

GENERAL ASSEMBLY OF NORTH CAROLINA
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HOUSE DRH20244-LH-123A (03/11)

Short Title: Repeal Death Penalty.

(Public)

Sponsors: Representatives Meyer and Michaux (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO REPEAL THE DEATH PENALTY AND TO PROVIDE THAT ALL
3 CURRENT PRISONERS SENTENCED TO DEATH SHALL BE RESENTENCED TO
4 LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 7A-450(b1) is repealed.

7 SECTION 2. G.S. 7A-498.8(b)(5) reads as rewritten:

8 "(b) The appellate defender shall perform such duties as may be directed by the Office of
9 Indigent Defense Services, including:

10 ...

11 (5) Recruiting qualified members of the private bar who are willing to provide
12 representation in ~~State and~~ federal death penalty postconviction
13 proceedings."

14 SECTION 3. G.S. 14-7.2 reads as rewritten:

15 "§ 14-7.2. Punishment.

16 When any person is charged by indictment with the commission of a felony under the laws
17 of the State of North Carolina and is also charged with being an habitual felon as defined in
18 G.S. 14-7.1, he must, upon conviction, be sentenced and punished as an habitual felon, as in
19 this Chapter provided, except in those cases where ~~the death penalty or a life sentence is~~
20 imposed."

21 SECTION 4. G.S. 14-7.8 reads as rewritten:

22 "§ 14-7.8. Punishment.

23 When a person is charged by indictment with the commission of a violent felony and is also
24 charged with being a violent habitual felon as defined in G.S. 14-7.7, the person must, upon
25 conviction, be sentenced in accordance with this ~~Article, except in those cases where the death~~
26 ~~penalty is imposed.~~ Article."

27 SECTION 5. G.S. 14-7.12 reads as rewritten:

28 "§ 14-7.12. Sentencing of violent habitual felons.

29 A person who is convicted of a violent felony and of being a violent habitual felon must,
30 upon ~~conviction (except where the death penalty is imposed), conviction,~~ conviction, be sentenced to life
31 imprisonment without parole. Life imprisonment without parole means that the person will
32 spend the remainder of the person's natural life in prison. The sentencing judge may not
33 suspend the sentence and may not place the person sentenced on probation. Sentences for
34 violent habitual felons imposed under this Article shall run consecutively with and shall
35 commence at the expiration of any other sentence being served by the person."

36 SECTION 6. G.S. 14-17(a) reads as rewritten:



* D R H 2 0 2 4 4 - L H - 1 2 3 A *

1 **"§ 14-17. Murder in the first and second degree defined; punishment.**

2 (a) A murder which shall be perpetrated by means of a nuclear, biological, or chemical
3 weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment,
4 starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which
5 shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex
6 offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of
7 a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any
8 person who commits such murder shall be punished with ~~death or~~ imprisonment in the State's
9 prison for life without parole as the court shall determine pursuant to ~~G.S. 15A-2000, except~~
10 ~~that any such person who was under 18 years of age at the time of the murder shall be punished~~
11 ~~in accordance with~~ Part 2A of Article 81B of Chapter 15A of the General Statutes.

12"

13 **SECTION 7.** G.S. 15-176.1 is repealed.

14 **SECTION 8.** Article 17A and Article 19 of Chapter 15 of the General Statutes are
15 repealed.

16 **SECTION 9.** G.S. 15A-268(a6) reads as rewritten:

17 "(a6) The evidence described by subsection (a1) of this section shall be preserved for the
18 following period:

19 (1) ~~For conviction resulting in a sentence of death, until execution.~~

20 (2) For conviction resulting in a sentence of life without parole, until the death
21 of the convicted person.

22 (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary,
23 robbery, arson or burning, for which a Class B1-E felony punishment is
24 imposed, the evidence shall be preserved during the period of incarceration
25 and mandatory supervised release, including sex offender registration
26 pursuant to Article 27A of Chapter 14 of the General Statutes, except in
27 cases where the person convicted entered and was convicted on a plea of
28 guilty, in which case the evidence shall be preserved for the earlier of three
29 years from the date of conviction or until released.

30 (4) Biological evidence collected as part of a criminal investigation of any
31 homicide or rape, in which no charges are filed, shall be preserved for the
32 period of time that the crime remains unsolved.

33 (5) A custodial agency in custody of biological evidence unrelated to a criminal
34 investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of
35 this subsection may dispose of the evidence in accordance with the rules of
36 the agency."

37 **SECTION 10.** G.S. 15A-734 reads as rewritten:

38 **"§ 15A-734. Arrest without a warrant.**

39 The arrest of a person may be lawfully made also by any peace officer or a private person,
40 without a warrant, upon reasonable information that the accused stands charged in the courts of
41 a state with a crime punishable by ~~death or~~ imprisonment for a term exceeding one year, but
42 when so arrested the accused must be taken before a judge or magistrate with all practicable
43 speed, and complaint must be made against him under oath setting forth the ground for the
44 arrest as in G.S. 15A-733; and thereafter his answer shall be heard as if he had been arrested on
45 a warrant."

46 **SECTION 11.** G.S. 15A-736 reads as rewritten:

47 **"§ 15A-736. Bail in certain cases; conditions of bond.**

48 Unless the offense with which the prisoner is charged is shown to be an offense punishable
49 by ~~death or~~ life imprisonment under the laws of the state in which it was committed, a judge or
50 magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties,
51 and in such sum as he deems proper, conditioned for his appearance before him at a time

1 specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor
 2 of this State."

3 **SECTION 12.** G.S. 15A-1201(b) reads as rewritten:

4 **"§ 15A-1201. Right to trial by jury; waiver of jury trial.**

5 ...

6 (b) A defendant accused of any criminal offense ~~for which the State is not seeking a~~
 7 ~~sentence of death~~ in superior court may, knowingly and voluntarily, in writing or on the record
 8 in the court and with the consent of the trial judge, waive the right to trial by jury. When a
 9 defendant waives the right to trial by jury under this section, the jury is dispensed with as
 10 provided by law, and the whole matter of law and fact shall be heard and judgment given by the
 11 court."

12 **SECTION 13.** Part 2 of Article 81B of Chapter 15A of the General Statutes is
 13 amended by adding a new section to read:

14 **"§ 15A-1340.13A. Death penalty abolished.**

15 Notwithstanding any other provision of law, no crime shall be punishable by death."

16 **SECTION 14.** G.S. 15A-1340.17(c) reads as rewritten:

17 **"§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

18 ...

19 (c) Punishments for Each Class of Offense and Prior Record Level; Punishment Chart
 20 Described. – The authorized punishment for each class of offense and prior record level is as
 21 specified in the chart below. Prior record levels are indicated by the Roman numerals placed
 22 horizontally on the top of the chart. Classes of offense are indicated by the letters placed
 23 vertically on the left side of the chart. Each cell on the chart contains the following
 24 components:

- 25 (1) A sentence disposition or dispositions: "C" indicates that a community
 26 punishment is authorized; "I" indicates that an intermediate punishment is
 27 authorized; "A" indicates that an active punishment is authorized; and "Life
 28 Imprisonment Without Parole" indicates that the defendant shall be
 29 imprisoned for the remainder of the prisoner's natural life.
- 30 (2) A presumptive range of minimum durations, if the sentence of imprisonment
 31 is neither aggravated or mitigated; any minimum term of imprisonment in
 32 that range is permitted unless the court finds pursuant to G.S. 15A-1340.16
 33 that an aggravated or mitigated sentence is appropriate. The presumptive
 34 range is the middle of the three ranges in the cell.
- 35 (3) A mitigated range of minimum durations if the court finds pursuant to
 36 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in
 37 such a case, any minimum term of imprisonment in the mitigated range is
 38 permitted. The mitigated range is the lower of the three ranges in the cell.
- 39 (4) An aggravated range of minimum durations if the court finds pursuant to
 40 G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified;
 41 in such a case, any minimum term of imprisonment in the aggravated range
 42 is permitted. The aggravated range is the higher of the three ranges in the
 43 cell.

44 **PRIOR RECORD LEVEL**

	I	II	III	IV	V	VI	
	0-1 Pt	2-5 Pts	6-9 Pts	10-13 Pts	14-17 Pts	18+ Pts	
A	Life Imprisonment With Parole or Without Parole, or Death, as Established by Statute						
	A	A	A	A	A	A	DISPOSITION
	240-300	276-345	317-397	365-456	Life Imprisonment		Aggravated
					Without Parole		

1	B1	192-240	221-276	254-317	292-365	336-420	386-483	PRESUMPTIVE
2		144-192	166-221	190-254	219-292	252-336	290-386	Mitigated
3		A	A	A	A	A	A	DISPOSITION
4		157-196	180-225	207-258	238-297	273-342	314-393	Aggravated
5	B2	125-157	144-180	165-207	190-238	219-273	251-314	PRESUMPTIVE
6		94-125	108-144	124-165	143-190	164-219	189-251	Mitigated
7		A	A	A	A	A	A	DISPOSITION
8		73-92	83-104	96-120	110-138	127-159	146-182	Aggravated
9	C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
10		44-58	50-67	58-77	66-88	76-101	87-117	Mitigated
11		A	A	A	A	A	A	DISPOSITION
12		64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
13	D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
14		38-51	44-59	51-67	58-78	67-89	77-103	Mitigated
15		I/A	I/A	A	A	A	A	DISPOSITION
16		25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
17	E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
18		15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
19		I/A	I/A	I/A	A	A	A	DISPOSITION
20		16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
21	F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
22		10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
23		I/A	I/A	I/A	I/A	A	A	DISPOSITION
24		13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
25	G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
26		8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
27		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
28		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
29	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
30		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
31		C	C/I	I	I/A	I/A	I/A	DISPOSITION
32		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
33	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
34		3-4	3-4	4-5	4-6	5-7	6-8	Mitigated"

SECTION 15. G.S. 15A-1415 reads as rewritten:

"§ 15A-1415. Grounds for appropriate relief which may be asserted by defendant after verdict; limitation as to time.

(a) At any time after verdict, a noncapital defendant by motion may seek appropriate relief upon any of the grounds enumerated in this section. ~~In a capital case, a postconviction motion for appropriate relief shall be filed within 120 days from the latest of the following:~~

- ~~(1) The court's judgment has been filed, but the defendant failed to perfect a timely appeal;~~
- ~~(2) The mandate issued by a court of the appellate division on direct appeal pursuant to N.C.R. App. P. 32(b) and the time for filing a petition for writ of certiorari to the United States Supreme Court has expired without a petition being filed;~~
- ~~(3) The United States Supreme Court denied a timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina;~~

- 1 (4) ~~Following the denial of discretionary review by the Supreme Court of North~~
 2 ~~Carolina, the United States Supreme Court denied a timely petition for writ~~
 3 ~~of certiorari seeking review of the decision on direct appeal by the North~~
 4 ~~Carolina Court of Appeals;~~
 5 (5) ~~The United States Supreme Court granted the defendant's or the State's~~
 6 ~~timely petition for writ of certiorari of the decision on direct appeal by the~~
 7 ~~Supreme Court of North Carolina or North Carolina Court of Appeals, but~~
 8 ~~subsequently left the defendant's conviction and sentence undisturbed; or~~
 9 (6) ~~The appointment of postconviction counsel for an indigent capital defendant.~~

10 ...
 11 (c) Notwithstanding the time limitations herein, a defendant at any time after verdict
 12 may by a motion for appropriate relief, raise the ground that evidence is available which was
 13 unknown or unavailable to the defendant at the time of trial, which could not with due diligence
 14 have been discovered or made available at that time, including recanted testimony, and which
 15 has a direct and material bearing upon ~~the defendant's eligibility for the death penalty or the~~
 16 ~~defendant's guilt or innocence.~~ A motion based upon such newly discovered evidence must be
 17 filed within a reasonable time of its discovery.

18 "

19 **SECTION 16.** G.S. 15A-1419 reads as rewritten:

20 "**§ 15A-1419. When motion for appropriate relief denied.**

21 (a) The following are grounds for the denial of a motion for appropriate relief,
 22 including motions filed in capital cases:

- 23 (1) Upon a previous motion made pursuant to this Article, the defendant was in
 24 a position to adequately raise the ground or issue underlying the present
 25 motion but did not do so. This subdivision does not apply when the previous
 26 motion was made within 10 days after entry of judgment or the previous
 27 motion was made during the pendency of the direct appeal.
 28 (2) The ground or issue underlying the motion was previously determined on the
 29 merits upon an appeal from the judgment or upon a previous motion or
 30 proceeding in the courts of this State or a federal court, unless since the time
 31 of such previous determination there has been a retroactively effective
 32 change in the law controlling such issue.
 33 (3) Upon a previous appeal the defendant was in a position to adequately raise
 34 the ground or issue underlying the present motion but did not do so.
 35 (4) The defendant failed to file a timely motion for appropriate relief as required
 36 by G.S. 15A-1415(a).

37 (b) The court shall deny the motion under any of the circumstances specified in this
 38 section, unless the defendant can demonstrate:

- 39 (1) Good cause for excusing the grounds for denial listed in subsection (a) of
 40 this section and can demonstrate actual prejudice resulting from the
 41 defendant's claim; or
 42 (2) That failure to consider the defendant's claim will result in a fundamental
 43 miscarriage of justice.

44 (c) For the purposes of subsection (b) of this section, good cause may only be shown if
 45 the defendant establishes by a preponderance of the evidence that his failure to raise the claim
 46 or file a timely motion was:

- 47 (1) The result of State action in violation of the United States Constitution or the
 48 North Carolina Constitution including ineffective assistance of trial or
 49 appellate counsel;
 50 (2) The result of the recognition of a new federal or State right which is
 51 retroactively applicable; or

- (3) Based on a factual predicate that could not have been discovered through the exercise of reasonable diligence in time to present the claim on a previous State or federal postconviction review.

A trial attorney's ignorance of a claim, inadvertence, or tactical decision to withhold a claim may not constitute good cause, nor may a claim of ineffective assistance of prior postconviction counsel constitute good cause.

(d) For the purposes of subsection (b) of this section, actual prejudice may only be shown if the defendant establishes by a preponderance of the evidence that an error during the trial or sentencing worked to the defendant's actual and substantial disadvantage, raising a reasonable probability, viewing the record as a whole, that a different result would have occurred but for the error.

(e) For the purposes of subsection (b) of this section, a fundamental miscarriage of justice only results if:

- (1) The defendant establishes that more likely than not, but for the error, no reasonable fact finder would have found the defendant guilty of the underlying ~~offense; or~~ offense.
- (2) ~~The defendant establishes by clear and convincing evidence that, but for the error, no reasonable fact finder would have found the defendant eligible for the death penalty.~~

~~A defendant raising a claim of newly discovered evidence of factual innocence or ineligibility for the death penalty, otherwise barred by the provisions of subsection (a) of this section or G.S. 15A-1415(c), may only show a fundamental miscarriage of justice by proving by clear and convincing evidence that, in light of the new evidence, if credible, no reasonable juror would have found the defendant guilty beyond a reasonable doubt or eligible for the death penalty."~~

SECTION 17. Subchapter XV of Chapter 15A of the General Statutes is repealed.

SECTION 18. G.S. 90-1.1 reads as rewritten:

"§ 90-1.1. Definitions.

The following definitions apply in this Article:

- ...
- (5) The practice of medicine or surgery. – Except as otherwise provided by this subdivision, the practice of medicine or surgery, for purposes of this Article, includes any of the following acts:
 - a. Advertising, holding out to the public, or representing in any manner that the individual is authorized to practice medicine in this State.
 - b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other individual.
 - c. Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual, including the management of pregnancy or parturition.
 - d. Offering or undertaking to perform any surgical operation on any individual.
 - e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of Osteopathy," "Doctor of Osteopathic Medicine," "Physician," "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of or reference to another branch of the healing arts for which the individual holds a valid license in this State or the use of

1 the designation "Doctor" or "Physician" is otherwise specifically
2 permitted by law.

3 f. The performance of any act, within or without this State, described in
4 this subdivision by use of any electronic or other means, including
5 the Internet or telephone.

6 ~~The administration of required lethal substances or any assistance~~
7 ~~whatsoever rendered with an execution under Article 19 of Chapter 15 of the~~
8 ~~General Statutes does not constitute the practice of medicine or surgery."~~

9 **SECTION 19.** G.S. 90-85.38(b) reads as rewritten:

10 "(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend,
11 revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a).
12 ~~The administration of required lethal substances or any assistance whatsoever rendered with an~~
13 ~~execution under Article 19 of Chapter 15 of the General Statutes does not constitute the~~
14 ~~practice of pharmacy under this Article, and any assistance rendered with an execution under~~
15 ~~Article 19 of Chapter 15 of the General Statutes shall not be the cause for disciplinary action~~
16 ~~under this Article."~~

17 **SECTION 20.** G.S. 90-171.20(4) reads as rewritten:

18 "(4) "Nursing" is a dynamic discipline which includes the assessing, caring,
19 counseling, teaching, referring and implementing of prescribed treatment in
20 the maintenance of health, prevention and management of illness, injury,
21 disability or the achievement of a dignified death. It is ministering to;
22 assisting; and sustained, vigilant, and continuous care of those acutely or
23 chronically ill; supervising patients during convalescence and rehabilitation;
24 the supportive and restorative care given to maintain the optimum health
25 level of individuals, groups, and communities; the supervision, teaching, and
26 evaluation of those who perform or are preparing to perform these functions;
27 and the administration of nursing programs and nursing services.~~For~~
28 ~~purposes of this Article, the administration of required lethal substances or~~
29 ~~any assistance whatsoever rendered with an execution under Article 19 of~~
30 ~~Chapter 15 of the General Statutes does not constitute nursing."~~

31 **SECTION 21.** The Attorney General shall, on behalf of each person convicted of a
32 capital offense and sentenced to death on or before the effective date of this section, petition the
33 court in which the person was convicted to resentence the person pursuant to this section. Upon
34 hearing the petition, the court shall order that the death sentence imposed by the judgment be
35 vacated and the defendant resented to life imprisonment without the possibility of parole.

36 **SECTION 22.** This act is effective when it becomes law and applies to any person
37 sentenced to death before, on, or after that date.