

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 180
Judiciary I (Civil) Committee Substitute Adopted 4/11/07

Short Title: Alternate Jurors/Jury Trial Deliberations.

(Public)

Sponsors:

Referred to:

February 15, 2007

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT AN ALTERNATE JUROR MAY REPLACE A
2 JUROR WHO IS UNABLE TO PERFORM THE JUROR'S DUTIES, IS
3 DISQUALIFIED FROM PERFORMING THE JUROR'S DUTIES, OR IS
4 DISCHARGED FOR MISCONDUCT OR OTHER EXTRAORDINARY CAUSE
5 DURING DELIBERATION BY THE JURY ON THE ISSUES.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 9-18(a) reads as rewritten:

9 "(a) Civil Cases. Whenever the presiding judge deems it appropriate, one or more
10 alternate jurors may be selected in the same manner as the regular trial panel of jurors in
11 the case. Each party shall be entitled to two peremptory challenges as to each such
12 alternate juror, in addition to any unexpended challenges the party may have after the
13 selection of the regular trial panel. Alternate jurors shall be sworn and seated near the
14 jury with equal opportunity to see and hear the proceedings and shall attend the trial at
15 all times with the jury and shall obey all orders and admonitions of the court to the jury.
16 When the jurors are ordered kept together in any case, the alternate jurors shall be kept
17 with them. An alternate juror shall receive the same compensation as other jurors and,
18 ~~except as hereinafter provided, shall be discharged upon the final submission of the case~~
19 ~~to the jury. If before that time jurors. If, before final submission of the case to the jury,~~
20 any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an
21 alternate juror shall become a part of the jury and serve in all respects as those selected
22 on the regular trial panel. If, during deliberations, any juror dies, becomes incapacitated
23 or disqualified, or is discharged for misconduct or other extraordinary cause not
24 substantially related to the substance of the jury's deliberations, an alternate juror may
25 become a part of the jury and serve in all respects as those selected on the regular trial
26 panel; however, if an alternate juror replaces a juror after deliberations have begun, the
27 court shall instruct the jury to begin its deliberations anew. If more than one alternate
28 juror has been selected, they shall be available to become a part of the jury in the order
29 in which they were selected."

1 **SECTION 2.** G.S. 15A-1215 reads as rewritten:

2 "**§ 15A-1215. Alternate jurors.**

3 (a) The judge may permit the seating of one or more alternate jurors. Alternate
4 jurors must be sworn and seated near the jury with equal opportunity to see and hear the
5 proceedings. They must attend the trial at all times with the jury, and obey all orders and
6 admonitions of the judge. When the jurors are ordered kept together, the alternate jurors
7 must be kept with them. ~~If before final submission of the case to the jury, any juror dies,~~
8 ~~becomes incapacitated or disqualified, or is discharged for any other reason, an alternate~~
9 ~~juror becomes a juror, in the order in which selected, and serves in all respects as those~~
10 ~~selected on the regular trial panel. Alternate jurors receive the same compensation as~~
11 ~~other jurors and, unless they become jurors, must be discharged upon the final~~
12 ~~submission of the case to the jury.~~ jurors. The court may retain alternate jurors after the
13 jury retires to deliberate. The court shall ensure that a retained alternate juror does not
14 discuss the case with anyone until that alternate juror replaces a juror or is discharged. If
15 any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or
16 other extraordinary cause not substantially related to the substance of the jury's
17 deliberations once the jury has begun its deliberations, an alternate juror may become
18 part of the jury and serve in all respects as those selected on the regular trial panel. If an
19 alternate juror replaces a juror after deliberations have begun, the court shall instruct the
20 jury to begin its deliberations anew.

21 (b) In all criminal actions in which one or more defendants is to be tried for a
22 capital offense, or enter a plea of guilty to a capital offense, the presiding judge shall
23 provide for the selection of at least two alternate jurors, or more as he deems
24 appropriate. The alternate jurors shall be retained during the deliberations of the jury on
25 the issue of guilt or innocence under such restrictions, regulations and instructions as the
26 presiding judge shall direct. In case of sequestration of a jury during deliberations in a
27 capital case, alternates shall be sequestered in the same manner as is the trial jury, but
28 such alternates shall also be sequestered from the trial jury. If any juror dies, becomes
29 incapacitated or disqualified, or is discharged for misconduct or other extraordinary
30 cause not substantially related to the substance of the jury's deliberations once the jury
31 has begun its deliberations, an alternate juror may become part of the jury and serve in
32 all respects as those selected on the regular trial panel. If an alternate juror replaces a
33 juror after deliberations have begun, the court shall instruct the jury to begin its
34 deliberations anew. In no event shall more than 12 jurors participate in the jury's
35 deliberations."

36 **SECTION 2.1.** G.S. 15A-1221(a)(10) reads as rewritten:

37 "(10) The jury must retire to deliberate, and alternate jurors who have not been
38 seated ~~must~~ may be excused as provided in G.S. 15A-1215."

39 **SECTION 3.** G.S. 15A-1340.16(a1) reads as rewritten:

40 "(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. –
41 The defendant may admit to the existence of an aggravating factor, and the factor so
42 admitted shall be treated as though it were found by a jury pursuant to the procedures in
43 this subsection. Admissions of the existence of an aggravating factor must be consistent
44 with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury

1 may determine if an aggravating factor is present in an offense. The jury impaneled for
2 the trial of the felony may, in the same trial, also determine if one or more aggravating
3 factors is present, unless the court determines that the interests of justice require that a
4 separate sentencing proceeding be used to make that determination. If the court
5 determines that a separate proceeding is required, the proceeding shall be conducted by
6 the trial judge before the trial jury as soon as practicable after the guilty verdict is
7 returned. If prior to the time that the trial jury begins its deliberations on the issue of
8 whether one or more aggravating factors exist, any juror dies, becomes incapacitated or
9 disqualified, or is discharged for any reason, an alternate juror shall become a part of the
10 jury and serve in all respects as those selected on the regular trial panel. If any juror
11 dies, becomes incapacitated or disqualified, or is discharged for misconduct or other
12 extraordinary cause not substantially related to the substance of the jury's deliberations
13 once the jury has begun its deliberation on the issue of whether one or more aggravating
14 factors exist, an alternate juror may become a part of the jury and serve in all respects as
15 those selected on the regular trial panel; however, if an alternate juror replaces a juror
16 after deliberations have begun, the court shall instruct the jury to begin its deliberations
17 anew. An alternate juror shall become a part of the jury in the order in which the juror
18 was selected. If the trial jury is unable to reconvene for a hearing on the issue of
19 whether one or more aggravating factors exist after having determined the guilt of the
20 accused, the trial judge shall impanel a new jury to determine the issue. A jury selected
21 to determine whether one or more aggravating factors exist shall be selected in the same
22 manner as juries are selected for the trial of criminal cases."

23 **SECTION 4.** G.S. 15A-2000(a) reads as rewritten:

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

- 25 (1) Except as provided in G.S. 15A-2004, upon conviction or adjudication
26 of guilt of a defendant of a capital felony in which the State has given
27 notice of its intent to seek the death penalty, the court shall conduct a
28 separate sentencing proceeding to determine whether the defendant
29 should be sentenced to death or life imprisonment. A capital felony is
30 one which may be punishable by death.
- 31 (2) The proceeding shall be conducted by the trial judge before the trial
32 jury as soon as practicable after the guilty verdict is returned. If prior
33 to the time that the trial jury begins its deliberations on the issue of
34 penalty, any juror dies, becomes incapacitated or disqualified, or is
35 discharged for any reason, an alternate juror shall become a part of the
36 jury and serve in all respects as those selected on the regular trial
37 panel. If any juror dies, becomes incapacitated or disqualified, or is
38 discharged for misconduct or other extraordinary cause not
39 substantially related to the substance of the jury's deliberations once
40 the jury has begun its deliberation on the issue of penalty, an alternate
41 juror may become a part of the jury and serve in all respects as those
42 selected on the regular trial panel; however, if an alternate juror
43 replaces a juror after deliberations have begun, the court shall instruct
44 the jury to begin its deliberations anew. An alternate juror shall

1 become a part of the jury in the order in which he was selected. If the
2 trial jury is unable to reconvene for a hearing on the issue of penalty
3 after having determined the guilt of the accused, the trial judge shall
4 impanel a new jury to determine the issue of the punishment. If the
5 defendant pleads guilty, the sentencing proceeding shall be conducted
6 before a jury impaneled for that purpose. A jury selected for the
7 purpose of determining punishment in a capital case shall be selected
8 in the same manner as juries are selected for the trial of 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,
14 and may include matters relating to any of the aggravating or
15 mitigating circumstances enumerated in subsections (e) and (f) of this
16 section. Any evidence which the court deems to have probative value
17 may be received.

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

21 **SECTION 5.** G.S. 20-179(a1) reads as rewritten:

22 "(a1) Jury Trial in Superior Court; Jury Procedure if Trial Bifurcated. –

23 (1) Notice. – If the defendant appeals to superior court, and the State
24 intends to use one or more aggravating factors under subsections (c) or
25 (d) of this section, the State must provide the defendant with notice of
26 its intent. The notice shall be provided no later than 10 days prior to
27 trial and shall contain a plain and concise factual statement indicating
28 the factor or factors it intends to use under the authority of subsections
29 (c) and (d) of this section. The notice must list all the aggravating
30 factors that the State seeks to establish.

31 (2) Aggravating factors. – The defendant may admit to the existence of an
32 aggravating factor, and the factor so admitted shall be treated as
33 though it were found by a jury pursuant to the procedures in this
34 section. If the defendant does not so admit, only a jury may determine
35 if an aggravating factor is present. The jury impaneled for the trial
36 may, in the same trial, also determine if one or more aggravating
37 factors is present, unless the court determines that the interests of
38 justice require that a separate sentencing proceeding be used to make
39 that determination. If the court determines that a separate proceeding is
40 required, the proceeding shall be conducted by the trial judge before
41 the trial jury as soon as practicable after the guilty verdict is returned.
42 The State bears the burden of proving beyond a reasonable doubt that
43 an aggravating factor exists, and the offender bears the burden of

1 proving by a preponderance of the evidence that a mitigating factor
2 exists.

- 3 (3) Convening the jury. – If prior to the time that the trial jury begins its
4 deliberations on the issue of whether one or more aggravating factors
5 exist, any juror dies, becomes incapacitated or disqualified, or is
6 discharged for any reason, an alternate juror shall become a part of the
7 jury and serve in all respects as those selected on the regular trial
8 panel. If any juror dies, becomes incapacitated or disqualified, or is
9 discharged for misconduct or other extraordinary cause not
10 substantially related to the substance of the jury's deliberations once
11 the jury has begun its deliberation on the issue of whether one or more
12 aggravating factors exist, an alternate juror may become a part of the
13 jury and serve in all respects as those selected on the regular trial
14 panel; however, if an alternate juror replaces a juror after deliberations
15 have begun, the court shall instruct the jury to begin its deliberations
16 anew. An alternate juror shall become a part of the jury in the order in
17 which the juror was selected. If the trial jury is unable to reconvene for
18 a hearing on the issue of whether one or more aggravating factors exist
19 after having determined the guilt of the accused, the trial judge shall
20 impanel a new jury to determine the issue.

- 21 (4) Jury selection. – A jury selected to determine whether one or more
22 aggravating factors exist shall be selected in the same manner as juries
23 are selected for the trial of criminal cases."

24 **SECTION 6.** G.S. 15A-2005 is amended by adding a new subsection to
25 read:

26 "(f1) The Court may retain alternate jurors after the jury retires to deliberate the
27 issue of mental retardation. The Court shall ensure that any retained alternate juror does
28 not discuss the case with anyone until that alternate replaces a juror or is discharged. If,
29 before final submission of the issue of mental retardation to the jury or during
30 deliberations on that issue, any juror dies, becomes incapacitated or disqualified, or is
31 discharged for misconduct or other extraordinary cause not substantially related to the
32 substance of the jury's deliberations, an alternate juror may become a part of the jury
33 and serve in all respects as those selected on the regular trial panel. If an alternate juror
34 replaces a juror after deliberations have begun, the court shall instruct the jury to begin
35 its deliberations anew."

36 **SECTION 7.** This act becomes effective December 1, 2007, and applies to
37 trials starting on or after that date.