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Short Title: Amend Racial Justice Act.

(Public)

Sponsors:

Referred to:

March 24, 2011

A BILL TO BE ENTITLED

AN ACT TO AMEND THE RACIAL JUSTICE ACT TO PROVIDE FOR THE RELEVANCY OF STATISTICS FROM THE COUNTY OR PROSECUTORIAL DISTRICT WHERE THE CAPITAL DEFENDANT RECEIVED THE DEATH PENALTY.

The General Assembly of North Carolina enacts:

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

"Article 101.

"North Carolina Racial Justice Act.

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

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

"§ 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 the date that is 24 months prior to the commission of the offense to the date that is 24 months after the imposition of the death sentence. ~~sentene 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~~



1 judicial division, or the State at the time the death sentence was sought or imposed may include
2 ~~statistical evidence or other evidence, including, but not limited to, sworn testimony of~~
3 ~~attorneys, prosecutors, law enforcement officers, jurors, or other members of the criminal~~
4 ~~justice system or both, that, irrespective of statutory factors, one or more of the following~~
5 ~~applies:~~

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

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

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

22 (d) Evidence relevant to establish a finding that race was a significant factor in
23 decisions to seek or impose the sentence of death in the county or prosecutorial district at the
24 time the death sentence was sought or imposed may include statistical evidence derived from
25 the county or prosecutorial district where the defendant was sentenced to death, or other
26 evidence, that the race of the defendant was a significant factor. The evidence may include, but
27 is not limited to, sworn testimony of attorneys, prosecutors, law enforcement officers, judicial
28 officials, jurors, or others involved in the criminal justice system. A juror's testimony under this
29 subsection shall be consistent with Rule 606(b) of the North Carolina Rules of Evidence, as
30 contained in G.S. 8C-1.

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

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

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

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

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

49 (g) If the court finds that race was a significant factor in decisions to seek or impose the
50 sentence of death in the defendant's case at the time the death sentence was sought or imposed,
51 the court shall order that a death sentence not be sought, or that the death sentence imposed by

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

3 ~~"§ 15A-2012. Hearing procedure.~~

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

8 (1) ~~The claim shall be raised by the defendant at the pretrial conference required~~
9 ~~by Rule 24 of the General Rules of Practice for the Superior and District~~
10 ~~Courts or in postconviction proceedings pursuant to Article 89 of Chapter~~
11 ~~15A of the General Statutes.~~

12 (2) ~~The court shall schedule a hearing on the claim and shall prescribe a time for~~
13 ~~the submission of evidence by both parties.~~

14 (3) ~~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, the~~
16 ~~judicial division, or the State at the time the death sentence was sought or~~
17 ~~imposed, the court shall order that a death sentence not be sought, or that the~~
18 ~~death sentence imposed by the judgment shall be vacated and the defendant~~
19 ~~resentenced to life imprisonment without the possibility of parole.~~

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

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

29 **SECTION 2.** This act does not change any provision in Article 89 of Chapter 15A
30 of the General Statutes concerning the procedure for the filing of motions for appropriate relief
31 in capital cases, including the deadlines and grounds upon which a motion may be filed.

32 **SECTION 3.** Unless otherwise excepted, this act, including the hearing procedure,
33 evidentiary burden, and the description of evidence that is relevant to a finding that race was a
34 significant factor in seeking or imposing a death sentence, also applies to any postconviction
35 motions for appropriate relief that were filed pursuant to S.L. 2009-464. This act also applies to
36 any hearing that commenced prior to the effective date of this act. A person who filed a
37 postconviction motion for appropriate relief pursuant to S.L. 2009-464 shall have 60 days from
38 the effective date of this act to amend or otherwise modify the motion. Any hearings
39 commenced prior to the effective date shall be continued and shall not be set to reconvene on a
40 date less than 60 days from the effective date of this act.

41 **SECTION 4.** This act does not provide, allow, or authorize any motions for
42 appropriate relief in addition to those already authorized under laws applicable to capital trial
43 procedure or Article 89 of Chapter 15A of the General Statutes. A capital defendant who filed a
44 trial motion alleging discrimination, or a motion for appropriate relief alleging discrimination,
45 prior to or following the effective date of S.L. 2009-464, is not entitled or authorized to file any
46 additional motions for appropriate relief based upon this act.

47 **SECTION 5.** This act does not apply to a postconviction motion for appropriate
48 relief which was filed pursuant to S.L. 2009-464 if the court, prior to the effective date of this
49 act, made findings of fact and conclusions of law after an evidentiary hearing in which the
50 person seeking relief and the State had an opportunity to present evidence, including witness
51 testimony and rebuttal evidence. If, however, an order by a trial court which would otherwise

1 meet the requirements of this section is vacated or overturned upon appellate review, then any
2 further proceedings required to prove a claim that racial discrimination was a significant factor
3 in seeking or imposing the death penalty shall be subject to the provisions of this act.

4 **SECTION 6.** If any provision of this act or its application is held invalid, the
5 invalidity does not affect other provisions or applications of this act that can be given effect
6 without the invalid provisions or application, and to this end the provisions of this act are
7 severable.

8 **SECTION 7.** This act is effective when it becomes law and applies to all capital
9 trials held prior to, on, or after the effective date of this act and to all capital defendants
10 sentenced to the death penalty prior to, on, or after the effective date of the act.