

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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HOUSE BILL 1221

Short Title: DA Discretion/Capital Case.

(Public)

Sponsors: Representatives Baddour; Culpepper, Daughtry, McMahan (Primary Sponsors), and Hardaway.

Referred to: Judiciary IV.

April 15, 1999

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY HAS DISCRETION AS TO WHETHER TO SEEK THE DEATH PENALTY FOR A CAPITAL CASE.

The General Assembly of North Carolina enacts:

Section 1. Article 100 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§ 15A-2004. Capital offenses; State has discretion as to whether to seek the death penalty.

(a) The State may try a defendant capitally or noncapitally for first degree murder, even if evidence of an aggravating circumstance exists. If a defendant indicted for first degree murder pleads guilty to the offense, the State may choose not to seek the death penalty, even if evidence of an aggravating circumstance exists. The State may accept a guilty plea from a defendant for first degree murder and agree as part of a plea bargain that the State shall not seek the death penalty for the capital offense, even if evidence of an aggravating circumstance exists.

The State may exercise its discretion to try a defendant noncapitally for first degree murder or to accept a guilty plea and not seek the death penalty at any time during the pretrial proceedings, the trial, or the sentencing hearing.

1 **(b)** If a defendant is convicted of or pleads guilty to first degree murder when the
2 State elects not to seek the death penalty, then the court shall impose a sentence of life
3 imprisonment."

4 Section 2. G.S. 15A-2000(a) reads as rewritten:

5 **"(a)** Separate Proceedings on Issue of Penalty. –

6 (1) ~~Upon~~ Except as provided in G.S. 15A-2004, upon conviction or
7 adjudication of guilt of a defendant of a capital felony, the court shall
8 conduct a separate sentencing proceeding to determine whether the
9 defendant should be sentenced to death or life imprisonment. A capital
10 felony is one which may be punishable by death.

11 (2) The proceeding shall be conducted by the trial judge before the trial jury
12 as soon as practicable after the guilty verdict is returned. If prior to the
13 time that the trial jury begins its deliberations on the issue of penalty,
14 any juror dies, becomes incapacitated or disqualified, or is discharged
15 for any reason, an alternate juror shall become a part of the jury and
16 serve in all respects as those selected on the regular trial panel. An
17 alternate juror shall become a part of the jury in the order in which he
18 was selected. If the trial jury is unable to reconvene for a hearing on the
19 issue of penalty after having determined the guilt of the accused, the
20 trial judge shall impanel a new jury to determine the issue of the
21 punishment. If the defendant pleads guilty, the sentencing proceeding
22 shall be conducted before a jury impaneled for that purpose. A jury
23 selected for the purpose of determining punishment in a capital case
24 shall be selected in the same manner as juries are selected for the trial of
25 capital cases.

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

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

37 Section 3. G.S. 15A-2001 reads as rewritten:

38 **"§ 15A-2001. Capital offenses; plea of guilty.**

39 **(a)** Any person who has been indicted for an offense punishable by death may
40 enter a plea of guilty at any time after his ~~indictment, and the indictment.~~

41 **(b)** If the defendant enters a guilty plea to first degree murder and the State
42 chooses not to seek the death penalty as provided in G.S. 15A-2004, then the judge of the
43 superior court having jurisdiction shall sentence the person to life imprisonment.

1 (c) If the defendant enters a guilty plea to first degree murder and the State
2 chooses to seek the death penalty, then the judge of the superior court having jurisdiction
3 may sentence such person to life imprisonment or to death pursuant to the procedures of
4 G.S. 15A-2000. Before sentencing the ~~defendant~~, defendant in a case in which the State is
5 seeking the death penalty, the presiding judge shall impanel a jury for the limited purpose
6 of hearing evidence and determining a sentence recommendation as to the appropriate
7 sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where
8 the defendant pleads guilty and the State seeks the death penalty shall be determined
9 under the same procedure of G.S. 15A-2000 applicable to defendants who have been
10 tried and found guilty by a jury."

11 Section 4. This act is effective when it becomes law.