

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1999

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SENATE BILL 1073*

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

Sponsors: Senator Rand.

Referred to: Judiciary I.

April 15, 1999

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) Unless the State seeks a sentence of life imprisonment pursuant to G.S. 15A-2004, upon ~~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

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

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

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

18 Section 2. G.S. 15A-2001 reads as rewritten:

19 "**§ 15A-2001. Capital offenses; plea of guilty.**

20 Subject to provisions of G.S. 15A-2004, any ~~Any~~ person who has been indicted for an
21 offense punishable by death may enter a plea of guilty at any time after his indictment,
22 and the judge of the superior court having jurisdiction may sentence such person to life
23 imprisonment or to death pursuant to the procedures of G.S. 15A-2000. Before
24 sentencing the defendant, the presiding judge shall impanel a jury for the limited purpose
25 of hearing evidence and determining a sentence recommendation as to the appropriate
26 sentence pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where
27 the defendant pleads guilty shall be determined under the same procedure of G.S. 15A-
28 2000 applicable to defendants who have been tried and found guilty by a jury."

29 Section 3. Article 100 of Chapter 15A of the General Statutes is amended by
30 adding a new section to read:

31 "**§ 15A-2004. Prosecutorial discretion to seek life imprisonment.**

32 Notwithstanding any other provision of Article 100 of Chapter 15A of the General
33 Statutes, the State shall have the discretion at any point in the prosecution to seek a
34 sentence of life imprisonment, notwithstanding the availability of evidence which would
35 support submission to the jury of one or more aggravating circumstances listed in G.S.
36 15A-2000(e).

37 If the State elects to seek a sentence of life imprisonment prior to trial, the trial or
38 hearing upon the defendant's plea of guilty shall be conducted as a noncapital proceeding,
39 and the court, upon adjudication of the defendant's guilt of first degree murder, shall
40 impose a sentence of life imprisonment.

41 If the State elects to seek a sentence of life imprisonment following an adjudication of
42 guilt or upon remand of the case for capital resentencing, the court shall impose a
43 sentence of life imprisonment."

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