

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2001**

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**SENATE BILL 647  
Judiciary I Committee Substitute Adopted 4/25/01**

Short Title: Prosecutorial Discretion/Capital Sentencing.

(Public)

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Sponsors:

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Referred to:

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March 22, 2001

A BILL TO BE ENTITLED

1 AN ACT TO INCREASE THE STATE'S DISCRETION IN CAPITAL  
2 SENTENCING.  
3

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** G.S. 15A-2000(a) reads as rewritten:

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

7 (1) Upon conviction or adjudication of guilt of a defendant of a capital  
8 ~~felony~~, felony in which the State has given notice of its intent to seek  
9 the death penalty, the court shall conduct a separate sentencing  
10 proceeding to determine whether the defendant should be sentenced to  
11 death or life imprisonment. A capital felony is one which may be  
12 punishable by death.

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

28 (3) In the proceeding there shall not be any requirement to resubmit  
29 evidence presented during the guilt determination phase of the case,

1 unless a new jury is impaneled, but all such evidence is competent for  
2 the jury's consideration in passing on punishment. Evidence may be  
3 presented as to any matter that the court deems relevant to sentence,  
4 and may include matters relating to any of the aggravating or  
5 mitigating circumstances enumerated in subsections (e) and (f). Any  
6 evidence which the court deems to have probative value may be  
7 received.

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

11 **SECTION 2.** G.S. 15A-2001 reads as rewritten:

12 **"§ 15A-2001. Capital offenses; plea of guilty.**

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

15 (b) If the defendant enters a guilty plea to first degree murder and the State has  
16 not given notice of intent to seek the death penalty as provided in G.S. 15A-2004 or the  
17 State has agreed to accept sentence of life imprisonment where it initially gave notice of  
18 intent to seek the death penalty, then the court shall sentence the person to life  
19 imprisonment. The defendant may plead guilty to first degree murder and the State may  
20 agree to accept a sentence of life imprisonment, even if evidence of an aggravating  
21 circumstance exists.

22 (c) If the defendant enters a guilty plea to first degree murder and the State has  
23 given notice of its intent to seek the death penalty, then the judge of the superior court  
24 having jurisdiction may sentence such person-the defendant to life imprisonment or to  
25 death pursuant to the procedures of G.S. 15A-2000. Before sentencing the defendant,  
26 defendant in a case in which the State has given notice of its intent to seek the death  
27 penalty, the presiding judge shall impanel a jury for the limited purpose of hearing  
28 evidence and determining a sentence recommendation as to the appropriate sentence  
29 pursuant to G.S. 15A-2000. The jury's sentence recommendation in cases where the  
30 defendant pleads guilty and the State has given notice of its intent to seek the death  
31 penalty shall be determined under the same procedure of G.S. 15A-2000 applicable to  
32 defendants who have been tried and found guilty by a jury."

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

35 **"§ 15A-2004. Prosecutorial discretion; notice of intent to seek the death penalty.**

36 (a) The State, in its discretion, may elect to try a defendant capitally or  
37 noncapitally for first degree murder, even if evidence of an aggravating circumstance  
38 exists.

39 (b) A sentence of death may not be imposed upon a defendant convicted of a  
40 capital felony unless the State has given notice of its intent to seek the death penalty.  
41 Notice of intent to seek the death penalty shall be given to the defendant and filed with  
42 the court on or before the date of the pretrial conference in capital cases required by

1 Rule 24 of the General Rules of Practice for the Superior and District Courts, or the  
2 arraignment, whichever is later.

3 (c) If the State has not given notice of its intent to seek the death penalty prior to  
4 trial, the trial shall be conducted as a noncapital proceeding, and the court, upon  
5 adjudication of the defendant's guilt of first degree murder, shall impose a sentence of  
6 life imprisonment.

7 (d) Notwithstanding any other provision of Article 100 of Chapter 15A of the  
8 General Statutes, the State may agree to accept a sentence of life imprisonment for a  
9 defendant at any point in the prosecution of a capital felony, even if evidence of an  
10 aggravating circumstance exists.

11 (e) If, prior to trial, the State agrees to accept a sentence of life imprisonment if  
12 the defendant is adjudicated guilty, then the trial or hearing upon the defendant's plea of  
13 guilty shall be conducted as a noncapital proceeding, and the court, upon adjudication of  
14 the defendant's guilt of first degree murder, shall impose a sentence of life  
15 imprisonment.

16 (f) Notwithstanding any other provision of Article 100 of Chapter 15A of the  
17 General Statutes, the State may agree to accept a sentence of life imprisonment for a  
18 defendant upon remand of a capital case for resentencing or upon an order of  
19 resentencing by a court in a State or federal postconviction proceeding. If the State  
20 exercises its discretion and does agree to accept a sentence of life imprisonment for the  
21 defendant, then the court shall impose a sentence of life imprisonment."

22 **SECTION 4.** This act becomes effective July 1, 2001, and applies to  
23 pending and future cases, except that the provisions of this act regarding the State's  
24 notice of intent to seek the death penalty do not apply to defendants indicted in capital  
25 cases before the effective date of this act.