

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001

H

1

HOUSE BILL 1117

Short Title: D A Discretion.

(Public)

---

Sponsors: Representatives Baddour; Hackney, Sutton, and C. Wilson.

---

Referred to: Judiciary II.

---

April 12, 2001

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT THE DISTRICT ATTORNEY HAS DISCRETION AS  
2 TO WHETHER TO SEEK THE DEATH PENALTY FOR A CAPITAL  
3 CASE.  
4

5 The General Assembly of North Carolina enacts:

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

8 "**§ 15A-2004. Capital offenses: State has discretion as to whether to seek the death**  
9 **penalty.**

10 (a) The State may try a defendant capitally or noncapitally for first degree  
11 murder, even if evidence of an aggravating circumstance exists. If a defendant indicted  
12 for first degree murder pleads guilty to the offense, the State may choose not to seek the  
13 death penalty, even if evidence of an aggravating circumstance exists. The State may  
14 agree to accept a sentence of life imprisonment for a defendant at any point in the  
15 prosecution of a capital case, prior to adjudication by a jury.

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

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

26 **SECTION 2.** G.S. 15A-2000(a) reads as rewritten:

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

- 1           (1) ~~Upon~~ Except as provided in G.S. 15A-2004, upon conviction or  
2 adjudication of guilt of a defendant of a capital felony, the court shall  
3 conduct a separate sentencing proceeding to determine whether the  
4 defendant should be sentenced to death or life imprisonment. A capital  
5 felony is one which may be punishable by death.
- 6           (2) The proceeding shall be conducted by the trial judge before the trial  
7 jury as soon as practicable after the guilty verdict is returned. If prior  
8 to the time that the trial jury begins its deliberations on the issue of  
9 penalty, any juror dies, becomes incapacitated or disqualified, or is  
10 discharged for any reason, an alternate juror shall become a part of the  
11 jury and serve in all respects as those selected on the regular trial  
12 panel. An alternate juror shall become a part of the jury in the order in  
13 which he was selected. If the trial jury is unable to reconvene for a  
14 hearing on the issue of penalty after having determined the guilt of the  
15 accused, the trial judge shall impanel a new jury to determine the issue  
16 of the punishment. If the defendant pleads guilty, the sentencing  
17 proceeding shall be conducted before a jury impaneled for that  
18 purpose. A jury selected for the purpose of determining punishment in  
19 a capital case shall be selected in the same manner as juries are  
20 selected for the trial of capital cases.
- 21           (3) In the proceeding there shall not be any requirement to resubmit  
22 evidence presented during the guilt determination phase of the case,  
23 unless a new jury is impaneled, but all such evidence is competent for  
24 the jury's consideration in passing on punishment. Evidence may be  
25 presented as to any matter that the court deems relevant to sentence,  
26 and may include matters relating to any of the aggravating or  
27 mitigating circumstances enumerated in subsections (e) and (f). Any  
28 evidence which the court deems to have probative value may be  
29 received.
- 30           (4) The State and the defendant or his counsel shall be permitted to  
31 present argument for or against sentence of death. The defendant or  
32 defendant's counsel shall have the right to the last argument."

33           **SECTION 3.** G.S. 15A-2001 reads as rewritten:

34           **"§ 15A-2001. Capital offenses; plea of guilty.**

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

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

40           (c) If the defendant enters a guilty plea to first degree murder and the State  
41 chooses to seek the death penalty, then the judge of the superior court having  
42 jurisdiction may sentence such person to life imprisonment or to death pursuant to the  
43 procedures of G.S. 15A-2000. Before sentencing the ~~defendant,~~ defendant in a case in  
44 which the State is seeking the death penalty, the presiding judge shall impanel a jury for

1 the limited purpose of hearing evidence and determining a sentence recommendation as  
2 to the appropriate sentence pursuant to G.S. 15A-2000. The jury's sentence  
3 recommendation in cases where the defendant pleads guilty and the State seeks the  
4 death penalty shall be determined under the same procedure of G.S. 15A-2000  
5 applicable to defendants who have been tried and found guilty by a jury."

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