

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2001**

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**HOUSE BILL 1117
Committee Substitute Favorable 4/24/01**

Short Title: D A Discretion.

(Public)

Sponsors:

Referred to:

April 12, 2001

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY HAS DISCRETION AS TO WHETHER TO SEEK THE DEATH PENALTY FOR A CAPITAL CASE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-2000(a) reads as rewritten:

"(a) Separate Proceedings on Issue of Penalty. –

(1) ~~Upon~~ Except as provided in G.S. 15A-2004, upon conviction or adjudication of guilt of a defendant of a capital ~~felony, felony in which the State has given notice of its intent to seek the death penalty,~~ the court shall conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment. A capital felony is one which may be punishable by death.

(2) The proceeding shall be conducted by the trial judge before the trial jury as soon as practicable after the guilty verdict is returned. If prior to the time that the trial jury begins its deliberations on the issue of penalty, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. An alternate juror shall become a part of the jury in the order in which he was selected. If the trial jury is unable to reconvene for a hearing on the issue of penalty after having determined the guilt of the accused, the trial judge shall impanel a new jury to determine the issue of the punishment. If the defendant pleads guilty, the sentencing proceeding shall be conducted before a jury impaneled for that purpose. A jury selected for the purpose of determining punishment in a capital case shall be selected in the same manner as juries are selected for the trial of capital cases.

1 (3) In the proceeding there shall not be any requirement to resubmit
2 evidence presented during the guilt determination phase of the case,
3 unless a new jury is impaneled, but all such evidence is competent for
4 the jury's consideration in passing on punishment. Evidence may be
5 presented as to any matter that the court deems relevant to sentence,
6 and may include matters relating to any of the aggravating or
7 mitigating circumstances enumerated in subsections (e) and (f) of this
8 section. Any evidence which the court deems to have probative value
9 may be received.

10 (4) The State and the defendant or his counsel shall be permitted to
11 present argument for or against sentence of death. The defendant or
12 defendant's counsel shall have the right to the last argument."

13 **SECTION 2.** G.S. 15A-2001 reads as rewritten:

14 **"§ 15A-2001. Capital offenses; plea of guilty.**

15 (a) Any ~~person~~ defendant who has been indicted for an offense punishable by
16 death may enter a plea of guilty at any time after ~~his indictment, and the indictment.~~

17 (b) If the defendant enters a guilty plea to first degree murder and the State has
18 not given notice of intent to seek the death penalty as provided in G.S. 15A-2004 or the
19 State has agreed to accept a sentence of life imprisonment where it initially gave notice
20 of intent to seek the death penalty, then the court shall sentence the person to life
21 imprisonment. The defendant may plead guilty to first degree murder and the State may
22 agree to accept a sentence of life imprisonment, even if evidence of an aggravating
23 circumstance exists.

24 (c) If the defendant enters a guilty plea to first degree murder and the State has
25 given notice of its intent to seek the death penalty, then the judge of the superior court
26 having jurisdiction may sentence such person the defendant to life imprisonment or to
27 death pursuant to the procedures of G.S. 15A-2000. Before sentencing the defendant,
28 defendant in a case in which the State has given notice of its intent to seek the death
29 penalty, the presiding judge shall impanel a jury for the limited purpose of hearing
30 evidence and determining a sentence recommendation as to the appropriate sentence
31 pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the
32 defendant pleads guilty and the State has given notice of its intent to seek the death
33 penalty shall be determined under the same procedure of G.S. 15A-2000 applicable to
34 defendants who have been tried and found guilty by a jury."

35 **SECTION 3.** Article 100 of Chapter 15A of the General Statutes is amended
36 by adding a new section to read:

37 **"§ 15A-2004. Prosecutorial discretion.**

38 (a) The State, in its discretion, may elect to try a defendant capitally or
39 noncapitally for first degree murder, even if evidence of an aggravating circumstance
40 exists. The State may agree to accept a sentence of life imprisonment for a defendant at
41 any point in the prosecution of a capital felony, even if evidence of an aggravating
42 circumstance exists.

1 **(b)** A sentence of death may not be imposed upon a defendant convicted of a
2 capital felony unless the State has given notice of its intent to seek the death penalty.
3 Notice of intent to seek the death penalty shall be given to the defendant and filed with
4 the court on or before the date of the pretrial conference in capital cases required by
5 Rule 24 of the General Rules of Practice for the Superior and District Courts, or the
6 arraignment, whichever is later.

7 **(c)** If the State has not given notice of its intent to seek the death penalty prior to
8 trial, the trial shall be conducted as a noncapital proceeding, and the court, upon
9 adjudication of the defendant's guilt of first degree murder, shall impose a sentence of
10 life imprisonment.

11 **(d)** Notwithstanding any other provision of Article 100 of Chapter 15A of the
12 General Statutes, the State may agree to accept a sentence of life imprisonment for a
13 defendant upon remand from the Supreme Court of North Carolina of a capital case for
14 resentencing or upon an order of resentencing by a court in a State or federal post-
15 conviction proceeding. If the State exercises its discretion and does agree to accept a
16 sentence of life imprisonment for the defendant, then the court shall impose a sentence
17 of life imprisonment."

18 **SECTION 4.** This act becomes effective July 1, 2001, and applies to
19 pending and future cases, except that the provisions of this act regarding the State's
20 notice of intent to seek the death penalty do not apply to defendants indicted in capital
21 cases before the effective date of this act.