



1 (3) Five members of the public appointed by the Governor.  
2 In the course of its study, the Commission shall consult with representatives of victims,  
3 law enforcement, or other interested parties.

4 **SECTION 1.(b)** The Commission shall consider and report on:

5 (1) The adequacy of counsel in all stages of capital cases and the  
6 sufficiency of guidelines for the appointment and performance of such  
7 counsel appointed prior to the enactment of current guidelines and  
8 qualifications.

9 (2) The process for judicial review of the merits of constitutional claims in  
10 State postconviction and federal habeas corpus proceedings.

11 (3) Any disproportionate racial impact from any aspect of capital case  
12 processing.

13 (4) Whether there is discrimination in capital sentencing on the basis of  
14 the victim's or the defendant's race.

15 (5) Prosecutorial misconduct as a factor in the imposition of the death  
16 penalty.

17 (6) The presence of innocent persons on death row.

18 (7) Whether the felony murder rule should be applied in capital cases.

19 (8) Any other appropriate or relevant subject.

20 **SECTION 1.(c)** The Speaker of the House of Representatives shall appoint a  
21 cochair, and the President Pro Tempore of the Senate shall appoint a cochair for the  
22 Commission. The Commission may meet at any time upon the joint call of the cochairs.  
23 Vacancies on the Commission shall be filled by the same appointing authority as made  
24 the initial appointment.

25 The Commission, while in the discharge of its official duties, may exercise all  
26 powers provided for under G.S. 120-19 and G.S. 120-19.1 through G.S. 120-19.4. The  
27 Commission may contract for professional, clerical, or consultant services as provided  
28 by G.S. 120-32.02.

29 Subject to the approval of the Legislative Services Commission, the  
30 Commission may meet in the Legislative Building or the Legislative Office Building.  
31 The Legislative Services Commission, through the Legislative Services Officer, shall  
32 assign professional staff to assist the Commission in its work. The House of  
33 Representatives' and the Senate's Supervisors of Clerks shall assign clerical support staff  
34 to the Commission, and the expenses relating to the clerical employees shall be borne  
35 by the Commission. Members of the Commission shall receive subsistence and travel  
36 expenses at the rates set forth in G.S. 120-3.1, 138-5, or 138-6, as appropriate.

37 **SECTION 1.(d)** The Commission shall submit an interim report to the 2007  
38 Regular Session of the General Assembly on the Commission's findings and  
39 recommendations, which may include any statutory changes necessary to implement the  
40 recommendations. The Commission shall make a final report to the 2008 Regular  
41 Session of the 2007 General Assembly and shall terminate upon the earlier of the filing  
42 of its final report or the convening of the 2008 Regular Session of the 2007 General  
43 Assembly.

1           **SECTION 1.(e)** Of the funds appropriated to the General Assembly, the  
2 Legislative Services Commission shall allocate funds for the expenses of the  
3 Commission established by this section.

4           **SECTION 2.** The Secretary of Correction shall continue to set dates for  
5 executions pursuant to G.S. 15-194 during the period of the study authorized by Section  
6 1 of this act. However, upon motion of a capital defendant, for whom an execution date  
7 has been set, filed in the county where the sentence of death was imposed, a superior  
8 court judge shall consider whether the execution should be stayed. The execution shall  
9 be stayed until the legislature has concluded its study if the superior court judge certifies  
10 and finds one or more of the following:

- 11           (1) That there is credible evidence of factual innocence of the capital  
12 offense although the defendant has not prevailed in the courts on this  
13 issue;
- 14           (2) That the capital case in question was tried before the effective date of  
15 legislation providing for open file discovery at trial, and that there is  
16 credible evidence that prosecutorial misconduct may have contributed  
17 to the verdict or sentence of death, although the defendant has not  
18 prevailed in the courts on this issue;
- 19           (3) That the capital case in question was tried before the effective date of  
20 legislation providing that capital defendant's trial counsel be appointed  
21 under rules and standards set by the Office of Indigent Defense  
22 Services, and that there is credible evidence that errors by defense  
23 counsel at any stage may have contributed to the verdict or sentence of  
24 death, or failure of the defendant to receive relief through the courts  
25 subsequent to the trial, although the defendant has not prevailed in the  
26 courts on this issue;
- 27           (4) That there is credible evidence of disproportionate racial impact in the  
28 operation of capital case processing and that the defendant is a member  
29 of a racial group for which the disproportionate impact is shown, or  
30 there is credible evidence of an improper role of the race of the  
31 defendant or the race of the victim(s) in the prosecution, conviction, or  
32 death verdict although the defendant has not prevailed in the courts on  
33 this issue;
- 34           (5) That there is credible evidence that the death penalty in this case is  
35 disproportionate when compared to other cases where the defendants  
36 have received a life sentence or the death penalty, although the  
37 defendant has not prevailed in the courts on this issue;
- 38           (6) That the capital case in question was tried before the effective date of  
39 legislation giving the prosecutor discretion to try or plead the case as a  
40 noncapital first degree murder, and there is credible evidence that the  
41 defendant might not have received the death penalty if the legislation  
42 had been in effect at the time of the defendant's trial; or
- 43           (7) That the capital case in question was tried before the effective date of  
44 legislation providing for a life sentence without parole for first degree

1                   murder, and there is credible evidence that the defendant might not  
2                   have received the death penalty if the legislation had been in effect at  
3                   the time of the defendant's trial.

4                   **SECTION 3.** Notwithstanding Section 2 above, nothing in this act shall  
5 prevent the prosecution of capital cases at trial or appeal, nor the imposition of a  
6 sentence of death during the period of the study.

7                   **SECTION 4.** This act is effective when it becomes law.