

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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SENATE BILL 885

Short Title: Time and Method for Execution.

(Public)

Sponsors: Senator Gulley.

Referred to: Judiciary.

April 15, 1997

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL AMENDMENTS TO THE LAWS REGARDING
THE TIME AND METHOD FOR EXECUTION.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15-194 reads as rewritten:

"§ 15-194. Time for execution.

(a) In sentencing a capital defendant to a death sentence pursuant to G.S. 15A-2000(b), the sentencing judge need not specify the date and time the execution is to be carried out by the Department of Correction. The warden of the State penitentiary at Raleigh shall immediately schedule a date for the execution of the original death sentence not less than 30 days nor more than 45 days from the date of receiving written notification from the Attorney General of North Carolina or the district attorney who prosecuted the case of any one of the following:

- (1) The United States Supreme Court has filed an opinion upholding the sentence of death following completion of the initial State and federal postconviction proceedings, if any;
- (2) The mandate issued by the Supreme Court of North Carolina on direct appeal pursuant to N.C.R. App. P. 32(b) affirming the capital defendant's death sentence and the time for filing a petition for writ of

1 certiorari to the United States Supreme Court has expired without a
2 petition being filed;

3 (3) The capital defendant, if indigent, failed to timely seek the appointment
4 of counsel pursuant to G.S. 7A-451(c), or failed to file a timely motion
5 for appropriate relief as required by G.S. ~~15A-1415(a)~~; 15A-1415(a), or
6 as required by the superior court;

7 (4) The superior court denied the capital defendant's motion for appropriate
8 relief, but the capital defendant failed to file a timely petition for writ of
9 certiorari to the Supreme Court of North Carolina pursuant to N.C.R.
10 App. P. 21(f);

11 (5) The Supreme Court of North Carolina denied the capital defendant's
12 petition for writ of certiorari pursuant to N.C.R. App. P. 21(f), or, if
13 certiorari was granted, upheld the capital defendant's death sentence, ~~but~~
14 ~~the capital defendant failed to file a timely petition for writ of certiorari to the~~
15 ~~United States Supreme Court~~ sentence; or

16 (6) Following State postconviction proceedings, if any, the capital
17 defendant failed to file a ~~timely~~ petition for writ of habeas corpus in the
18 appropriate federal district court, within 60 days of the denial of the
19 capital defendant's petition for writ of certiorari by the Supreme Court
20 of North Carolina pursuant to N.C.R. App. P. 21(f), or, if certiorari was
21 granted, the decision by the Supreme Court of North Carolina upholding
22 the capital defendant's death sentence, or failed to timely appeal ~~or~~
23 ~~petition~~ an adverse habeas corpus decision to the United States Court of
24 Appeals for the Fourth ~~Circuit or the United States Supreme Court~~ Circuit.

25 The warden shall send a certified copy of the document fixing the date to the clerk of
26 superior court of the county in which the case was tried or, if venue was changed, in
27 which the defendant was indicted. The certified copy shall be recorded in the minutes of
28 the court. The warden shall also send certified copies to the capital defendant, the capital
29 defendant's attorney, the district attorney who prosecuted the case, and the Attorney
30 General of North Carolina.

31 (b) Nothing shall prohibit a superior court from setting an execution date under
32 circumstances other than those specified in subsection (a) of this section."

33 Section 2. G.S. 15A-1415 is amended to insert a new subsection to read as
34 follows:

35 "(a1) For capital cases in which the death sentence was entered on or before October
36 1, 1996, the superior court of the county in which the defendant was indicted shall be
37 authorized to set a time limitation for the filing of a postconviction motion for appropriate
38 relief."

39 Section 3. G.S. 15A-1419 reads as rewritten:

40 "**§ 15A-1419. When motion for appropriate relief denied.**

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

- 1 (1) Upon a previous motion made pursuant to this Article, the defendant
2 was in a position to adequately raise the ground or issue underlying the
3 present motion but did not do so. This subdivision does not apply when
4 the previous motion was made within 10 days after entry of judgment or
5 the previous motion was made during the pendency of the direct appeal.
- 6 (2) The ground or issue underlying the motion was previously determined
7 on the merits upon an appeal from the judgment or upon a previous
8 motion or proceeding in the courts of this State or a federal court, unless
9 since the time of such previous determination there has been a
10 retroactively effective change in the law controlling such issue.
- 11 (3) Upon a previous appeal the defendant was in a position to adequately
12 raise the ground or issue underlying the present motion but did not do
13 so.
- 14 (4) The defendant failed to file a timely motion for appropriate relief as
15 required by G.S. ~~15A-1415(a)~~-15A-1415(a) or G.S. 15A-1415(a1)."

16 Section 4. G.S. 15-187 reads as rewritten:

17 "**§ 15-187. Death by administration of lethal gas or drugs.**

18 Death by electrocution and death by the administration of lethal gas under sentence of
19 law ~~is~~are hereby abolished and death by the administration of lethal ~~gas~~drugs substituted
20 ~~therefor, therefor.~~ except that if any person sentenced to death so chooses, he may at least five
21 ~~days prior to his execution date, elect in writing to be executed by the administration of a lethal~~
22 ~~quantity of an ultrashort-acting barbiturate in combination with a chemical paralytic agent.~~
23 Death by the administration of lethal drugs shall be accomplished by the injection or
24 administration of a lethal quantity of an ultrashort-acting barbiturate in combination with
25 a chemical paralytic agent."

26 Section 5. This act is effective when it becomes law.