

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

H

1

HOUSE BILL 1326

Short Title: Amend Second Degree Murder. (Public)

Sponsors: Representatives Glazier, Lucas, Parmon, Harrison (Primary Sponsors); and Mackey.

Referred to: Ways and Means/Broadband Connectivity, if favorable, Judiciary II.

April 9, 2009

A BILL TO BE ENTITLED

1 AN ACT TO AMEND THE CRIMINAL OFFENSE OF SECOND DEGREE MURDER, TO  
2 AMEND THE AGGRAVATING CIRCUMSTANCES THAT MAY BE CONSIDERED  
3 FOR CAPITAL CASES, AND TO PROVIDE THAT A CASE MAY BE TRIED AS A  
4 CAPITAL CASE ONLY IF THE COURT DETERMINES AT A HEARING  
5 CONDUCTED PURSUANT TO RULE 24 OF THE GENERAL RULES OF PRACTICE  
6 FOR SUPERIOR AND DISTRICT COURTS THAT THERE IS SUBSTANTIAL  
7 EVIDENCE OF THE DEFENDANT'S GUILT AND OF AN AGGRAVATING  
8 CIRCUMSTANCE, AND TO PROVIDE THAT NO CAPITAL CASE SHALL GO TO  
9 TRIAL EARLIER THAN NINE MONTHS FROM ITS DETERMINATION AS A  
10 CAPITAL CASE.  
11

12 Whereas, the large number of potential capital cases annually costs the State of  
13 North Carolina tens of millions of dollars for prosecution and defense services and court costs  
14 in excess of the cost of handling those cases as noncapital; and

15 Whereas, over 83% of potential capital cases end in a conviction of second degree  
16 murder or less; and

17 Whereas, a clear and precise definition of aggravating circumstances would  
18 continue to permit prosecutors to pursue death penalties for the most culpable defendants and  
19 the worst crimes; Now, therefore,

20 The General Assembly of North Carolina enacts:

21 **SECTION 1.** G.S. 14-17 reads as rewritten:

22 **"§ 14-17. Murder in the first and second degree defined; punishment.**

23 A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon  
24 of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving,  
25 torture, or by any other kind of willful, deliberate, and premeditated killing, ~~or which shall be~~  
26 ~~committed in the perpetration or attempted perpetration of any arson, rape or a sex offense,~~  
27 ~~robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly~~  
28 ~~weapon~~ shall be deemed to be murder in the first degree, a Class A felony, and any person who  
29 commits such murder shall be punished with death or imprisonment in the State's prison for life  
30 without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such  
31 person who was under 18 years of age at the time of the murder shall be punished with  
32 imprisonment in the State's prison for life without parole. A killing committed in the  
33 perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony  
34 committed or attempted with the use of a deadly weapon shall be deemed murder in the second  
35 degree, and any person who commits such murder shall be punished as a Class B1 felon. All  
36 other kinds of murder, including that which shall be proximately caused by the unlawful



1 distribution of opium or any synthetic or natural salt, compound, derivative, or preparation of  
2 opium, or cocaine or other substance described in G.S. 90-90(1)d., or methamphetamine, when  
3 the ingestion of such substance causes the death of the user, shall be deemed murder in the  
4 second degree, and any person who commits such murder shall be punished as a Class B2  
5 felon."

6 **SECTION 2.** G.S. 15A-2000(e) reads as rewritten:

7 "(e) Aggravating Circumstances. – Aggravating circumstances which may be considered  
8 shall be limited to the following:

- 9 ~~(1) The capital felony was committed by a person lawfully incarcerated.~~
- 10 (2) The defendant had been previously convicted of another capital felony or  
11 had been previously adjudicated delinquent in a juvenile proceeding for  
12 committing an offense that would be a capital felony if committed by an  
13 adult.
- 14 ~~(3) The defendant had been previously convicted of a felony involving the use  
15 or threat of violence to the person or had been previously adjudicated  
16 delinquent in a juvenile proceeding for committing an offense that would be  
17 a Class A, B1, B2, C, D, or E felony involving the use or threat of violence  
18 to the person if the offense had been committed by an adult.~~
- 19 ~~(4) The capital felony was committed for the purpose of avoiding or preventing  
20 a lawful arrest or effecting an escape from custody.~~
- 21 ~~(5) The capital felony was committed while the defendant was engaged, or was  
22 an aider or abettor, in the commission of, or an attempt to commit, or flight  
23 after committing or attempting to commit, any homicide, robbery, rape or a  
24 sex offense, arson, burglary, kidnapping, or aircraft piracy or the unlawful  
25 throwing, placing, or discharging of a destructive device or bomb.~~
- 26 ~~(6) The capital felony was committed for pecuniary gain.~~
- 27 ~~(7) The capital felony was committed to disrupt or hinder the lawful exercise of  
28 any governmental function or the enforcement of laws.~~
- 29 ~~(8) The capital felony was committed against a law enforcement officer,  
30 employee of the Department of Correction, jailer, fireman, judge or justice,  
31 former judge or justice, prosecutor or former prosecutor, juror or former  
32 juror, or witness or former witness against the defendant, while engaged in  
33 the performance of his official duties or because of the exercise of his  
34 official duty.~~
- 35 ~~(9) The capital felony was especially heinous, atrocious, or cruel.~~
- 36 ~~(10) The defendant knowingly created a great risk of death to more than one  
37 person by means of a weapon or device which would normally be hazardous  
38 to the lives of more than one person.~~
- 39 ~~(11) The murder for which the defendant stands convicted was part of a course of  
40 conduct in which the defendant engaged and which included the commission  
41 by the defendant of other crimes of violence against another person or  
42 persons.~~
- 43 (12) The capital felony was committed in the commission of or attempted  
44 commission of an act of political terrorism. For purposes of this subdivision  
45 an act of political terrorism means an act committed by the defendant for the  
46 purpose of attacking the government of the United States, or any political  
47 subdivision there.
- 48 (13) The capital felony was knowingly and intentionally committed against a law  
49 enforcement officer, employee of the Department of Correction, jailer,  
50 firefighter, judge or justice, prosecutor, or juror, while engaged in the  
51 performance of his or her official duties.

1           (14) The murder for which the defendant stands convicted was part of a course of  
2 conduct in which the defendant intentionally killed more than one person.

3           (15) The defendant intentionally tortured the victim, in a gratuitous and depraved  
4 manner, during or immediately prior to the murder. For purposes of this  
5 subdivision the term "torture" means the infliction of extreme physical pain  
6 against a victim who the defendant knew was conscious. For purposes of this  
7 subdivision the term "gratuitous and depraved manner" means that the  
8 defendant inflicted pain in addition to that which necessarily accompanied  
9 the act of killing itself or the particular method of killing was chosen by the  
10 defendant for the purpose of inflicting such pain."

11           **SECTION 3.** G.S. 15A-2004 is amended by adding a new section to read:

12 **"§ 15A-2004. Prosecutorial discretion.**

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

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

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

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

31           (e) On or before the date of the pretrial conference in a capital case required by Rule 24  
32 of the General Rules of Practice for the Superior and District Courts, the Superior Court shall  
33 conduct a hearing to determine whether there is substantial evidence of the defendant's guilt of  
34 first-degree murder and substantial evidence to support one of the aggravating circumstances  
35 listed in G.S. 15A-2000(e). Notwithstanding any other provision of Chapter 15A of the General  
36 Statutes, if the court does not find substantial evidence of an aggravating circumstance, it shall  
37 declare the case noncapital. In no event shall a first degree murder trial begin earlier than nine  
38 months after the case is determined to be a capital case at a court hearing conducted pursuant to  
39 Rule 24 of the General Rules of Practice for the Superior and District Courts."

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