

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH10121-LH-232 (4/10)

Short Title: Streamlined & Cost Effective Capital Case Act.

(Public)

Sponsors: Representative Bryant.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO STREAMLINE AND MAKE MORE COST EFFECTIVE THE
DETERMINATION OF WHETHER A FIRST DEGREE MURDER CASE MAY
BE TRIED AS A CAPITAL CASE.

Whereas, between July 2, 2001, and July 1, 2005, the State of North Carolina averaged more than 500 potential capital cases annually; and

Whereas, during that time, according to the Office of Indigent Defense Services, fewer than 1% of those cases resulted in the imposition of the death penalty, 14% resulted in the dismissal of all charges, and 3% resulted in not-guilty verdicts by juries; and

Whereas, the large number of potential capital cases annually costs the State of North Carolina tens of millions of dollars for prosecution and defense services and court costs in excess of the cost of handling those cases as noncapital; and

Whereas, a narrowed definition of aggravating circumstances would continue to permit prosecutors to pursue death penalties for the most culpable defendants and the worst crimes; Now, therefore,

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-2000(e) reads as rewritten:

"(e) Aggravating Circumstances. – Aggravating circumstances which may be considered shall be limited to the following:

(1) ~~The capital felony was committed by a person lawfully incarcerated.~~

(2) ~~The defendant had been previously convicted of another capital felony or had been previously adjudicated delinquent in a juvenile proceeding for committing an offense that would be a capital felony if committed by an adult.~~

(3) ~~The defendant had been previously convicted of a felony involving the use or threat of violence to the person or had been previously~~

1 adjudicated delinquent in a juvenile proceeding for committing an
2 offense that would be a Class A, B1, B2, C, D, or E felony involving
3 the use or threat of violence to the person if the offense had been
4 committed by an adult.

5 (4) ~~The capital felony was committed for the purpose of avoiding or~~
6 ~~preventing a lawful arrest or effecting an escape from custody.~~

7 (5) ~~The capital felony was committed while the defendant was engaged, or~~
8 ~~was an aider or abettor, in the commission of, or an attempt to commit,~~
9 ~~or flight after committing or attempting to commit, any homicide,~~
10 ~~robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft~~
11 ~~piracy or the unlawful throwing, placing, or discharging of a~~
12 ~~destructive device or bomb.~~

13 (6) ~~The capital felony was committed for pecuniary gain.~~

14 (7) ~~The capital felony was committed to disrupt or hinder the lawful~~
15 ~~exercise of any governmental function or the enforcement of laws.~~

16 (8) ~~The capital felony was committed against a law enforcement officer,~~
17 ~~employee of the Department of Correction, jailer, fireman, judge or~~
18 ~~justice, former judge or justice, prosecutor or former prosecutor, juror~~
19 ~~or former juror, or witness or former witness against the defendant,~~
20 ~~while engaged in the performance of his official duties or because of~~
21 ~~the exercise of his official duty.~~

22 (9) ~~The capital felony was especially heinous, atrocious, or cruel.~~

23 (10) ~~The defendant knowingly created a great risk of death to more than~~
24 ~~one person by means of a weapon or device which would normally be~~
25 ~~hazardous to the lives of more than one person.~~

26 (11) ~~The murder for which the defendant stands convicted was part of a~~
27 ~~course of conduct in which the defendant engaged and which included~~
28 ~~the commission by the defendant of other crimes of violence against~~
29 ~~another person or persons.~~

30 (12) The defendant had been previously convicted of another capital felony.

31 (13) The capital felony was intentionally committed while the defendant
32 was engaged in the commission of, or an attempt to commit, or flight
33 after committing or attempting to commit a Class A, B1, B2, or C
34 felony.

35 (14) The capital felony was committed in the commission of or attempted
36 commission of an act of political terrorism. An act of political
37 terrorism means an act committed by the defendant for the purpose of
38 attacking the government of the United States or any political
39 subdivision therein.

40 (15) The capital felony was a murder for hire.

41 (16) The capital felony was knowingly and intentionally committed against
42 a law enforcement officer, employee of the Department of Correction,
43 jailer, firefighter, judge or justice, former judge or justice, prosecutor
44 or former prosecutor, juror or former juror, or witness or former

1 witness against the defendant, while engaged in the performance of his
2 official duties or because of the exercise of his official duties.

3 (17) The defendant intentionally tortured the victim, for a prolonged period
4 of time and in a gratuitous and depraved manner, during or
5 immediately prior to the murder. 'Torture' means the infliction of
6 extreme physical pain against a victim who the defendant knew was
7 conscious. 'Gratuitous and depraved manner' means that the defendant
8 inflicted pain in addition to that which necessarily accompanied the act
9 of killing itself or the particular method of killing was chosen by the
10 defendant for the purpose of inflicting such pain.

11 (18) The murder for which the defendant stands convicted was part of a
12 course of conduct in which the defendant intentionally killed or
13 inflicted serious bodily injury upon more than one person."

14 **SECTION 2.** G.S. 15A-2004 is amended by adding the following
15 subsection:

16 "(e) On or before the date of the pretrial conference in capital cases required by
17 Rule 24 of the General Rules of Practice for the Superior District Courts, the superior
18 court shall conduct a hearing to determine whether there is substantial evidence of the
19 defendant's guilt of first degree murder and substantial evidence to support one of the
20 aggravating circumstances listed in G.S. 15A-2000(e). Notwithstanding any other
21 provision of Chapter 15A of the General Statutes, if the court does not find substantial
22 evidence that the defendant committed first degree murder, or if the court does not find
23 substantial evidence of an aggravating circumstance, it shall declare the case
24 noncapital."

25 **SECTION 3.** Article 100 of Chapter 15A of the General Statutes is amended
26 by adding a new section to read:

27 "**§ 15A-2007. No execution of person sentenced to death prior to December 1,**
28 **2007, except in certain circumstances.**

29 No person sentenced to death prior to December 1, 2007, shall be executed unless
30 the jury that imposed the death sentence found no aggravating factors other than those
31 set forth in G.S. 15A-2000(e), as enacted on December 1, 2007."

32 **SECTION 4.** This act becomes effective December 1, 2007.