defendant's motion fails to state a sufficient claim
20 under this Article, then the court shall dismiss the claim without an
21 evidentiary hearing.

22 (3) If the court finds that the defendant's motion states a sufficient claim under
23 this Article, the court shall schedule a hearing on the claim and may
24 prescribe a time prior to the hearing for each party to present a forecast of its
25 proposed evidence.

26 (g) If the court finds that race was a significant factor in decisions to seek or impose the
27 sentence of death in the defendant's case at the time the death sentence was sought or imposed,
28 the court shall order that a death sentence not be sought, or that the death sentence imposed by
29 the judgment shall be vacated and the defendant resentenced to life imprisonment without the
30 possibility of parole."

31 **SECTION 5.** G.S. 15A-2012 is repealed.

32 **SECTION 6.** This act does not change any provision in Article 89 of Chapter 15A
33 of the General Statutes concerning the procedure for the filing of motions for appropriate relief
34 in capital cases, including the deadlines and grounds upon which a motion may be filed.

35 **SECTION 7.** Unless otherwise excepted, this act, including the hearing procedure,
36 evidentiary burden, and the description of evidence that is relevant to a finding that race was a
37 significant factor in seeking or imposing a death sentence, also applies to any postconviction
38 motions for appropriate relief that were filed pursuant to S.L. 2009-464. This act also applies to
39 any hearing that commenced prior to the effective date of this act. A person who filed a
40 postconviction motion for appropriate relief pursuant to S.L. 2009-464 shall have 60 days from
41 the effective date of this act to amend or otherwise modify the motion. Any hearings
42 commenced prior to the effective date shall be continued and shall not be set to reconvene on a
43 date less than 60 days from the effective date of this act.

44 **SECTION 8.** This act does not provide, allow, or authorize any motions for
45 appropriate relief in addition to those already authorized under laws applicable to capital trial
46 procedure or Article 89 of Chapter 15A of the General Statutes. A capital defendant who filed a
47 trial motion alleging discrimination, or a motion for appropriate relief alleging discrimination,
48 prior to or following the effective date of S.L. 2009-464, is not entitled or authorized to file any
49 additional motions for appropriate relief based upon this act.

50 **SECTION 9.** This act does not apply to a postconviction motion for appropriate
51 relief which was filed pursuant to S.L. 2009-464 if the court, prior to the effective date of this

1 act, made findings of fact and conclusions of law after an evidentiary hearing in which the
2 person seeking relief and the State had an opportunity to present evidence, including witness
3 testimony and rebuttal evidence. If, however, an order by a trial court which would otherwise
4 meet the requirements of this section is vacated or overturned upon appellate review, then any
5 further proceedings required to prove a claim that racial discrimination was a significant factor
6 in seeking or imposing the death penalty shall be subject to the provisions of this act.

7 **SECTION 10.** If any provision of this act or its application is held invalid, the
8 invalidity does not affect other provisions or applications of this act that can be given effect
9 without the invalid provisions or application, and to this end the provisions of this act are
10 severable.

11 **SECTION 11.** Section 1 of this act is applicable for executions scheduled after the
12 effective date of this act. Sections 2 and 3 of this act are effective for trials commencing on or
13 after the effective date of this act. The remainder of this act is effective when it becomes law
14 and applies to all capital trials held prior to, on, or after the effective date of this act and to all
15 capital defendants sentenced to the death penalty prior to, on, or after the effective date of the
16 act.