

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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HOUSE BILL 638

Short Title: Repeal Death Penalty. (Public)

Sponsors: Representatives Alston, Hawkins, Morey, and Harrison (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 18, 2023

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

5 Whereas, 10 people in North Carolina that were sentenced to death row have been
6 found innocent of the crime for which they were sentenced; and

7 Whereas, evidence suggests a greater likelihood of wrongful conviction in death
8 penalty cases; and

9 Whereas, the death penalty continues to be disproportionately imposed on members
10 of minority groups, persons of low income, and persons with mental and intellectual disabilities;
11 and

12 Whereas, studies have shown that the death penalty does not deter crime; and

13 Whereas, North Carolina spends almost eleven million dollars (\$11,000,000)
14 annually on costs related to the death penalty, even though the last person executed in North
15 Carolina was in 2006; and

16 Whereas, death penalty cases cost taxpayers approximately four times as much as
17 non-death penalty cases; and

18 Whereas, arbitrary distinctions are made about whom to seek the death penalty
19 against, and those decisions are often influenced by extra-legal factors; and

20 Whereas, Justices William Brennan and Thurgood Marshall of the United States
21 Supreme Court both found that the death penalty was inherently unconstitutional as a violation
22 of the Eighth Amendment to the United States Constitution; Now, therefore,

23 The General Assembly of North Carolina enacts:

24 **SECTION 1.** G.S. 7A-450(b1) is repealed.

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

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

28 ...

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

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

32 "§ 14-7.2. **Punishment.**

33 When any person is charged by indictment with the commission of a felony under the laws
34 of the State of North Carolina and is also charged with being an habitual felon as defined in



1 G.S. 14-7.1, he must, upon conviction, be sentenced and punished as an habitual felon, as in this
2 Chapter provided, except in those cases where ~~the death penalty or a life sentence is imposed.~~"

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

4 "**§ 14-7.8. Punishment.**

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

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

10 "**§ 14-7.12. Sentencing of violent habitual felons.**

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

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

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

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

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

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

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

- 35 (1) ~~For conviction resulting in a sentence of death, until execution.~~
36 (2) For conviction resulting in a sentence of life without parole, until the death of
37 the convicted person.
38 (3) For conviction of any homicide, sex offense, assault, kidnapping, burglary,
39 robbery, arson or burning, for which a Class B1-E felony punishment is
40 imposed, the evidence shall be preserved during the period of incarceration
41 and mandatory supervised release, including sex offender registration
42 pursuant to Article 27A of Chapter 14 of the General Statutes, except in cases
43 where the person convicted entered and was convicted on a plea of guilty, in
44 which case the evidence shall be preserved for the earlier of three years from
45 the date of conviction or until released.
46 (4) Biological evidence collected as part of a criminal investigation of any
47 homicide or rape, in which no charges are filed, shall be preserved for the
48 period of time that the crime remains unsolved.
49 (5) A custodial agency in custody of biological evidence unrelated to a criminal
50 investigation or prosecution referenced by subdivision (1), (2), (3), or (4) of

1 this subsection may dispose of the evidence in accordance with the rules of
2 the agency.

- 3 (6) Notwithstanding the retention requirements in subdivisions (1) through (5) of
4 this subsection, at any time after collection and prior to or at the time of
5 disposition of the case at the trial court level, if the evidence collected as part
6 of the criminal investigation is of a size, bulk, or physical character as to
7 render retention impracticable or should be returned to its rightful owner, the
8 State may petition the court for retention of samples of the biological evidence
9 in lieu of the actual physical evidence. After giving any defendant charged in
10 connection with the case an opportunity to be heard, the court may order that
11 the collecting agency take reasonable measures to remove or preserve for
12 retention portions of evidence likely to contain biological evidence related to
13 the offense through cuttings, swabs, or other means consistent with Crime
14 Laboratory minimum guidelines in a quantity sufficient to permit DNA testing
15 before returning or disposing of the evidence."

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

17 **"§ 15A-734. Arrest without a warrant.**

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

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

26 **"§ 15A-736. Bail in certain cases; conditions of bond.**

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

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

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

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

44 **"§ 15A-1340.13A. Death penalty abolished.**

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

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

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

- 1 (1) A sentence disposition or dispositions: "C" indicates that a community
2 punishment is authorized; "I" indicates that an intermediate punishment is
3 authorized; "A" indicates that an active punishment is authorized; and "Life
4 Imprisonment Without Parole" indicates that the defendant shall be
5 imprisoned for the remainder of the prisoner's natural life.
- 6 (2) A presumptive range of minimum durations, if the sentence of imprisonment
7 is neither aggravated or mitigated; any minimum term of imprisonment in that
8 range is permitted unless the court finds pursuant to G.S. 15A-1340.16 that an
9 aggravated or mitigated sentence is appropriate. The presumptive range is the
10 middle of the three ranges in the cell.
- 11 (3) A mitigated range of minimum durations if the court finds pursuant to
12 G.S. 15A-1340.16 that a mitigated sentence of imprisonment is justified; in
13 such a case, any minimum term of imprisonment in the mitigated range is
14 permitted. The mitigated range is the lower of the three ranges in the cell.
- 15 (4) An aggravated range of minimum durations if the court finds pursuant to
16 G.S. 15A-1340.16 that an aggravated sentence of imprisonment is justified; in
17 such a case, any minimum term of imprisonment in the aggravated range is
18 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

1	G	10-13	12-14	13-17	15-19	17-22	20-25	PRESUMPTIVE
2		8-10	9-12	10-13	11-15	13-17	15-20	Mitigated
3		C/I/A	I/A	I/A	I/A	I/A	A	DISPOSITION
4		6-8	8-10	10-12	11-14	15-19	20-25	Aggravated
5	H	5-6	6-8	8-10	9-11	12-15	16-20	PRESUMPTIVE
6		4-5	4-6	6-8	7-9	9-12	12-16	Mitigated
7		C	C/I	I	I/A	I/A	I/A	DISPOSITION
8		6-8	6-8	6-8	8-10	9-11	10-12	Aggravated
9	I	4-6	4-6	5-6	6-8	7-9	8-10	PRESUMPTIVE
10		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(e) reads as rewritten:

"(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.~~

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

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

7 **SECTION 18.** G.S. 90-1.1(5) reads as rewritten:

8 "(5) The practice of medicine or surgery. – Except as otherwise provided by this
 9 subdivision, the practice of medicine or surgery, for purposes of this Article,
 10 includes any of the following acts:

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

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

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

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

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

47 "(4) "Nursing" is a dynamic discipline which includes the assessing, caring,
 48 counseling, teaching, referring and implementing of prescribed treatment in
 49 the maintenance of health, prevention and management of illness, injury,
 50 disability or the achievement of a dignified death. It is ministering to;
 51 assisting; and sustained, vigilant, and continuous care of those acutely or

1 chronically ill; supervising patients during convalescence and rehabilitation;
2 the supportive and restorative care given to maintain the optimum health level
3 of individuals, groups, and communities; the supervision, teaching, and
4 evaluation of those who perform or are preparing to perform these functions;
5 and the administration of nursing programs and nursing services. For purposes
6 of this Article, the administration of required lethal substances or any
7 assistance whatsoever rendered with an execution under Article 19 of Chapter
8 15 of the General Statutes does not constitute nursing."

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

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