

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 604

Short Title: Repeal Death Penalty. (Public)

Sponsors: Representatives Meyer, Michaux, Holley, and Black (Primary Sponsors).
For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Rules, Calendar, and Operations of the House

April 6, 2017

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6 **SECTION 1.** G.S. 7A-450(b1) is repealed.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



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

2 "**§ 14-17. Murder in the first and second degree defined; punishment.**

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

13 "

14 **SECTION 7.** G.S. 15-176.1 is repealed.

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16 repealed.

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

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

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

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

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

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

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

38 (6) Notwithstanding the retention requirements in subdivisions (1) through (5)
39 of this subsection, at any time after collection and prior to or at the time of
40 disposition of the case at the trial court level, if the evidence collected as part
41 of the criminal investigation is of a size, bulk, or physical character as to
42 render retention impracticable or should be returned to its rightful owner, the
43 State may petition the court for retention of samples of the biological
44 evidence in lieu of the actual physical evidence. After giving any defendant
45 charged in connection with the case an opportunity to be heard, the court
46 may order that the collecting agency take reasonable measures to remove or
47 preserve for retention portions of evidence likely to contain biological
48 evidence related to the offense through cuttings, swabs, or other means
49 consistent with Crime Laboratory minimum guidelines in a quantity
50 sufficient to permit DNA testing before returning or disposing of the
51 evidence."

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

2 "**§ 15A-734. Arrest without a warrant.**

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

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

11 "**§ 15A-736. Bail in certain cases; conditions of bond.**

12 Unless the offense with which the prisoner is charged is shown to be an offense punishable
13 by ~~death or~~ life imprisonment under the laws of the state in which it was committed, a judge or
14 magistrate in this State may admit the person arrested to bail by bond, with sufficient sureties,
15 and in such sum as he deems proper, conditioned for his appearance before him at a time
16 specified in such bond, and for his surrender, to be arrested upon the warrant of the Governor
17 of this State."

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

19 "**§ 15A-1201. Right to trial by jury; waiver of jury trial.**

20 ...

21 (b) Waiver of Right to Jury Trial. – A defendant accused of any criminal offense ~~for~~
22 ~~which the State is not seeking a sentence of death in~~ superior court may, knowingly and
23 voluntarily, in writing or on the record in the court and with the consent of the trial judge,
24 waive the right to trial by jury. When a defendant waives the right to trial by jury under this
25 section, the jury is dispensed with as provided by law, and the whole matter of law and fact, to
26 include all factors referred to in G.S. 20-179 and subsections (a1) and (a3) of
27 G.S. 15A-1340.16, shall be heard and judgment given by the court. If a motion for joinder of
28 co-defendants is allowed, there shall be a jury trial unless all defendants waive the right to trial
29 by jury, or the court, in its discretion, severs the case."

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

32 "**§ 15A-1340.13A. Death penalty abolished.**

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

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

35 "**§ 15A-1340.17. Punishment limits for each class of offense and prior record level.**

36 ...

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

- 43 (1) A sentence disposition or dispositions: "C" indicates that a community
44 punishment is authorized; "I" indicates that an intermediate punishment is
45 authorized; "A" indicates that an active punishment is authorized; and "Life
46 Imprisonment Without Parole" indicates that the defendant shall be
47 imprisoned for the remainder of the prisoner's natural life.
- 48 (2) A presumptive range of minimum durations, if the sentence of imprisonment
49 is neither aggravated or mitigated; any minimum term of imprisonment in
50 that range is permitted unless the court finds pursuant to G.S. 15A-1340.16

that an aggravated or mitigated sentence is appropriate. The presumptive range is the middle of the three ranges in the cell.

(3) A mitigated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the mitigated range is permitted. The mitigated range is the lower of the three ranges in the cell.

(4) An aggravated range of minimum durations if the court finds pursuant to G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in such a case, any minimum term of imprisonment in the aggravated range is permitted. The aggravated range is the higher of the three ranges in the cell.

PRIOR RECORD LEVEL

	I 0-1 Pt	II 2-5 Pts	III 6-9 Pts	IV 10-13 Pts	V 14-17 Pts	VI 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 Without Parole		Aggravated
B1	192-240	221-276	254-317	292-365	336-420	386-483	PRESUMPTIVE
	144-192	166-221	190-254	219-292	252-336	290-386	Mitigated
	A	A	A	A	A	A	DISPOSITION
	157-196	180-225	207-258	238-297	273-342	314-393	Aggravated
B2	125-157	144-180	165-207	190-238	219-273	251-314	PRESUMPTIVE
	94-125	108-144	124-165	143-190	164-219	189-251	Mitigated
	A	A	A	A	A	A	DISPOSITION
	73-92	83-104	96-120	110-138	127-159	146-182	Aggravated
C	58-73	67-83	77-96	88-110	101-127	117-146	PRESUMPTIVE
	44-58	50-67	58-77	66-88	76-101	87-117	Mitigated
	A	A	A	A	A	A	DISPOSITION
	64-80	73-92	84-105	97-121	111-139	128-160	Aggravated
D	51-64	59-73	67-84	78-97	89-111	103-128	PRESUMPTIVE
	38-51	44-59	51-67	58-78	67-89	77-103	Mitigated
	I/A	I/A	A	A	A	A	DISPOSITION
	25-31	29-36	33-41	38-48	44-55	50-63	Aggravated
E	20-25	23-29	26-33	30-38	35-44	40-50	PRESUMPTIVE
	15-20	17-23	20-26	23-30	26-35	30-40	Mitigated
	I/A	I/A	I/A	A	A	A	DISPOSITION
	16-20	19-23	21-27	25-31	28-36	33-41	Aggravated
F	13-16	15-19	17-21	20-25	23-28	26-33	PRESUMPTIVE
	10-13	11-15	13-17	15-20	17-23	20-26	Mitigated
	I/A	I/A	I/A	I/A	A	A	DISPOSITION
	13-16	14-18	17-21	19-24	22-27	25-31	Aggravated
G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
	8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
	C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
	6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
	4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
	C	C/I	I	I/A	I/A	I/A	DISPOSITION

1	6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
2	I 4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
3	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;~~
- ~~(4) Following the denial of discretionary review by the Supreme Court of North Carolina, the United States Supreme Court denied a timely petition for writ of certiorari seeking review of the decision on direct appeal by the North Carolina Court of Appeals;~~
- ~~(5) The United States Supreme Court granted the defendant's or the State's timely petition for writ of certiorari of the decision on direct appeal by the Supreme Court of North Carolina or North Carolina Court of Appeals, but subsequently left the defendant's conviction and sentence undisturbed; or~~
- ~~(6) The appointment of postconviction counsel for an indigent capital defendant.~~

...

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

...."

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

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

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

- (1) Upon a previous motion made pursuant to this Article, the defendant was in a position to adequately raise the ground or issue underlying the present motion but did not do so. This subdivision does not apply when the previous motion was made within 10 days after entry of judgment or the previous motion was made during the pendency of the direct appeal.
- (2) The ground or issue underlying the motion was previously determined on the merits upon an appeal from the judgment or upon a previous motion or proceeding in the courts of this State or a federal court, unless since the time of such previous determination there has been a retroactively effective change in the law controlling such issue.

- 1 (3) Upon a previous appeal the defendant was in a position to adequately raise
 2 the ground or issue underlying the present motion but did not do so.
- 3 (4) The defendant failed to file a timely motion for appropriate relief as required
 4 by G.S. 15A-1415(a).
- 5 (b) The court shall deny the motion under any of the circumstances specified in this
 6 section, unless the defendant can demonstrate:
- 7 (1) Good cause for excusing the grounds for denial listed in subsection (a) of
 8 this section and can demonstrate actual prejudice resulting from the
 9 defendant's claim; or
- 10 (2) That failure to consider the defendant's claim will result in a fundamental
 11 miscarriage of justice.
- 12 (c) For the purposes of subsection (b) of this section, good cause may only be shown if
 13 the defendant establishes by a preponderance of the evidence that his failure to raise the claim
 14 or file a timely motion was:
- 15 (1) The result of State action in violation of the United States Constitution or the
 16 North Carolina Constitution including ineffective assistance of trial or
 17 appellate counsel;
- 18 (2) The result of the recognition of a new federal or State right which is
 19 retroactively applicable; or
- 20 (3) Based on a factual predicate that could not have been discovered through the
 21 exercise of reasonable diligence in time to present the claim on a previous
 22 State or federal postconviction review.

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

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

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

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

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

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

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

46 **"§ 90-1.1. Definitions.**

47 The following definitions apply in this Article:

48 ...

- 49 (5) The practice of medicine or surgery. – Except as otherwise provided by this
 50 subdivision, the practice of medicine or surgery, for purposes of this Article,
 51 includes any of the following acts:

- 1 a. Advertising, holding out to the public, or representing in any manner
2 that the individual is authorized to practice medicine in this State.
- 3 b. Offering or undertaking to prescribe, order, give, or administer any
4 drug or medicine for the use of any other individual.
- 5 c. Offering or undertaking to prevent or diagnose, correct, prescribe for,
6 administer to, or treat in any manner or by any means, methods, or
7 devices any disease, illness, pain, wound, fracture, infirmity, defect,
8 or abnormal physical or mental condition of any individual, including
9 the management of pregnancy or parturition.
- 10 d. Offering or undertaking to perform any surgical operation on any
11 individual.
- 12 e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of
13 Osteopathy," "Doctor of Osteopathic Medicine," "Physician,"
14 "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any
15 combination thereof in the conduct of any occupation or profession
16 pertaining to the prevention, diagnosis, or treatment of human
17 disease or condition, unless the designation additionally contains the
18 description of or reference to another branch of the healing arts for
19 which the individual holds a valid license in this State or the use of
20 the designation "Doctor" or "Physician" is otherwise specifically
21 permitted by law.
- 22 f. The performance of any act, within or without this State, described in
23 this subdivision by use of any electronic or other means, including
24 the Internet or telephone.

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

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

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

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

37 "(4) "Nursing" is a dynamic discipline which includes the assessing, caring,
38 counseling, teaching, referring and implementing of prescribed treatment in
39 the maintenance of health, prevention and management of illness, injury,
40 disability or the achievement of a dignified death. It is ministering to;
41 assisting; and sustained, vigilant, and continuous care of those acutely or
42 chronically ill; supervising patients during convalescence and rehabilitation;
43 the supportive and restorative care given to maintain the optimum health
44 level of individuals, groups, and communities; the supervision, teaching, and
45 evaluation of those who perform or are preparing to perform these functions;
46 and the administration of nursing programs and nursing services. ~~For~~
47 ~~purposes of this Article, the administration of required lethal substances or~~
48 ~~any assistance whatsoever rendered with an execution under Article 19 of~~
49 ~~Chapter 15 of the General Statutes does not constitute nursing."~~

50 **SECTION 21.** The Attorney General shall, on behalf of each person convicted of a
51 capital offense and sentenced to death on or before the effective date of this section, petition the

1 court in which the person was convicted to resentence the person pursuant to this section. Upon
2 hearing the petition, the court shall order that the death sentence imposed by the judgment be
3 vacated and the defendant resentenced to life imprisonment without the possibility of parole.
4 **SECTION 22.** This act is effective when it becomes law and applies to any person
5 sentenced to death before, on, or after that date.