

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1989

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HOUSE BILL 1300

Short Title: Drug Murder/Require Death Penalty.

(Public)

Sponsors: Representatives Rhyne; Privette, Brawley, L. Etheridge, and Decker.

Referred to: Judiciary.

April 12, 1989

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A MANDATORY DEATH SENTENCE BE  
IMPOSED ON A PERSON CONVICTED OF FIRST DEGREE MURDER THAT  
OCCURS AS A RESULT OF A DRUG OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S.14-17 reads as rewritten:

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

(a) A murder which shall be perpetrated by means of poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age at the time of the murder shall be punished with imprisonment in the State's prison for life. Provided, however, any person under the age of 17 who commits murder in the first degree while serving a prison sentence imposed for a prior murder or while on escape from a prison sentence imposed for a prior murder shall be punished with death or imprisonment in the State's prison for life as the court shall determine pursuant to G.S. 15A-2000.

(b) A person 18 years of age or older who while dealing in controlled substances directly causes the death of another person shall be guilty of first degree murder and shall be punished with death. For purposes of this subsection the term 'dealing in

1 controlled substances' means the unlawful selling, purchasing, manufacturing, or  
2 delivery of a controlled substance or the unlawful possession of a controlled substance  
3 with the intent to sell or deliver a controlled substance. A death is deemed to be directly  
4 caused by a person dealing in controlled substances and is first degree murder if the  
5 death is a result of any of the following:

- 6 (1) An overdose of the controlled substance;
- 7 (2) The actions of a person impaired by use of the controlled substance;
- 8 (3) Criminal activity related to dealing in controlled substances;
- 9 (4) An intentional or reckless indifference to human life, or participation  
10 in a criminal activity in which an individual is killed while engaged in  
11 dealing in controlled substances.

12 The death of a law enforcement officer involved in an investigation of a criminal  
13 enterprise related to dealing in controlled substances shall also be deemed to be caused  
14 by a person dealing in controlled substances and is first degree murder.

15 (c) All other kinds of murder, including that which shall be proximately caused  
16 by the unlawful distribution of opium or any synthetic or natural salt, compound,  
17 derivative, or preparation of opium when the ingestion of such substance causes the  
18 death of the user, shall be deemed murder in the second degree, and any person who  
19 commits such murder shall be punished as a Class C felon.”

20 Sec. 2. G.S. 15A-2000 reads as rewritten:

21 **"§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further**  
22 **proceedings to determine sentence.**

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

24 (1) ~~Upon~~ Except as provided in subsection (g) of this section, upon  
25 conviction or adjudication of guilt of a defendant of a capital felony,  
26 the court shall conduct a separate sentencing proceeding to determine  
27 whether the defendant should be sentenced to death or life  
28 imprisonment. A capital felony is one which may be punishable by  
29 death.

30 (2) The proceeding shall be conducted by the trial judge before the trial  
31 jury as soon as practicable after the guilty verdict is returned. If prior  
32 to the time that the trial jury begins its deliberations on the issue of  
33 penalty, any juror dies, becomes incapacitated or disqualified, or is  
34 discharged for any reason, an alternate juror shall become a part of the  
35 jury and serve in all respects as those selected on the regular trial  
36 panel. An alternate juror shall become a part of the jury in the order in  
37 which he was selected. If the trial jury is unable to reconvene for a  
38 hearing on the issue of penalty after having determined the guilt of the  
39 accused, the trial judge shall impanel a new jury to determine the issue  
40 of the punishment. If the defendant pleads guilty, the sentencing  
41 proceeding shall be conducted before a jury impaneled for that  
42 purpose. A jury selected for the purpose of determining punishment in  
43 a capital case shall be selected in the same manner as juries are  
44 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). Any  
8 evidence which the court deems to have probative value may be  
9 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 (b) Sentence Recommendation by the Jury. – Instructions determined by the trial  
14 judge to be warranted by the evidence shall be given by the court in its charge to the  
15 jury prior to its deliberation in determining sentence. In all cases in which the death  
16 penalty may be authorized, the judge shall include in his instructions to the jury that it  
17 must consider any aggravating circumstance or circumstances or mitigating  
18 circumstance or circumstances from the lists provided in subsections (e) and (f) which  
19 may be supported by the evidence, and shall furnish to the jury a written list of issues  
20 relating to such aggravating or mitigating circumstance or circumstances.

21 After hearing the evidence, argument of counsel, and instructions of the court, the  
22 jury shall deliberate and render a sentence recommendation to the court, based upon the  
23 following matters:

24 (1) Whether any sufficient aggravating circumstance or circumstances as  
25 enumerated in subsection (e) exist;

26 (2) Whether any sufficient mitigating circumstance or circumstances as  
27 enumerated in subsection (f), which outweigh the aggravating  
28 circumstance or circumstances found, exist; and

29 (3) Based on these considerations, whether the defendant should be  
30 sentenced to death or to imprisonment in the State's prison for life.

31 The sentence recommendation must be agreed upon by a unanimous vote of the 12  
32 jurors. Upon delivery of the sentence recommendation by the foreman of the jury, the  
33 jury shall be individually polled to establish whether each juror concurs and agrees to  
34 the sentence recommendation returned.

35 If the jury cannot, within a reasonable time, unanimously agree to its sentence  
36 recommendation, the judge shall impose a sentence of life imprisonment; provided,  
37 however, that the judge shall in no instance impose the death penalty when the jury  
38 cannot agree unanimously to its sentence recommendation.

39 (c) Findings in Support of Sentence of Death. – When the jury recommends a  
40 sentence of death, the foreman of the jury shall sign a writing on behalf of the jury  
41 which writing shall show:

42 (1) The statutory aggravating circumstance or circumstances which the  
43 jury finds beyond a reasonable doubt; and

- 1 (2) That the statutory aggravating circumstance or circumstances found by  
2 the jury are sufficiently substantial to call for the imposition of the  
3 death penalty; and,  
4 (3) That the mitigating circumstance or circumstances are insufficient to  
5 outweigh the aggravating circumstance or circumstances found.
- 6 (d) Review of Judgment and Sentence. –  
7 (1) The judgment of conviction and sentence of death shall be subject to  
8 automatic review by the Supreme Court of North Carolina pursuant to  
9 procedures established by the Rules of Appellate Procedure. In its  
10 review, the Supreme Court shall consider the punishment imposed as  
11 well as any errors assigned on appeal.  
12 (2) The sentence of death shall be overturned and a sentence of life  
13 imprisonment imposed in lieu thereof by the Supreme Court upon a  
14 finding that the record does not support the jury's findings of any  
15 aggravating circumstance or circumstances upon which the sentencing  
16 court based its sentence of death, or upon a finding that the sentence of  
17 death was imposed under the influence of passion, prejudice, or any  
18 other arbitrary factor, or upon a finding that the sentence of death is  
19 excessive or disproportionate to the penalty imposed in similar cases,  
20 considering both the crime and the defendant. The Supreme Court may  
21 suspend consideration of death penalty cases until such time as the  
22 court determines it is prepared to make the comparisons required under  
23 the provisions of this section.  
24 (3) If the sentence of death and the judgment of the trial court are  
25 reversed on appeal for error in the post-verdict sentencing proceeding,  
26 the Supreme Court shall order that a new sentencing hearing be  
27 conducted in conformity with the procedures of this Article.
- 28 (e) Aggravating Circumstances. – Aggravating circumstances which may be  
29 considered shall be limited to the following:  
30 (1) The capital felony was committed by a person lawfully incarcerated.  
31 (2) The defendant had been previously convicted of another capital felony.  
32 (3) The defendant had been previously convicted of a felony involving the  
33 use or threat of violence to the person.  
34 (4) The capital felony was committed for the purpose of avoiding or  
35 preventing a lawful arrest or effecting an escape from custody.  
36 (5) The capital felony was committed while the defendant was engaged, or  
37 was an aider or abettor, in the commission of, or an attempt to commit,  
38 or flight after committing or attempting to commit, any homicide,  
39 robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft  
40 piracy or the unlawful throwing, placing, or discharging of a  
41 destructive device or bomb.  
42 (6) The capital felony was committed for pecuniary gain.  
43 (7) The capital felony was committed to disrupt or hinder the lawful  
44 exercise of any governmental function or the enforcement of laws.

- 1 (8) The capital felony was committed against a law-enforcement officer,  
2 employee of the Department of Correction, jailer, fireman, judge or  
3 justice, former judge or justice, prosecutor or former prosecutor, juror  
4 or former juror, or witness or former witness against the defendant,  
5 while engaged in the performance of his official duties or because of  
6 the exercise of his official duty.
- 7 (9) The capital felony was especially heinous, atrocious, or cruel.
- 8 (10) The defendant knowingly created a great risk of death to more than  
9 one person by means of a weapon or device which would normally be  
10 hazardous to the lives of more than one person.
- 11 (11) The murder for which the defendant stands convicted was part of a  
12 course of conduct in which the defendant engaged and which included  
13 the commission by the defendant of other crimes of violence against  
14 another person or persons.
- 15 (f) Mitigating Circumstances. – Mitigating circumstances which may be  
16 considered shall include, but not be limited to, the following:
- 17 (1) The defendant has no significant history of prior criminal activity.
- 18 (2) The capital felony was committed while the defendant was under the  
19 influence of mental or emotional disturbance.
- 20 (3) The victim was a voluntary participant in the defendant's homicidal  
21 conduct or consented to the homicidal act.
- 22 (4) The defendant was an accomplice in or accessory to the capital felony  
23 committed by another person and his participation was relatively  
24 minor.
- 25 (5) The defendant acted under duress or under the domination of another  
26 person.
- 27 (6) The capacity of the defendant to appreciate the criminality of his  
28 conduct or to conform his conduct to the requirements of law was  
29 impaired.
- 30 (7) The age of the defendant at the time of the crime.
- 31 (8) The defendant aided in the apprehension of another capital felon or  
32 testified truthfully on behalf of the prosecution in another prosecution  
33 of a felony.
- 34 (9) Any other circumstance arising from the evidence which the jury  
35 deems to have mitigating value.

36 (g) Upon conviction of a defendant of a capital felony under G.S. 14-17(b), the  
37 judge shall impose a mandatory sentence of death."

38 Sec. 3. G.S. 15A-2001 reads as rewritten:

39 "**§ 15A-2001. Capital offenses; plea of guilty.**

40 (a) Except as provided in subsection (b), any ~~Any~~ person who has been indicted  
41 for an offense punishable by death may enter a plea of guilty at any time after his  
42 indictment, and the judge of the superior court having jurisdiction may sentence such  
43 person to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000.  
44 Before sentencing the defendant, the presiding judge shall impanel a jury for the limited

1 purpose of hearing evidence and determining a sentence recommendation as to the  
2 appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation  
3 in cases where the defendant pleads guilty shall be determined under the same  
4 procedure of G.S. 15A-2000 applicable to defendants who have been tried and found  
5 guilty by a jury.

6 (b) A person who has been indicted for an offense punishable by death under  
7 G.S. 14-17(b) may not enter a plea of guilty to that crime and the judge of the superior  
8 court having jurisdiction may not accept a guilty plea or any other plea bargain  
9 arrangement for an offense punishable under G.S. 14-17(b)."

10 Sec. 4. G.S. 15A-2002 reads as rewritten:

11 "**§ 15A-2002. Capital offenses; jury verdict and sentence.**

12 (a) If the recommendation of the jury is that the defendant be sentenced to death,  
13 the judge shall impose a sentence of death in accordance with the provisions of Chapter  
14 15, Article 19 of the General Statutes. If the recommendation of the jury is that the  
15 defendant be imprisoned for life in the State's prison, the judge shall impose a sentence  
16 of imprisonment for life in the State's prison.

17 (b) If the defendant is convicted of a crime under G.S. 14-17(b), the judge shall  
18 impose a sentence of death in accordance with the provisions of Chapter 15, Article 19  
19 of the General Statutes."

20 Sec. 5. The provisions of this act are severable. If any provision of this act is  
21 held invalid by a court of competent jurisdiction, the invalidity shall not affect other  
22 provisions of the act which can be given effect without the invalid provision.

23 Sec. 6. This act shall become effective October 1, 1989, and shall apply to  
24 offenses occurring on or after that date.