

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007**

**S**

**1**

**SENATE BILL 180**

Short Title: Alternate Jurors/Jury Trial Deliberations. (Public)

---

Sponsors: Senators Rand; Brown, Goodall, and Preston.

---

Referred to: Judiciary 1 (Civil).

---

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

37       "(a1) Jury to Determine Aggravating Factors; Jury Procedure if Trial Bifurcated. –  
38 The defendant may admit to the existence of an aggravating factor, and the factor so  
39 admitted shall be treated as though it were found by a jury pursuant to the procedures in  
40 this subsection. Admissions of the existence of an aggravating factor must be consistent  
41 with the provisions of G.S. 15A-1022.1. If the defendant does not so admit, only a jury  
42 may determine if an aggravating factor is present in an offense. The jury impaneled for  
43 the trial of the felony may, in the same trial, also determine if one or more aggravating  
44 factors is present, unless the court determines that the interests of justice require that a

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

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

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

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

1 impanel a new jury to determine the issue of the punishment. If the  
2 defendant pleads guilty, the sentencing proceeding shall be conducted  
3 before a jury impaneled for that purpose. A jury selected for the  
4 purpose of determining punishment in a capital case shall be selected  
5 in the same manner as juries are 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) of this  
13 section. Any evidence which the court deems to have probative value  
14 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 **SECTION 5.** G.S. 20-179(a1) reads as rewritten:

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

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

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

43 (3) Convening the jury. – If prior to the time that the trial jury begins its  
44 deliberations on the issue of whether one or more aggravating factors

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

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

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

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

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