

GENERAL ASSEMBLY OF NORTH CAROLINA
EXTRA SESSION 1994

H

1

HOUSE BILL 112*

Short Title: Death Penalty for Killing Officer.

(Public)

Sponsors: Representatives Gamble, Joye (cosponsors); Flaherty and Spears.

Referred to: Judiciary III.

February 14, 1994

A BILL TO BE ENTITLED

1
2 AN ACT TO ESTABLISH SPECIAL AGGRAVATING CIRCUMSTANCES
3 RELATING TO THE IMPOSITION OF THE DEATH SENTENCE FOR THE
4 FIRST DEGREE MURDER OF A SWORN LAW ENFORCEMENT OFFICER.

5 The General Assembly of North Carolina enacts:

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

7 **"§ 15A-2000. Sentence of death or life imprisonment for capital felonies; further**
8 **proceedings to determine sentence.**

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

10 (1) Upon conviction or adjudication of guilt of a defendant of a capital
11 felony, the court shall conduct a separate sentencing proceeding to
12 determine whether the defendant should be sentenced to death or life
13 imprisonment. A capital felony is one which may be punishable by
14 death.

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

1 of the punishment. If the defendant pleads guilty, the sentencing
2 proceeding shall be conducted before a jury impaneled for that
3 purpose. A jury selected for the purpose of determining punishment in
4 a capital case shall be selected in the same manner as juries are
5 selected for the trial of capital cases.

6 (3) In the proceeding there shall not be any requirement to resubmit
7 evidence presented during the guilt determination phase of the case,
8 unless a new jury is impaneled, but all such evidence is competent for
9 the jury's consideration in passing on punishment. Evidence may be
10 presented as to any matter that the court deems relevant to sentence,
11 and may include matters relating to any of the aggravating or
12 mitigating circumstances enumerated in subsections ~~(e) and (f)~~, ~~(e)~~,
13 (e1), and (f). Any evidence which the court deems to have probative
14 value may be received.

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

18 (b) Sentence Recommendation by the Jury. – Instructions determined by the trial
19 judge to be warranted by the evidence shall be given by the court in its charge to the
20 jury prior to its deliberation in determining sentence. In ~~all~~ cases in which the death
21 penalty may be authorized, except cases involving the first degree murder of a sworn
22 law enforcement officer, the judge shall include in his instructions to the jury that it
23 must consider any aggravating circumstance or circumstances or mitigating
24 circumstance or circumstances from the lists provided in subsections (e) and (f) which
25 may be supported by the evidence, and shall furnish to the jury a written list of issues
26 relating to such aggravating or mitigating circumstance or circumstances. In cases
27 involving the first degree murder of a sworn law enforcement officer, the judge shall
28 include in his instructions to the jury that it must first consider any special aggravating
29 circumstance or circumstances from the list provided in subsection (e1) which may be
30 supported by the evidence, and shall furnish to the jury a written list of issues relating to
31 such special aggravating circumstances.

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

35 (1) Whether any special aggravating circumstance or circumstances as
36 enumerated in subsection (e1) exist, and if no special aggravating
37 circumstance or circumstances exist, whether any sufficient
38 aggravating circumstance or circumstances as enumerated in
39 subsection (e) exist;

40 (2) Whether any sufficient mitigating circumstance or circumstances exist
41 as enumerated in subsection ~~(f)~~, ~~(f)~~ which outweigh the aggravating
42 circumstance or circumstances ~~found~~, ~~exist~~, and ~~enumerated in~~
43 subsection (e); and

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

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

7 If the jury cannot, within a reasonable time, unanimously agree to its sentence
8 recommendation, the judge shall impose a sentence of life imprisonment; provided,
9 however, that the judge shall in no instance impose the death penalty when the jury
10 cannot agree unanimously to its sentence recommendation.

11 (c) Findings in Support of Sentence of Death. – When the jury recommends a
12 sentence of death, the foreman of the jury shall sign a writing on behalf of the jury
13 which writing shall ~~show~~ show the special aggravating circumstance or circumstances
14 found by the jury beyond a reasonable doubt in cases involving the first degree murder
15 of a sworn law enforcement officer, or in any other case:

16 (1) The statutory aggravating circumstance or circumstances which the
17 jury finds beyond a reasonable doubt; ~~and~~

18 (2) That the statutory aggravating circumstance or circumstances found by
19 the jury are sufficiently substantial to call for the imposition of the
20 death penalty; ~~and~~, and

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

23 (d) Review of Judgment and Sentence. –

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

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

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

1 (e) ~~Aggravating Circumstances. — Aggravating~~ Except for the special aggravating
2 circumstances enumerated in subsection (e1), aggravating circumstances which may be
3 considered shall be limited to the following:

- 4 (1) The capital felony was committed by a person lawfully incarcerated.
- 5 (2) The defendant had been previously convicted of another capital felony.
- 6 (3) The defendant had been previously convicted of a felony involving the
7 use or threat of violence to the person.
- 8 (4) The capital felony was committed for the purpose of avoiding or
9 preventing a lawful arrest or effecting an escape from custody.
- 10 (5) The capital felony was committed while the defendant was engaged, or
11 was an aider or abettor, in the commission of, or an attempt to commit,
12 or flight after committing or attempting to commit, any homicide,
13 robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft
14 piracy or the unlawful throwing, placing, or discharging of a
15 destructive device or bomb.
- 16 (6) The capital felony was committed for pecuniary gain.
- 17 (7) The capital felony was committed to disrupt or hinder the lawful
18 exercise of any governmental function or the enforcement of laws.
- 19 (8) The capital felony was committed against a former law-enforcement
20 officer, an employee of the Department of Correction, a jailer, fireman,
21 judge or justice, former judge or justice, prosecutor or former
22 prosecutor, juror or former juror, or witness or former witness against
23 the defendant, while engaged in the performance of his official duties
24 or because of the exercise of his official duty.
- 25 (9) The capital felony was especially heinous, atrocious, or cruel.
- 26 (10) The defendant knowingly created a great risk of death to more than
27 one person by means of a weapon or device which would normally be
28 hazardous to the lives of more than one person.
- 29 (11) The murder for which the defendant stands convicted was part of a
30 course of conduct in which the defendant engaged and which included
31 the commission by the defendant of other crimes of violence against
32 another person or persons.

33 (e1) Special Aggravating Circumstances. — Special aggravating circumstances
34 which shall be considered, and if found to exist, shall require the imposition of the death
35 penalty, include the following:

- 36 (1) The capital felony was first degree murder committed against a sworn
37 law enforcement officer while the officer was performing his or her
38 official duties.
- 39 (2) The capital felony was first degree murder committed against a sworn
40 law enforcement officer because of the exercise of his or her official
41 duty.

42 (f) Mitigating Circumstances. — Mitigating circumstances which may be
43 considered shall include, but not be limited to, the following:

- 44 (1) The defendant has no significant history of prior criminal activity.

- 1 (2) The capital felony was committed while the defendant was under the
2 influence of mental or emotional disturbance.
- 3 (3) The victim was a voluntary participant in the defendant's homicidal
4 conduct or consented to the homicidal act.
- 5 (4) The defendant was an accomplice in or accessory to the capital felony
6 committed by another person and his participation was relatively
7 minor.
- 8 (5) The defendant acted under duress or under the domination of another
9 person.
- 10 (6) The capacity of the defendant to appreciate the criminality of his
11 conduct or to conform his conduct to the requirements of law was
12 impaired.
- 13 (7) The age of the defendant at the time of the crime.
- 14 (8) The defendant aided in the apprehension of another capital felon or
15 testified truthfully on behalf of the prosecution in another prosecution
16 of a felony.
- 17 (9) Any other circumstance arising from the evidence which the jury
18 deems to have mitigating value."
- 19 Sec. 2. This act becomes effective January 1, 1995, and applies to offenses
20 committed on or after that date.