

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1995

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SENATE BILL 985

Short Title: Capital Punishment Procedure.

(Public)

Sponsors: Senator Rand.

Referred to: Judiciary II/Election Laws

May 4, 1995

A BILL TO BE ENTITLED

AN ACT TO AMEND THE PROCEDURE FOR IMPOSING A SENTENCE FOR A CAPITAL OFFENSE.

The General Assembly of North Carolina enacts:

Section 1. G.S. 15A-2000 reads as rewritten:

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

(a) Separate Proceedings on Issue of Penalty. –

(1) Upon conviction or adjudication of guilt of a defendant of a capital felony, 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

1 was selected. If the trial jury is unable to reconvene for a hearing on the
2 issue of penalty after having determined the guilt of the accused, the
3 trial judge shall impanel a new jury to determine the issue of the
4 punishment. If the defendant pleads guilty, the sentencing proceeding
5 shall be conducted before a jury impaneled for that purpose. A jury
6 selected for the purpose of determining punishment in a capital case
7 shall be selected in the same manner as juries are selected for the trial of
8 capital cases.

9 (3) In the proceeding there shall not be any requirement to resubmit
10 evidence presented during the guilt determination phase of the case,
11 unless a new jury is impaneled, but all such evidence is competent for
12 the jury's consideration in passing on punishment. Evidence may be
13 presented as to any matter that the court deems relevant to sentence, and
14 may include matters relating to any of the aggravating ~~or mitigating~~
15 ~~circumstances enumerated in subsections (e) and (f).~~ circumstances
16 enumerated in subsection (e) of this section and any circumstance in
17 mitigation proffered by the defendant. The defendant's record of prior
18 convictions, including pleas of guilty or no contest pleas and any
19 adjudication of juvenile delinquency which would have constituted a
20 misdemeanor or felony if the offense had been committed by an adult,
21 or the lack of any such record shall be competent in every case for the
22 jury's consideration in passing on punishment. Any evidence which the
23 court deems reliable and to have probative value may be received.
24 received during the sentencing hearing so long as the evidence has
25 sufficient guarantees of trustworthiness.

26 (4) The State and the defendant or his counsel shall be permitted to present
27 argument for or against sentence of death. ~~The defendant or defendant's~~
28 ~~counsel~~ State shall have the right to the last argument.

29 (b) Sentence Recommendation by the Jury. ~~Instructions determined by the trial~~
30 ~~judge to be warranted by the evidence shall be given by the court in its charge to the jury~~
31 ~~prior to its deliberation in determining sentence. In all cases in which the death penalty~~
32 ~~may be authorized, the judge shall include in his instructions to the jury that it must~~
33 ~~consider any aggravating circumstance or circumstances or mitigating circumstance or~~
34 ~~circumstances from the lists provided in subsections (e) and (f) which may be supported~~
35 ~~by the evidence, and shall furnish to the jury a written list of issues relating to such~~
36 ~~aggravating or mitigating circumstance or circumstances.~~

37 ~~After hearing the evidence, argument of counsel, and instructions of the court, the jury~~
38 ~~shall deliberate and render a sentence recommendation to the court, based upon the~~
39 ~~following matters:~~

40 (1) ~~Whether any sufficient aggravating circumstance or circumstances as~~
41 ~~enumerated in subsection (e) exist;~~

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

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

6 The jury shall determine the appropriate punishment based upon whether any of the
7 aggravating circumstances enumerated in subsection (e) of this section exist, whether any
8 mitigating circumstances exist, and if so, whether the aggravating circumstance or
9 circumstances found outweigh the mitigating circumstance or circumstances found. The
10 same evidence may be used to support more than one aggravating circumstance
11 enumerated in subsection (e) of this section and to support the existence of more than one
12 mitigating circumstance.

13 If, beyond a reasonable doubt, the aggravating circumstance or circumstances
14 enumerated in subsection (e) of this section outweigh any mitigating circumstances,
15 or if no mitigating circumstances are found to exist, the jury shall recommend the court
16 impose a sentence of death. If the aggravating circumstance or circumstances
17 enumerated in subsection (e) of this section do not, beyond a reasonable doubt, outweigh
18 the mitigating circumstance or circumstances found to exist, the jury shall recommend
19 the court impose a sentence of imprisonment for life in the State's prison.

20 After hearing the evidence and argument of counsel, the court shall give the jury
21 appropriate instructions on the sentencing procedures and shall furnish the jury with a
22 writing upon which the court lists all aggravating circumstances enumerated in
23 subsection (e) of this section that may be supported by the evidence and, at the
24 request of defendant or the defendant's counsel, any examples of possible mitigation set
25 out in subsection (f) of this section or other circumstances proffered by the defendant that
26 are supported by the evidence. The court need not list or instruct upon any examples of
27 possible mitigating circumstances set out in subsection (f) of this section or other possible
28 mitigating circumstances unless requested to do so by the defendant or the defendant's
29 counsel. The court shall not give peremptory instructions on any of the aggravating or
30 mitigating circumstances, provided, however, that the court may instruct that certain
31 felonies, as a matter of law, are considered to be violent felonies. The court shall instruct
32 the jury that it need not assign any particular weight or value to the matters in mitigation
33 or the aggravating circumstances set out in subsection (e) of this section, but that the jury
34 should consider the criminal record, or lack of one, in assessing the appropriate value to
35 give the circumstances in aggravation enumerated in subsection (e) of this section and the
36 mitigating circumstances.

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

41 If the jury cannot, within a reasonable time, unanimously agree to its sentence
42 recommendation, the judge shall impose a sentence of life imprisonment; provided,

1 however, that the judge shall in no instance impose the death penalty when the jury
2 cannot agree unanimously to its sentence recommendation.

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

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

8 (2) ~~That the statutory aggravating circumstance or circumstances found by~~
9 ~~the jury are sufficiently substantial to call for the imposition of the death~~
10 ~~penalty; Whether one or more jurors has found, by a preponderance of~~
11 ~~the evidence, that any of the proffered circumstances in mitigation exist;~~
12 ~~and,~~

13 (3) ~~That the mitigating circumstance or circumstances are insufficient to~~
14 ~~outweigh the aggravating circumstance or circumstances found.~~
15 ~~Whether, beyond a reasonable doubt, the aggravating circumstance or~~
16 ~~circumstances found outweigh the mitigating circumstances, if any,~~
17 ~~found; and~~

18 (4) Based on the answer to the issue set out in subdivision (3) of this
19 subsection, the unanimous sentencing recommendation of the jury.

20 (d) Review of Judgment and Sentence. –

21 (1) ~~The judgment of conviction and that a sentence of death be imposed~~
22 ~~shall be subject to automatic review by the Supreme Court of North~~
23 ~~Carolina pursuant to procedures established by the Rules of Appellate~~
24 ~~Procedure. In its review, the Supreme Court shall consider the~~
25 ~~punishment imposed as well as any errors assigned on appeal.~~

26 If the defendant wishes to waive the right to appeal the conviction
27 and sentence of death, the North Carolina Supreme Court shall
28 nevertheless review the sentencing phase portion of the trial solely to
29 determine if any aggravating circumstance or circumstances enumerated
30 in subsection (e) of this section upon which the sentencing court based
31 its sentence of death are supported by the evidence and whether the
32 sentence was imposed under the influence of passion, prejudice, or any
33 other arbitrary circumstance.

34 (2) The sentence of death shall be overturned and a sentence of life
35 imprisonment imposed in lieu thereof by the Supreme Court upon a
36 finding that the record does not support the jury's findings of any
37 aggravating circumstance or circumstances upon which the sentencing
38 court based its sentence of death, or upon a finding that the sentence of
39 death was imposed under the influence of passion, prejudice, or any
40 other arbitrary factor, or upon a finding that the sentence of death is
41 excessive or disproportionate to the penalty imposed in similar cases,
42 considering both the crime and the defendant. The Supreme Court may
43 suspend consideration of death penalty cases until such time as the court

1 determines it is prepared to make the comparisons required under the
2 provisions of this section.

3 (3) If the sentence of death and the judgment of the trial court are reversed
4 on appeal for error in the post-verdict sentencing proceeding, the
5 Supreme Court shall order that a new sentencing hearing be conducted
6 in conformity with the procedures of this Article.

7 (e) Aggravating Circumstances. – Aggravating circumstances which may be
8 considered 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
11 or had been previously adjudicated delinquent in a juvenile proceeding
12 for committing an offense that would be a capital felony if committed
13 by an adult.

14 (3) The defendant had been previously convicted of a felony involving the
15 use or threat of violence to the person or had been previously
16 adjudicated delinquent in a juvenile proceeding for committing an
17 offense that would be a Class A, B, C, D, or E felony involving the use
18 or threat of violence to the person if the offense had been committed by
19 an adult.

20 (4) The capital felony was committed for the purpose of avoiding or
21 preventing a lawful arrest or effecting an escape from custody.

22 (5) The capital felony was committed while the defendant was engaged, or
23 was an aider or abettor, in the commission of, or an attempt to commit,
24 or flight after committing or attempting to commit, any homicide,
25 robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft
26 piracy or the unlawful throwing, placing, or discharging of a destructive
27 device or bomb.

28 (6) The capital felony was committed for pecuniary gain.

29 (7) The capital felony was committed to disrupt or hinder the lawful
30 exercise of any governmental function or the enforcement of laws.

31 (8) The capital felony was committed against a law-enforcement officer,
32 employee of the Department of Correction, jailer, fireman, judge or
33 justice, former judge or justice, prosecutor or former prosecutor, juror or
34 former juror, or witness or former witness against the defendant, while
35 engaged in the performance of his official duties or because of the
36 exercise of his official duty.

37 (9) The capital felony was especially heinous, atrocious, or cruel.

38 (10) The defendant knowingly created a great risk of death to more than one
39 person by means of a weapon or device which would normally be
40 hazardous to the lives of more than one person.

41 (11) The murder for which the defendant stands convicted was part of a
42 course of conduct in which the defendant engaged and which included

1 the commission by the defendant of other crimes of violence against
2 another person or persons.

3 (f) Mitigating Circumstances. —~~Mitigating circumstances which may be considered~~
4 ~~shall include, but not be~~ The defendant may present any evidence bearing on the
5 defendant's character, record, background, circumstances of the crime, or any other
6 matter that may mitigate against a sentence of death. Examples of possible circumstances
7 that one or more jurors may, but need not, find to mitigate against a sentence of death
8 include, but are not limited to, the following:

- 9 (1) The defendant has no significant history of prior criminal activity.
- 10 (2) The capital felony was committed while the defendant was under the
11 influence of mental or emotional disturbance.
- 12 (3) The victim was a voluntary participant in the defendant's homicidal
13 conduct or consented to the homicidal act.
- 14 (4) The defendant was an accomplice in or accessory to the capital felony
15 committed by another person and his participation was relatively minor.
- 16 (5) The defendant acted under duress or under the domination of another
17 person.
- 18 (6) The capacity of the defendant to appreciate the criminality of his
19 conduct or to conform his conduct to the requirements of law was
20 impaired.
- 21 (7) The age of the defendant at the time of the crime.
- 22 (8) The defendant aided in the apprehension of another capital felon or
23 testified truthfully on behalf of the prosecution in another prosecution of
24 a felony.
- 25 (9) Any other circumstance arising from the evidence which the jury deems
26 to have mitigating value."

27 Sec. 2. This act becomes effective December 1, 1995, and applies to all capital
28 felonies committed on or after that date.