

GENERAL ASSEMBLY OF NORTH CAROLINA

EXTRA SESSION 1994

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HOUSE BILL 126

Short Title: Kill Law Officer/Capital Crime.

(Public)

Sponsors: Representatives Justus; Alphin, Arnold, Brawley, J. Brown, Brubaker, Crawford, Creech, Culp, Decker, Dickson, Edwards, Ellis, Fussell, Gardner, Hill, Ives, Lemmond, McCombs, McCrary, McLawhorn, Mitchell, Nichols, J. Preston, Redwine, Sexton, Sutton, Thompson, Weatherly, Wood, and Yongue.

Referred to: Judiciary III.

February 14, 1994

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A PERSON WHO KILLS A LAW ENFORCEMENT
2 OFFICER, A CORRECTIONAL OFFICER, A DISTRICT ATTORNEY, AN
3 ASSISTANT DISTRICT ATTORNEY, A JUSTICE, OR A JUDGE IS GUILTY OF
4 FIRST DEGREE MURDER, PUNISHABLE BY DEATH OR LIFE
5 IMPRISONMENT WITHOUT PAROLE.
6

7 The General Assembly of North Carolina enacts:

8 Section 1. Article 6 of Chapter 14 of the General Statutes is amended by
9 adding a new section to read:

10 "**§ 14-17.2. Murder of a law enforcement officer, a correctional officer, a district**
11 **attorney, an assistant district attorney, a justice, or a judge.**

12 (a) A person is guilty of a Class A felony if the person murders any of the
13 following people while they are discharging their official duties:

14 (1) A law enforcement officer.

15 (2) A correctional officer.

16 (3) A district attorney or assistant district attorney.

17 (4) A justice or a judge.

18 (b) A person convicted of an offense under this section shall be sentenced to
19 death or life imprisonment pursuant to G.S. 15A-2000. If the recommendation of the
20 jury is that the defendant be imprisoned for life in the State's prison, the judge shall
21 impose a mandatory minimum sentence of life imprisonment to be served as active time

1 in the State prison by the defendant. A person convicted under this section shall not
2 receive a suspended sentence or be placed on probation. A person convicted under this
3 section shall not receive a reduced sentence. Notwithstanding Article 85 of Chapter
4 15A of the General Statutes, a person convicted under this section is not eligible for
5 parole. A person convicted under this section is not eligible for good time or gain
6 time."

7 Sec. 2. G.S. 14-17 reads as rewritten:

8 **"§ 14-17. Murder in the first and second degree defined; punishment.**

9 A murder which shall be perpetrated by means of poison, lying in wait,
10 imprisonment, starving, torture, or by any other kind of willful, deliberate, and
11 premeditated killing, or which shall be committed in the perpetration or attempted
12 perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other
13 felony committed or attempted with the use of a deadly weapon shall be deemed to be
14 murder in the first degree, and any person who commits such murder shall be punished
15 with death or imprisonment in the State's prison for life as the court shall determine
16 pursuant to G.S. 15A-2000, except that any such person who was under 17 years of age
17 at the time of the murder shall be punished with imprisonment in the State's prison for
18 life. Provided, however, any person under the age of 17 who commits murder in the
19 first degree while serving a prison sentence imposed for a prior murder or while on
20 escape from a prison sentence imposed for a prior murder shall be punished with death
21 or imprisonment in the State's prison for life as the court shall determine pursuant to
22 G.S. 15A-2000. Except as provided by G.S. 14-17.2, all ~~At~~ other kinds of murder,
23 including that which shall be proximately caused by the unlawful distribution of opium
24 or any synthetic or natural salt, compound, derivative, or preparation of opium, or
25 cocaine or other substance described in G.S. 90-90(a)4., when the ingestion of such
26 substance causes the death of the user, shall be deemed murder in the second degree,
27 and any person who commits such murder shall be punished as a Class C felon."

28 Sec. 3. G.S. 15A-2000 reads as rewritten:

29 **"§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further**
30 **proceedings to determine sentence.**

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

32 (1) Upon conviction or adjudication of guilt of a defendant of a capital
33 felony, the court shall conduct a separate sentencing proceeding to
34 determine whether the defendant should be sentenced to death or life
35 imprisonment. A capital felony is one which may be punishable by
36 death.

37 (2) The proceeding shall be conducted by the trial judge before the trial
38 jury as soon as practicable after the guilty verdict is returned. If prior
39 to the time that the trial jury begins its deliberations on the issue of
40 penalty, any juror dies, becomes incapacitated or disqualified, or is
41 discharged for any reason, an alternate juror shall become a part of the
42 jury and serve in all respects as those selected on the regular trial
43 panel. An alternate juror shall become a part of the jury in the order in
44 which he was selected. If the trial jury is unable to reconvene for a

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

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

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

20 (b) Sentence Recommendation by the Jury. – Instructions determined by the trial
21 judge to be warranted by the evidence shall be given by the court in its charge to the
22 jury prior to its deliberation in determining sentence. In all cases in which the death
23 penalty may be authorized, the judge shall include in his instructions to the jury that it
24 must consider any aggravating circumstance or circumstances or mitigating
25 circumstance or circumstances from the lists provided in subsections (e) and (f) which
26 may be supported by the evidence, and shall furnish to the jury a written list of issues
27 relating to such aggravating or mitigating circumstance or circumstances.

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

- 31 (1) Whether any sufficient aggravating circumstance or circumstances as
32 enumerated in subsection (e) exist;
- 33 (2) Whether any sufficient mitigating circumstance or circumstances as
34 enumerated in subsection (f), which outweigh the aggravating
35 circumstance or circumstances found, exist; and
- 36 (3) Based on these considerations, whether the defendant should be
37 sentenced to death or to imprisonment in the State's prison for life.

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

42 If the jury cannot, within a reasonable time, unanimously agree to its sentence
43 recommendation, the judge shall impose a sentence of life ~~imprisonment~~; imprisonment,
44 unless the defendant was convicted of a capital felony under G.S. 14-17.2. In that case,

1 if the jury cannot, within a reasonable time, unanimously agree to its sentence
2 recommendation, the judge shall impose a sentence of life imprisonment without parole.
3 ~~provided, however, that the~~ The judge shall in no instance impose the death penalty when
4 the jury cannot agree unanimously to its sentence recommendation.

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

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

10 (2) That the statutory aggravating circumstance or circumstances found by
11 the jury are sufficiently substantial to call for the imposition of the
12 death penalty; and,

13 (3) That the mitigating circumstance or circumstances are insufficient to
14 outweigh the aggravating circumstance or circumstances found.

15 (d) Review of Judgment and Sentence. –

16 (1) The judgment of conviction and sentence of death shall be subject to
17 automatic review by the Supreme Court of North Carolina pursuant to
18 procedures established by the Rules of Appellate Procedure. In its
19 review, the Supreme Court shall consider the punishment imposed as
20 well as any errors assigned on appeal.

21 (2) The sentence of death shall be overturned and a sentence of life
22 imprisonment or, if the conviction was for a capital felony committed
23 in violation of G.S. 14-17.2, a sentence of life imprisonment without
24 parole, imposed in lieu thereof by the Supreme Court upon a finding
25 that the record does not support the jury's findings of any aggravating
26 circumstance or circumstances upon which the sentencing court based
27 its sentence of death, or upon a finding that the sentence of death was
28 imposed under the influence of passion, prejudice, or any other
29 arbitrary factor, or upon a finding that the sentence of death is
30 excessive or disproportionate to the penalty imposed in similar cases,
31 considering both the crime and the defendant. The Supreme Court may
32 suspend consideration of death penalty cases until such time as the
33 court determines it is prepared to make the comparisons required under
34 the provisions of this section.

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

39 (e) Aggravating Circumstances. – Aggravating circumstances which may be
40 considered shall be limited to the following:

41 (1) The capital felony was committed by a person lawfully incarcerated.

42 (2) The defendant had been previously convicted of another capital felony.

43 (3) The defendant had been previously convicted of a felony involving the
44 use or threat of violence to the person.

- 1 (4) The capital felony was committed for the purpose of avoiding or
2 preventing a lawful arrest or effecting an escape from custody.
- 3 (5) The capital felony was committed while the defendant was engaged, or
4 was an aider or abettor, in the commission of, or an attempt to commit,
5 or flight after committing or attempting to commit, any homicide,
6 robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft
7 piracy or the unlawful throwing, placing, or discharging of a
8 destructive device or bomb.
- 9 (6) The capital felony was committed for pecuniary gain.
- 10 (7) The capital felony was committed to disrupt or hinder the lawful
11 exercise of any governmental function or the enforcement of laws.
- 12 (8) The capital felony was committed against a law-enforcement officer,
13 employee of the Department of Correction, jailer, fireman, judge or
14 justice, former judge or justice, prosecutor or former prosecutor, juror
15 or former juror, or witness or former witness against the defendant,
16 while engaged in the performance of his official duties or because of
17 the exercise of his official duty.
- 18 (9) The capital felony was especially heinous, atrocious, or cruel.
- 19 (10) The defendant knowingly created a great risk of death to more than
20 one person by means of a weapon or device which would normally be
21 hazardous to the lives of more than one person.
- 22 (11) The murder for which the defendant stands convicted was part of a
23 course of conduct in which the defendant engaged and which included
24 the commission by the defendant of other crimes of violence against
25 another person or persons.
- 26 (f) Mitigating Circumstances. – Mitigating circumstances which may be
27 considered shall include, but not be limited to, the following:
 - 28 (1) The defendant has no significant history of prior criminal activity.
 - 29 (2) The capital felony was committed while the defendant was under the
30 influence of mental or emotional disturbance.
 - 31 (3) The victim was a voluntary participant in the defendant's homicidal
32 conduct or consented to the homicidal act.
 - 33 (4) The defendant was an accomplice in or accessory to the capital felony
34 committed by another person and his participation was relatively
35 minor.
 - 36 (5) The defendant acted under duress or under the domination of another
37 person.
 - 38 (6) The capacity of the defendant to appreciate the criminality of his
39 conduct or to conform his conduct to the requirements of law was
40 impaired.
 - 41 (7) The age of the defendant at the time of the crime.
 - 42 (8) The defendant aided in the apprehension of another capital felon or
43 testified truthfully on behalf of the prosecution in another prosecution
44 of a felony.

1 (9) Any other circumstance arising from the evidence which the jury
2 deems to have mitigating value."

3 Sec. 4. G.S. 15A-2001 reads as rewritten:

4 **"§ 15A-2001. Capital offenses; plea of guilty.**

5 Any person who has been indicted for an offense punishable by death may enter a
6 plea of guilty at any time after his indictment, and the judge of the superior court
7 having jurisdiction may sentence such person to life ~~imprisonment~~imprisonment, life
8 imprisonment without parole, or to death pursuant to the procedures of G.S. 15A-2000.
9 Before sentencing the defendant, the presiding judge shall impanel a jury for the limited
10 purpose of hearing evidence and determining a sentence recommendation as to the
11 appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation
12 in cases where the defendant pleads guilty shall be determined under the same
13 procedure of G.S. 15A-2000 applicable to defendants who have been tried and found
14 guilty by a jury."

15 Sec. 5. G.S. 15A-2002 reads as rewritten:

16 **"§ 15A-2002. Capital offenses; jury verdict and sentence.**

17 If the recommendation of the jury is that the defendant be sentenced to death, the
18 judge shall impose a sentence of death in accordance with the provisions of ~~Chapter 15,~~
19 ~~Article 19~~Article 19 of Chapter 15 of the General Statutes. If the recommendation of
20 the jury is that the defendant be imprisoned for life in the State's prison, the judge shall
21 impose a sentence of imprisonment for life in the State's ~~prison~~prison, unless the
22 defendant was convicted for a capital felony under G.S. 14-17.2. If the
23 recommendation of the jury is that a defendant convicted under G.S. 14-17.2 be
24 imprisoned for life in the State's prison, the judge shall impose a sentence of
25 imprisonment for life without parole."

26 Sec. 6. G.S. 15A-2002, as amended by this act and by Section 29 of Chapter
27 538 of the 1993 Session Laws, reads as rewritten:

28 **"§ 15A-2002. (Effective January 1, 1995) Capital offenses; jury verdict and**
29 **sentence.**

30 If the recommendation of the jury is that the defendant be sentenced to death, the
31 judge shall impose a sentence of death in accordance with the provisions of Article 19
32 of Chapter 15 of the General Statutes. If the recommendation of the jury is that the
33 defendant be imprisoned for life in the State's prison, the judge shall impose a sentence
34 of imprisonment for life in the State's prison, unless the defendant was convicted for a
35 capital felony under G.S. 14-17.2. If the recommendation of the jury is that a defendant
36 convicted under G.S. 14-17.2 be imprisoned for life in the State's prison, the judge shall
37 impose a sentence of imprisonment for life without parole.

38 The judge shall instruct the jury, in words substantially equivalent to those of this
39 section, that a sentence of life imprisonment means a sentence of life with eligibility for
40 parole consideration after ~~25 years~~years, except that a sentence of life imprisonment for
41 a conviction of a capital felony under G.S. 14-17.2 means a sentence of life without any
42 possibility of parole."

1 Sec. 7. Section 6 of this act becomes effective January 1, 1995, and applies
2 to offenses committed on or after that date. The remainder of this act becomes effective
3 July 1, 1994, and applies to offenses committed on or after that date.