

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 635
Judiciary II Committee Substitute Adopted 6/2/11
House Committee Substitute Favorable 7/2/12

Short Title: Minors/Sentencing for 1st Degree Murder.

(Public)

Sponsors:

Referred to:

April 19, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO AMEND THE STATE SENTENCING LAWS TO COMPLY WITH THE
3 UNITED STATES SUPREME COURT DECISION IN MILLER V. ALABAMA.

4 The General Assembly of North Carolina enacts:

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

7 "Article 93.

8 "Sentencing for Minors Subject to Life Imprisonment Without Parole.

9 "**§ 15A-1476. Applicability.**

10 Notwithstanding the provisions of G.S. 14-17, a defendant who is convicted of first degree
11 murder, and who was under the age of 18 at the time of the offense, shall be sentenced in
12 accordance with this Article. For the purposes of this Article, "life imprisonment with parole"
13 shall mean that the defendant shall serve a minimum of 25 years imprisonment prior to
14 becoming eligible for parole.

15 "**§ 15A-1477. Penalty determination.**

16 (a) In determining a sentence under this Article, the court shall do one of the following:

17 (1) If the sole basis for conviction of a count or each count of first degree
18 murder was the felony murder rule, then the court shall sentence the
19 defendant to life imprisonment with parole.

20 (2) If the court does not sentence the defendant pursuant to subdivision (1) of
21 this subsection, then the court shall conduct a hearing to determine whether
22 the defendant should be sentenced to life imprisonment without parole, as set
23 forth in G.S. 14-17, or a lesser sentence of life imprisonment with parole.

24 (b) The hearing under subdivision (2) of subsection (a) of this section shall be
25 conducted by the trial judge as soon as practicable after the guilty verdict is returned. The State
26 and the defendant shall not be required to resubmit evidence presented during the guilt
27 determination phase of the case. Evidence, including evidence in rebuttal, may be presented as
28 to any matter that the court deems relevant to sentencing, and any evidence which the court
29 deems to have probative value may be received.

30 (c) The defendant or the defendant's counsel may submit mitigating circumstances to
31 the court, including, but not limited to, the following factors:

32 (1) Age at the time of the offense.

33 (2) Immaturity.

34 (3) Ability to appreciate the risks and consequences of the conduct.

35 (4) Intellectual capacity.



1 (5) Prior record.

2 (6) Mental health.

3 (7) Familial or peer pressure exerted upon the defendant.

4 (8) Likelihood that the defendant would benefit from rehabilitation in
5 confinement.

6 (9) Any other mitigating factor or circumstance.

7 (d) The State and the defendant or the defendant's counsel shall be permitted to present
8 argument for or against the sentence of life imprisonment with parole. The defendant or the
9 defendant's counsel shall have the right to the last argument.

10 (e) The provisions of Article 58 of Chapter 15A of the General Statutes apply to
11 proceedings under this Article.

12 **"§ 15A-1478. Sentencing; assignment for resentencing.**

13 (a) The court shall consider any mitigating factors in determining whether, based upon
14 all the circumstances of the offense and the particular circumstances of the defendant, the
15 defendant should be sentenced to life imprisonment with parole instead of life imprisonment
16 without parole. The order adjudging the sentence shall include findings on the absence or
17 presence of any mitigating factors and such other findings as the court deems appropriate to
18 include in the order.

19 (b) All motions for appropriate relief filed in superior court seeking resentencing under
20 the provisions of this Article may be heard and determined in the trial division by any judge (i)
21 who is empowered to act in criminal matters in the superior court district or set of districts as
22 defined in G.S. 7A-41.1, in which the judgment was entered and (ii) who is assigned pursuant
23 to this section to review the motion for appropriate relief and take the appropriate
24 administrative action to dispense with the motion.

25 (c) The judge who presided at the trial of the defendant is empowered to act upon the
26 motion for appropriate relief even though the judge is in another district or even though the
27 judge's commission has expired; however, if the judge who presided at the trial is still
28 unavailable to act, the senior resident superior court judge shall assign a judge who is
29 empowered to act under subsection (b) of this section.

30 (d) All motions for appropriate relief filed in superior court seeking resentencing under
31 the provisions of this Article shall, when filed, be referred to the senior resident superior court
32 judge, who shall assign the motion as provided by this section for review and administrative
33 action, including, as may be appropriate, dismissal, calendaring for hearing, entry of a
34 scheduling order for subsequent events in the case, or other appropriate actions.

35 **"§ 15A-1479. Incidents of parole.**

36 (a) Except as otherwise provided in this section, a defendant sentenced to life
37 imprisonment with parole shall be subject to the conditions and procedures set forth in Article
38 85 of Chapter 15A of the General Statutes, including the notification requirement in
39 G.S. 15A-1371(b)(3).

40 (b) The term of parole for a person released from imprisonment from a sentence of life
41 imprisonment with parole shall be five years and may not be terminated earlier by the
42 Post-Release Supervision and Parole Commission.

43 (c) A defendant sentenced to life imprisonment with parole who is paroled, and then
44 violates a condition of parole and is returned to prison to serve the life sentence, shall not be
45 eligible for parole for five years from the date of the return to confinement.

46 (d) Life imprisonment with parole under this Article means that unless the defendant
47 receives parole, the defendant shall remain imprisoned for the defendant's natural life."

48 **SECTION 2.** The North Carolina Sentencing and Policy Advisory Commission, in
49 consultation with the Office of the Juvenile Defender, the Conference of District Attorneys, and
50 other organizations and agencies it deems appropriate, shall study the provisions in this act,
51 United States Supreme Court precedent relevant to sentencing a minor for first degree murder,

1 sentencing policies in other jurisdictions, and any other matter relating to the sentencing of
2 minors convicted of first degree murder. The Commission shall report its findings and
3 recommendations to the General Assembly no later than January 31, 2013.

4 **SECTION 3.** This act is effective when it becomes law and is applicable to any
5 sentencing hearings held on or after that date. This act also applies to any resentencing
6 hearings required by law for a defendant who was under the age of 18 years at the time of the
7 offense, was sentenced to life imprisonment without parole prior to the effective date of this
8 act, and for whom a resentencing hearing has been ordered.