

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE BILL DRH40366-ML-41

Short Title: Reenact & Revise Racial Justice Act.

(Public)

Sponsors: Representative Alston.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REENACT THE RACIAL JUSTICE ACT AND TO PROHIBIT THE STATE
3 FROM SEEKING A CRIMINAL CONVICTION OR SENTENCE ON THE BASIS OF
4 RACE, ETHNICITY, OR NATIONAL ORIGIN.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 101 of Chapter 15A of the General Statutes is reenacted as it
7 was originally enacted under S.L. 2009-464.

8 SECTION 2. Article 101 of Chapter 15A of the General Statutes, as reenacted by
9 Section 1 of this act, is amended by adding a new section to read:

10 "**§ 15A-2013. Prohibition on prosecution based on race, ethnicity, or national origin.**

11 (a) Definitions. – The following definitions apply in this section:

12 (1) More frequently sought or obtained or more frequently imposed. – Statistical
13 evidence or aggregate data demonstrate a significant difference in seeking or
14 obtaining convictions or in imposing sentences comparing individuals who
15 have committed similar offenses and are similarly situated, and the
16 prosecution cannot establish race-neutral reasons for the disparity.

17 (2) Prima facie showing. – The defendant produces facts that, if true, establish
18 that there is a substantial likelihood that a violation of subsection (b) of this
19 section occurred. For purposes of this subdivision, a "substantial likelihood"
20 requires more than a mere possibility, but less than a standard of more likely
21 than not.

22 (3) Racially discriminatory language. – Language that, to an objective observer,
23 explicitly or implicitly appeals to racial bias, including, but not limited to,
24 racially charged or racially coded language, language that compares the
25 defendant to an animal, or language that references the defendant's physical
26 appearance, culture, ethnicity, or national origin. Evidence that particular
27 words or images are used exclusively or disproportionately in cases where the
28 defendant is of a specific race, ethnicity, or national origin is relevant to
29 determining whether language is discriminatory.

30 (b) Prohibition. – The State shall not seek or obtain a criminal conviction, or seek, obtain,
31 or impose a sentence, on the basis of race, ethnicity, or national origin. A violation of this
32 subsection is established if the defendant proves, by a preponderance of the evidence, any of the
33 following:

34 (1) The judge, an attorney in the case, a law enforcement officer involved in the
35 case, an expert witness, or juror exhibited bias or animus towards the
36 defendant because of the defendant's race, ethnicity, or national origin.



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- 1 (2) During the defendant's trial, in court and during the proceedings, the judge, an
2 attorney in the case, a law enforcement officer involved in the case, an expert
3 witness, or juror used racially discriminatory language about the defendant's
4 race, ethnicity, or national origin, or otherwise exhibited bias or animus
5 towards the defendant because of the defendant's race, ethnicity, or national
6 origin, whether or not purposeful. This subdivision does not apply if the
7 person speaking is describing language used by another that is relevant to the
8 case or if the person speaking is giving a racially neutral and unbiased physical
9 description of the suspect.
- 10 (3) Race, ethnicity, or national origin was a factor in the exercise of peremptory
11 challenges. The defendant need not show that purposeful discrimination
12 occurred in the exercise of peremptory challenges to demonstrate a violation
13 of this subsection.
- 14 (4) The defendant was charged or convicted of a more serious offense than
15 defendants of other races, ethnicities, or national origins who commit similar
16 offenses and are similarly situated, and the evidence establishes that the
17 prosecution more frequently sought or obtained convictions for more serious
18 offenses against people who share the defendant's race, ethnicity, or national
19 origin in the county where the convictions were sought or obtained.
- 20 (5) A longer or more severe sentence was imposed on the defendant than was
21 imposed on other similarly situated individuals convicted of the same offense,
22 and longer or more severe sentences were more frequently imposed for that
23 offense on people that share the defendant's race, ethnicity, or national origin
24 than on defendants of other races, ethnicities, or national origins in the county
25 where the sentence was imposed.
- 26 (6) A longer or more severe sentence was imposed on the defendant than was
27 imposed on other similarly situated individuals convicted of the same offense,
28 and longer or more severe sentences were more frequently imposed for the
29 same offense on defendants in cases with victims of one race, ethnicity, or
30 national origin than in cases with victims of other races, ethnicities, or national
31 origins in the county where the sentence was imposed.
- 32 (c) Motion. – A defendant may file a motion in the trial court or, if judgment has been
33 imposed, may file a petition for writ of habeas corpus or a motion under Article 89 of this Chapter
34 in a court of competent jurisdiction, alleging a violation of subsection (b) of this section.
- 35 (d) Hearing. – If a motion is filed in the trial court and the defendant makes a prima facie
36 showing of a violation of subsection (b) of this section, the trial court shall hold a hearing.
- 37 (e) Hearing Requirements. – All of the following requirements apply to a hearing held
38 under subsection (d) of this section:
- 39 (1) Evidence may be presented by either party, including, but not limited to,
40 statistical evidence, aggregate data, expert testimony, and the sworn testimony
41 of witnesses. The court may also appoint an independent expert.
- 42 (2) The defendant shall have the burden of proving a violation of subsection (b)
43 of this section by a preponderance of the evidence.
- 44 (3) At the conclusion of the hearing, the court shall make findings on the record.
- 45 (f) Remedies. – If the court finds, by a preponderance of evidence, a violation of
46 subsection (b) of this section, the court shall impose any of the following remedies:
- 47 (1) Before a judgment has been entered, the court may impose any of the
48 following remedies:
- 49 a. Reseat a juror removed by use of a peremptory challenge.
50 b. Declare a mistrial, if requested by the defendant.
51 c. Discharge the jury panel and empanel a new jury.

- 1 d. If the court determines that it would be in the interest of justice,
2 dismiss enhancements, special circumstances, or reduce one or more
3 charges.
- 4 (2) When a judgment has been entered, if the court finds that a conviction was
5 sought or obtained in violation of subsection (b) of this section, the court shall
6 vacate the conviction and sentence, find that it is legally invalid, and order
7 new proceedings consistent with subsection (b) of this section. If the court
8 finds that the only violation of subsection (b) of this section that occurred is
9 based on subdivision (4) of subsection (b) of this section and the court has the
10 ability to rectify the violation by modifying the judgment, the court shall
11 vacate the conviction and sentence, find that the conviction is legally invalid,
12 and modify the judgment to impose an appropriate remedy for the violation
13 that occurred. On resentencing, the court shall not impose a new sentence
14 greater than that previously imposed.
- 15 (3) When a judgment has been entered, if the court finds that only the sentence
16 was sought, obtained, or imposed in violation of subsection (b) of this section,
17 the court shall vacate the sentence, find that it is legally invalid, and impose a
18 new sentence. On resentencing, the court shall not impose a new sentence
19 greater than that previously imposed.
- 20 (4) Any other remedies available under the United States Constitution, the North
21 Carolina Constitution, or any other law.
- 22 (g) Capital Punishment. – When the court finds there has been a violation of subsection
23 (b) of this section, the defendant shall not be eligible for the death penalty.
- 24 (h) Juveniles. – This section also applies to adjudications and dispositions under Chapter
25 7B of the General Statutes.
- 26 (i) Aggregation of Data. – A defendant may share a race, ethnicity, or national origin
27 with more than one group. A defendant may aggregate data among groups to demonstrate a
28 violation of subsection (b) of this section.
- 29 (j) Controlling Authority. – To the extent this section conflicts with any other section of
30 the General Statutes, this section controls."

31 **SECTION 3.** This act is effective when it becomes law and applies retroactively.
32 For persons under a death sentence imposed before the effective date of this act, motions under
33 this act shall be filed within one year of the effective date of this act; for persons whose death
34 sentence is imposed on or after the effective date of this act, motions shall be filed as provided
35 in Article 101 of Chapter 15A of the General Statutes, as reenacted and amended by this act.