

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 9*
Judiciary II Committee Substitute Adopted 2/7/11
House Committee Substitute Favorable 6/1/11

Short Title: No Discriminatory Purpose in Death Penalty.

(Public)

Sponsors:

Referred to:

January 31, 2011

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, intentional racial discrimination is a violation of a defendant's right to the
5 equal protection of the law, as guaranteed by the Fourteenth Amendment to the Constitution of
6 the United States and Section 19 of Article I of the North Carolina Constitution; and

7 Whereas, in 1987, the United States Supreme Court held in McCleskey v. Kemp
8 that (i) a statistical study which showed that the death penalty was more often imposed in
9 Georgia on black defendants and killers of white victims than on white defendants and killers
10 of black victims did not establish that Georgia enacted or maintained the death penalty because
11 of anticipated racially discriminatory effect in violation of equal protection, (ii) the statistical
12 study was insufficient to support an inference that any of the decision makers in the defendant's
13 case acted with discriminatory purpose, and (iii) to prevail in a discrimination claim under the
14 equal protection clause, a capital defendant must prove that decision makers in the defendant's
15 case acted with discriminatory purpose; and

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

20 Whereas, the policy of the State has been to ensure that no death penalty shall be
21 sought or imposed for any discriminatory purpose and there existed in the North Carolina Rules
22 of Criminal Procedure, prior to the enactment of Article 101 of Chapter 15A of the General
23 Statutes, substantial procedural rights to safeguard a capital defendant's constitutional rights to
24 equal protection of the laws and a trial and sentencing free from racial discrimination, and
25 which required the defendant to show that the decision makers in the defendant's case acted
26 with discriminatory purpose; and

27 Whereas, it is the intent of the General Assembly to clarify the language in Article
28 101 of Chapter 15A of the General Statutes, to reflect the burden on the defendant is to show
29 that the decision makers in the defendant's case acted with discriminatory purpose, and to
30 clarify that this burden existed prior to the passage of Article 101 of Chapter 15A of the
31 General Statutes; Now, therefore,

32 The General Assembly of North Carolina enacts:

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

"Article 101.

"North Carolina Racial Justice Act.



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1 **"§ 15A-2010. North Carolina Racial Justice Act.**

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

4 **"§ 15A-2011. Proof of racial discrimination.**

5 (a) At trial or upon a motion for appropriate relief filed pursuant to Article 89 of
6 Chapter 15A of the General Statutes, A finding that race was the basis of the decision to seek
7 or impose a death sentence may be established if the court finds that the State acted with
8 discriminatory purpose in seeking the death penalty or in selecting the jury that sentenced the
9 defendant, or one or more of the jurors acted with discriminatory purpose in the guilt-innocence
10 or sentencing phases of the defendant's trial. race was a significant factor in decisions to seek or
11 impose the sentence of death in the county, the prosecutorial district, the judicial division, or
12 the State at the time the death sentence was sought or imposed.

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

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

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

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

37 **"§ 15A-2012. Hearing procedure.**

38 (a) ~~The defendant shall state with particularity how the evidence supports a claim that~~
39 ~~race was a significant factor in decisions to seek or impose the sentence of death in the county,~~
40 ~~the prosecutorial district, the judicial division, or the State at the time the death sentence was~~
41 ~~sought or imposed.~~

- 42 (1) ~~The claim shall be raised by the defendant at the pretrial conference required~~
43 ~~by Rule 24 of the General Rules of Practice for the Superior and District~~
44 ~~Courts or in postconviction proceedings pursuant to Article 89 of Chapter~~
45 ~~15A of the General Statutes.~~
46 (2) ~~The court shall schedule a hearing on the claim and shall prescribe a time for~~
47 ~~the submission of evidence by both parties.~~
48 (3) ~~If the court finds that race was a significant factor in decisions to seek or~~
49 ~~impose the sentence of death in the county, the prosecutorial district, the~~
50 ~~judicial division, or the State at the time the death sentence was sought or~~
51 ~~imposed, the court shall order that a death sentence not be sought, or that the~~

1 death sentence imposed by the judgment shall be vacated and the defendant
2 resentenced to life imprisonment without the possibility of parole.

3 (b) ~~Notwithstanding any other provision or time limitation contained in Article 89 of~~
4 Chapter 15A of the General Statutes, a defendant may seek relief from the defendant's death
5 sentence upon the ground that racial considerations played a significant part in the decision to
6 seek or impose a death sentence by filing a motion seeking relief.

7 (c) ~~Except as specifically stated in subsections (a) and (b) of this section, the procedures~~
8 ~~and hearing on the motion seeking relief from a death sentence upon the ground that race was a~~
9 ~~significant factor in decisions to seek or impose the sentence of death in the county, the~~
10 ~~prosecutorial district, the judicial division, or the State at the time the death sentence was~~
11 ~~sought or imposed shall follow and comply with G.S. 15A 1420, 15A 1421, and 15A 1422."~~

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

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

20 **SECTION 4.** Nothing in this act is intended to amend or modify either the
21 statutory or common law applicable to trial or postconviction proceedings in capital cases that
22 existed prior to July 11, 2009. Consequently, this act does not change any provision in Article
23 89 of Chapter 15A of the General Statutes concerning the procedure for the filing of motions
24 for appropriate relief in capital cases, including the deadlines and grounds upon which a motion
25 may be filed. This act, in addition to the nullification of hearings based upon the prior
26 provisions of Article 101A of the General Statutes, as explained in Section 2 of this act, is
27 intended only to clarify the law that existed prior to the passage of Article 101A of Chapter
28 15A of the General Statutes, and add terminology used by the United States Supreme Court in
29 1987. Specifically, this act does not provide, allow, or authorize any hearings in addition to
30 those already authorized under laws applicable to capital trial procedure or Article 89 of
31 Chapter 15A of the General Statutes, and a capital defendant who filed a trial motion alleging
32 discrimination, or a motion for appropriate relief alleging discrimination, prior to or following
33 the effective date of Article 101A of Chapter 15A of the General Statutes is not entitled or
34 authorized to file any further pleadings based upon this act, including a claim that the decision
35 makers in the defendant's case acted with a discriminatory purpose, whether the defendant's
36 prior motion included a discrimination claim or not, nor does it authorize any hearing on any
37 claim of discrimination that may have been waived.

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