

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 647**

Short Title: Prosecutorial Discretion/Capital Sentencing. (Public)

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Sponsors: Senators Rand; Ballance and Cunningham.

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Referred to: Judiciary I.

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March 22, 2001

A BILL TO BE ENTITLED

AN ACT TO INCREASE THE STATE'S DISCRETION IN CAPITAL SENTENCING.

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~~ Unless the State agrees to accept a sentence of life imprisonment pursuant to G.S. 15A-2004, 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 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). 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 **SECTION 2.** G.S. 15A-2001 reads as rewritten:

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

15 ~~Any~~ Subject to the provisions of G.S. 15A-2004, any person who has been indicted  
16 for an offense punishable by death may enter a plea of guilty at any time after his  
17 indictment, and the judge of the superior court having jurisdiction may sentence such  
18 person to life imprisonment or to death pursuant to the procedures of G.S. 15A-2000.  
19 Before sentencing the defendant, the presiding judge shall impanel a jury for the limited  
20 purpose of hearing evidence and determining a sentence recommendation as to the  
21 appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation  
22 in cases where the defendant pleads guilty shall be determined under the same  
23 procedure of G.S. 15A-2000 applicable to defendants who have been tried and found  
24 guilty by a jury."

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

27 **"§ 15A-2004. Prosecutorial discretion to agree to accept a sentence of life**  
28 **imprisonment for a defendant.**

29 (a) Notwithstanding any other provision of Article 100 of Chapter 15A of the  
30 General Statutes, the State may agree to accept a sentence of life imprisonment for a  
31 defendant at any point in the prosecution of a capital case, prior to adjudication by a  
32 jury.

33 (b) If, prior to trial, the State agrees to accept a sentence of life imprisonment if  
34 the defendant is adjudicated guilty, then the trial or hearing upon the defendant's plea of  
35 guilty shall be conducted as a noncapital proceeding, and the court, upon adjudication of  
36 the defendant's guilt of first degree murder, shall impose a sentence of life  
37 imprisonment.

38 (c) Notwithstanding any other provision of Article 100 of Chapter 15A of the  
39 General Statutes, the State may agree to accept a sentence of life imprisonment for a  
40 defendant upon remand of a capital case for resentencing. If the State exercises its  
41 discretion and does agree to accept a sentence of life imprisonment for the defendant,  
42 then the court shall impose a sentence of life imprisonment."

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