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SENATE DRS75168-LL-29A (01/03)

Short Title: Capital Punishment/Amendments. (Public)

Sponsors: Senator Goolsby (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO EXCLUDE THE ADMINISTRATION OF A LETHAL INJECTION FROM THE PRACTICE OF MEDICINE; TO CODIFY THE LAW THAT PROHIBITS REGULATORY BOARDS FROM SANCTIONING HEALTH CARE PROFESSIONALS FOR ASSISTING IN THE EXECUTION PROCESS; TO AMEND THE LAW ON THE ADMINISTRATION OF A LETHAL INJECTION; TO REQUIRE THE SETTING OF AN EXECUTION DATE IF ANY OF THE EVENTS WHICH ARE PROVIDED BY STATUTE HAVE OCCURRED; TO ELIMINATE THE PROCESS BY WHICH A DEFENDANT MAY USE STATISTICS TO HAVE A SENTENCE OF DEATH REDUCED TO LIFE IN PRISON WITHOUT PAROLE; TO REQUIRE PERIODIC REPORTS ON THE TRAINING AND AVAILABILITY OF PERSONNEL TO CARRY OUT A DEATH SENTENCE; AND TO REQUIRE PERIODIC REPORTS ON THE STATUS OF PENDING POSTCONVICTION CAPITAL CASES.

The General Assembly of North Carolina enacts:

SECTION 1.(a) Article 19 of Chapter 15 of the General Statutes is amended by adding a new section to read:

"§ 15-188.1. Health care professional assistance.

(a) Any assistance rendered with an execution under this Article by any licensed health care professional, including, but not limited to, physicians, nurses, and pharmacists shall not be cause for any disciplinary or corrective measures by any board, commission, or other authority created by the State or governed by State law which oversees or regulates the practice of health care professionals, including, but not limited to, the North Carolina Medical Board, the North Carolina Board of Nursing, and the North Carolina Board of Pharmacy.

(b) The infliction of the punishment of death by administration of the required lethal substances under this Article shall not be construed to be the practice of medicine."

SECTION 1.(b) G.S. 90-1.1(5) reads as rewritten:

"(5) The practice of medicine or surgery. – ~~The~~ 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,



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1 or abnormal physical or mental condition of any individual, including
2 the management of pregnancy or parturition.

3 d. Offering or undertaking to perform any surgical operation on any
4 individual.

5 e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of
6 Osteopathy," "Doctor of Osteopathic Medicine," "Physician,"
7 "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any
8 combination thereof in the conduct of any occupation or profession
9 pertaining to the prevention, diagnosis, or treatment of human
10 disease or condition, unless the designation additionally contains the
11 description of or reference to another branch of the healing arts for
12 which the individual holds a valid license in this State or the use of
13 the designation "Doctor" or "Physician" is otherwise specifically
14 permitted by law.

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

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

21 **SECTION 1.(c)** G.S. 90-85.38(b) reads as rewritten:

22 "(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend,
23 revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a).
24 The administration or any assistance whatsoever rendered with an execution under Article 19
25 of Chapter 15 of the General Statutes does not constitute the practice of pharmacy under this
26 Article, and any assistance rendered with an execution under Article 19 of Chapter 15 of the
27 General Statutes shall not be the cause for disciplinary action under this Article."

28 **SECTION 1.(d)** G.S. 90-171.20(4) reads as rewritten:

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

42 **SECTION 2.** G.S. 15-194 reads as rewritten:

43 **"§ 15-194. Time for execution.**

44 (a) In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b),
45 the sentencing judge need not specify the date and time the execution is to be carried out by the
46 Division of Adult Correction of the Department of Public Safety. ~~The Secretary of Public~~
47 ~~Safety shall immediately schedule a date for the execution of the original death sentence not~~
48 ~~less than 30 days nor more than 60 days from the date of receiving written notification from the~~
49 ~~Attorney General of North Carolina or the district attorney who prosecuted the case of any one~~
50 ~~of the following:~~ The Attorney General of North Carolina shall provide written notification to

1 the Secretary of the Department of Public Safety of the occurrence of any of the following not
2 less than 30 days or more than 60 days from that occurrence:

- 3 (1) The United States Supreme Court has filed an opinion upholding the
4 sentence of death following completion of the initial State and federal
5 postconviction proceedings, if any;
- 6 (2) The mandate issued by the Supreme Court of North Carolina on direct
7 appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's
8 death sentence and the time for filing a petition for writ of certiorari to the
9 United States Supreme Court has expired without a petition being filed;
- 10 (3) The capital defendant, if indigent, failed to timely seek the appointment of
11 counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion for
12 appropriate relief as required by G.S. 15A-1415(a);
- 13 (4) The superior court denied the capital defendant's motion for appropriate
14 relief, but the capital defendant failed to file a timely petition for writ of
15 certiorari to the Supreme Court of North Carolina pursuant to N.C.R. App.
16 P. 21(f);
- 17 (5) The Supreme Court of North Carolina denied the capital defendant's petition
18 for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if certiorari was
19 granted, upheld the capital defendant's death sentence, but the capital
20 defendant failed to file a timely petition for writ of certiorari to the United
21 States Supreme Court; or
- 22 (6) Following State postconviction proceedings, if any, the capital defendant
23 failed to file a timely petition for writ of habeas corpus in the appropriate
24 federal district court, or failed to timely appeal or petition an adverse habeas
25 corpus decision to the United States Court of Appeals for the Fourth Circuit
26 or the United States Supreme Court.

27 The Secretary of the Department of Public Safety shall immediately schedule a date for the
28 execution of the original death sentence not less than 30 days or more than 60 days from the
29 date of receiving written notification from the Attorney General under this section.

30 The Secretary shall send a certified copy of the document fixing the date to the clerk of
31 superior court of the county in which the case was tried or, if venue was changed, in which the
32 defendant was indicted. The certified copy shall be recorded in the minutes of the court. The
33 Secretary shall also send certified copies to the capital defendant, the capital defendant's
34 attorney, the district attorney who prosecuted the case, and the Attorney General of North
35 Carolina.

36 (b) The Attorney General shall submit a written report to the Joint Legislative Oversight
37 Committee on Justice and Public Safety by April 1, 2013, and thereafter on October 1 of each
38 year, on the status of all pending postconviction capital cases. Alternatively, the Chairs of the
39 Joint Legislative Oversight Committee on Justice and Public Safety may direct that the reports
40 required under this subsection be made on other dates consistent with the Committee's
41 schedule."

42 **SECTION 3.(a)** G.S. 15-188 reads as rewritten:

43 **"§ 15-188. Manner and place of execution.**

44 In accordance with G.S. 15-187, the mode of executing a death sentence must in every case
45 be by administering to the convict or felon ~~a lethal quantity of an ultrashort acting barbiturate~~
46 ~~in combination with a chemical paralytic agent until the convict or felon is dead; an intravenous~~
47 injection of a substance or substances in a lethal quantity sufficient to cause death and until the
48 person is dead, and that procedure shall be determined by the Secretary of the Department of
49 Public Safety, who shall ensure compliance with the federal and State constitutions; and when
50 any person, convict or felon shall be sentenced by any court of the State having competent
51 jurisdiction to be so executed, the punishment shall only be inflicted within a permanent death

1 chamber which the superintendent of the State penitentiary is hereby authorized and directed to
2 provide within the walls of the North Carolina penitentiary at Raleigh, North Carolina. The
3 superintendent of the State penitentiary shall also cause to be provided, in conformity with this
4 Article, the necessary appliances for the infliction of the punishment of death and qualified
5 personnel to set up and prepare the injection, administer the preinjections, insert the IV
6 catheter, and to perform other tasks required for this procedure in accordance with the
7 requirements of this Article."

8 **SECTION 3.(b)** Procedures and substances utilized to carry out a death sentence in
9 place before the effective date of this act are not abated or affected by this act; however, it shall
10 be within the discretion of the Secretary whether to continue, change, or modify such
11 procedures or substances as authorized by law.

12 **SECTION 4.** G.S. 15-90 reads as rewritten:

13 **"§ 15-190. Person or persons to be designated by warden to execute sentence; supervision**
14 **of execution; who shall be present.**

15 (a) Some guard or guards or other reliable person or persons to be named and
16 designated by the warden from time to time shall cause the person, convict or felon against
17 whom the death sentence has been so pronounced to be executed as provided by this Article
18 and all amendments thereto. The execution shall be under the general supervision and control
19 of the warden of the penitentiary, who shall from time to time, in writing, name and designate
20 the guard or guards or other reliable person or persons who shall cause the person, convict or
21 felon against whom the death sentence has been pronounced to be executed as provided by this
22 Article and all amendments thereto. At such execution there shall be present the warden or
23 deputy warden or some person designated by the warden in the warden's place, and the surgeon
24 or physician of the penitentiary. Four respectable citizens, two members of the victim's family,
25 the counsel and any relatives of such person, convict or felon and a minister or member of the
26 clergy or religious leader of the person's choosing may be present if they so desire. The
27 identities, including the names, residential addresses, residential telephone numbers, and social
28 security numbers, of witnesses or persons designated to carry out the execution shall be
29 confidential and exempted from Chapter 132 of the General Statutes and are not subject to
30 discovery or introduction as evidence in any proceeding. The Senior Resident Superior Court
31 Judge for Wake County may order disclosure of names made confidential by this section after
32 making findings that support a conclusion that disclosure is necessary to a proper
33 administration of justice.

34 (b) The warden shall report to the Joint Legislative Oversight Committee on Justice and
35 Public Safety by April 1, 2013, and thereafter on October 1 of each year, on the status of the
36 persons required by subsection (a) of this section to be named and designated by the warden to
37 execute death sentences under this Article. The report shall confirm that the required persons
38 are properly trained and ready to serve as an execution team. Alternatively, the Chairs of the
39 Joint Legislative Oversight Committee on Justice and Public Safety may direct that the reports
40 required under this subsection be made on other dates consistent with the Committee's
41 schedule."

42 **SECTION 5.(a)** Article 101 of Chapter 15A of the General Statutes is repealed.

43 **SECTION 5.(b)** The intent and purpose of this section, and its sole effect, is to
44 remove the use of statistics to prove purposeful discrimination in a specific case. Upon repeal
45 of Article 101 of Chapter 15A of the General Statutes, a capital defendant retains all of the
46 rights which the State and federal constitutions provide to ensure that the prosecutors who
47 selected a jury and who sought a capital conviction did not do so on the basis of race, that the
48 jury that hears his or her case is impartial, and that the trial was free from prejudicial error of
49 any kind. These rights are protected through multiple avenues of appeal, including direct appeal
50 to the North Carolina Supreme Court, and discretionary review to the United States Supreme
51 Court; a postconviction right to file a motion for appropriate relief at the trial court level where

1 claims of racial discrimination may be heard; and again at the federal level through a petition of
2 habeas corpus. A capital defendant prior to the passage of Article 101 of Chapter 15A of the
3 General Statutes had the right to raise the issue of whether a prosecutor sought the death
4 penalty on the basis of race, whether the jury was selected on the basis of race, or any other
5 matter which evidenced discrimination on the basis of race. All these same rights, existing prior
6 to the enactment of Article 101 of Chapter 15A of the General Statutes, remain the law of this
7 State after its repeal.

8 **SECTION 5.(c)** Upon request of a district attorney, the Attorney General shall
9 assume primary responsibility on behalf of that district attorney for the litigation in superior
10 court or an appellate court of any claims or issues resulting from a petition for relief that has
11 been or may be filed under the provisions of Article 101 of Chapter 15A of the General Statutes
12 or any issues or matters relating to the repeal of Article 101 of Chapter 15A of the General
13 Statutes, as provided in this act.

14 **SECTION 5.(d)** Except as otherwise provided in this subsection, this section is
15 retroactive and applies to any motion for appropriate relief filed pursuant to Article 101 of
16 Chapter 15A of the General Statutes prior to the effective date of this act. All motions filed
17 pursuant to Article 101 of Chapter 15A of the General Statutes prior to the effective date of this
18 act are void; however, this section does not apply to any case in which there is a final order
19 issued by a court of competent jurisdiction, issued prior to the effective date of this act, which
20 resentenced a petitioner to life imprisonment without parole pursuant to the provisions of
21 Article 101 of Chapter 15A of the General Statutes.

22 **SECTION 6.** This act is effective when it becomes law.