

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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HOUSE DRH70207-RK-22A (01/31)

Short Title: Capital Murder Statute.

(Public)

Sponsors: Representative Earle.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO CREATE A CAPITAL MURDER STATUTE, TO AMEND THE  
HOMICIDE STATUTES, AND TO AMEND THE CAPITAL SENTENCING  
LAWS AS RECOMMENDED BY THE HOUSE INTERIM STUDY COMMITTEE  
ON CAPITAL PUNISHMENT.

The General Assembly of North Carolina enacts:

**SECTION 1.** G.S. 14-17 is repealed.

**SECTION 2.** Article 6 of Chapter 14 of the General Statutes is amended by  
adding a new section to read:

**"§ 14-17.2 Capital murder; punishment.**

(a) The following offenses shall constitute capital murder:

- (1) The willful, deliberate, and premeditated killing of any person for pecuniary benefit, or in the commission of a kidnapping, when the kidnapping was committed with the intent to extort money for a pecuniary benefit.
- (2) The willful, deliberate, and premeditated killing of any person by another for hire.
- (3) The willful, deliberate, and premeditated killing of any person by a person in the custody of a law enforcement officer, the Department of Correction, the Department of Juvenile Justice and Delinquency Prevention, or any local confinement facility as defined in G.S. 153A-217 or G.S. 153A-230.1, or while in the custody of an employee thereof.
- (4) The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery.
- (5) The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, an offense in violation of Article 7A

- 1                   of Chapter 14 of the General Statutes, or in attempting to commit such  
2                   offense.
- 3           (6)       The willful, deliberate, and premeditated killing of a State or local law  
4                   enforcement officer, or any law enforcement officer of another state or  
5                   the United States, employee of the Department of Correction, jailer,  
6                   fireman, judge or justice, former judge or justice, prosecutor or former  
7                   prosecutor, juror or former juror, or witness or former witness against  
8                   the defendant, while engaged in the performance of his or her official  
9                   duties or because of the exercise of his or her official duties.
- 10           (7)       The willful, deliberate, and premeditated killing of more than one  
11                   person as a part of the same act or transaction or more than one person  
12                   within a three-year period.
- 13           (8)       The willful, deliberate, and premeditated killing of any person in the  
14                   commission of, or attempted commission of, the trafficking of a  
15                   controlled substance, in violation of Chapter 90 of the General  
16                   Statutes, when such killing is for the purpose of furthering the  
17                   commission, or attempted commission, of such offense.
- 18           (9)       The willful, deliberate, and premeditated killing of any person by  
19                   another pursuant to the direction or order of one who is engaged in a  
20                   continuing criminal enterprise, as defined in G.S. 90-95.1.
- 21           (10)       The willful, deliberate, and premeditated killing of a pregnant woman  
22                   by one who knows that the woman is pregnant and has the intent to  
23                   cause the involuntary termination of the woman's pregnancy without a  
24                   live birth.
- 25           (11)       The willful, deliberate, and premeditated killing of a person under the  
26                   age of 14 by a person age 21 or older.
- 27           (12)       The willful, deliberate, and premeditated killing of any person by  
28                   another in the commission of, or attempted commission of, an act of  
29                   terrorism as defined in 18 U.S.C. § 2331(5).
- 30           (13)       The willful, deliberate, and premeditated killing of any person  
31                   committed by a person who had been previously convicted of another  
32                   capital felony or had been previously adjudicated delinquent in a  
33                   juvenile proceeding for committing an offense that would be a capital  
34                   felony if committed by an adult.
- 35           (14)       The willful, deliberate, and premeditated killing of any person  
36                   committed by a person who had been previously convicted of a felony  
37                   involving the use or threat of violence to the person or had been  
38                   previously adjudicated delinquent in a juvenile proceeding for  
39                   committing an offense that would be a Class A, B1, B2, C, D, or E  
40                   felony involving the use or threat of violence to the person if the  
41                   offense had been committed by an adult.
- 42           (15)       The willful, deliberate, and premeditated killing of any person where  
43                   the murder is especially heinous, atrocious, or cruel.

1           (16) The willful, deliberate, and premeditated killing of any person where  
2           the defendant knowingly created a great risk of death to more than one  
3           person by means of a weapon or device which would normally be  
4           hazardous to the lives of more than one person.

5           (17) The willful, deliberate, and premeditated killing of any person where  
6           the murder for which the defendant stands convicted was part of a  
7           course of conduct in which the defendant engaged and which included  
8           the commission by the defendant of other crimes of violence against  
9           another person or persons.

10          (b) An offense under this section shall be deemed to be a Class A felony, and any  
11          person who commits capital murder shall be punished with death or imprisonment in the  
12          State's prison for life without parole, as the court shall determine pursuant to  
13          G.S. 15A-2000, except as provided in subsection (c) of this section.

14          (c) Any person who commits an offense in violation of this section who was  
15          under 18 years of age at the time of the capital murder shall be punished with  
16          imprisonment in the State's prison for life without parole."

17          **SECTION 3.** Article 6 of Chapter 14 of the General Statutes is amended by  
18          adding a new section to read:

19          "**§ 14-17.3. First degree murder; punishment.**

20          (a) Murder, other than capital murder, by means of a nuclear, biological, or  
21          chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in  
22          wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and  
23          premeditated killing, or which shall be committed in the perpetration or attempted  
24          perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other  
25          felony committed or attempted with the use of a deadly weapon, except as provided in  
26          G.S. 14-17.2, shall be deemed murder in the first degree.

27          (b) An offense under this section shall be a Class A felony, and any person who  
28          commits first degree murder shall be punished with imprisonment in the State's prison  
29          for life without parole."

30          **SECTION 4.** Article 6 of Chapter 14 of the General Statutes is amended by  
31          adding a new section to read:

32          "**§ 14-17.4. Second degree murder; punishment.**

33          Any murder other than capital murder or first degree murder, including that which  
34          shall be proximately caused by the unlawful distribution of opium or any synthetic or  
35          natural salt, compound, derivative, or preparation of opium, or cocaine or other  
36          substance described in G.S. 90-90(1)d., or methamphetamine, when the ingestion of  
37          such substance causes the death of the user, shall be deemed murder in the second  
38          degree, and any person who commits such murder shall be punished as a Class B2  
39          felon."

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

41          "(e) Aggravating Circumstances. – Aggravating circumstances which may be  
42          considered shall be limited to the following: factors enumerated in this subsection. The  
43          penalty of death shall not be imposed unless the State shall prove beyond a reasonable  
44          doubt at least one of the following:

- 1           (1)    There is a probability based upon evidence of the prior history of the  
2           defendant or of the circumstances surrounding the commission of the  
3           offense of which he is accused that he would commit criminal acts of  
4           violence that would constitute a continuing serious threat to society.  
5           (2)    The defendant's conduct in committing the offense was outrageously  
6           or wantonly vile, horrible, or inhuman, in that it involved torture,  
7           depravity of mind, or aggravated battery to the victim.  
8           ~~(1)    The capital felony was committed by a person lawfully incarcerated.~~  
9           ~~(2)    The defendant had been previously convicted of another capital felony~~  
10          ~~or had been previously adjudicated delinquent in a juvenile proceeding~~  
11          ~~for committing an offense that would be a capital felony if committed~~  
12          ~~by an adult.~~  
13          ~~(3)    The defendant had been previously convicted of a felony involving the~~  
14          ~~use or threat of violence to the person or had been previously~~  
15          ~~adjudicated delinquent in a juvenile proceeding for committing an~~  
16          ~~offense that would be a Class A, B1, B2, C, D, or E felony involving~~  
17          ~~the use or threat of violence to the person if the offense had been~~  
18          ~~committed by an adult.~~  
19          ~~(4)    The capital felony was committed for the purpose of avoiding or~~  
20          ~~preventing a lawful arrest or effecting an escape from custody.~~  
21          ~~(5)    The capital felony was committed while the defendant was engaged, or~~  
22          ~~was an aider or abettor, in the commission of, or an attempt to commit,~~  
23          ~~or flight after committing or attempting to commit, any homicide,~~  
24          ~~robbery, rape or a sex offense, arson, burglary, kidnapping, or aircraft~~  
25          ~~piracy or the unlawful throwing, placing, or discharging of a~~  
26          ~~destructive device or bomb.~~  
27          ~~(6)    The capital felony was committed for pecuniary gain.~~  
28          ~~(7)    The capital felony was committed to disrupt or hinder the lawful~~  
29          ~~exercise of any governmental function or the enforcement of laws.~~  
30          ~~(8)    The capital felony was committed against a law enforcement officer,~~  
31          ~~employee of the Department of Correction, jailer, fireman, judge or~~  
32          ~~justice, former judge or justice, prosecutor or former prosecutor, juror~~  
33          ~~or former juror, or witness or former witness against the defendant,~~  
34          ~~while engaged in the performance of his official duties or because of~~  
35          ~~the exercise of his official duty.~~  
36          ~~(9)    The capital felony was especially heinous, atrocious, or cruel.~~  
37          ~~(10)   The defendant knowingly created a great risk of death to more than~~  
38          ~~one person by means of a weapon or device which would normally be~~  
39          ~~hazardous to the lives of more than one person.~~  
40          ~~(11)   The murder for which the defendant stands convicted was part of a~~  
41          ~~course of conduct in which the defendant engaged and which included~~  
42          ~~the commission by the defendant of other crimes of violence against~~  
43          ~~another person or persons."~~

44       **SECTION 6.** G.S. 15A-2005(h) reads as rewritten:

1       "(h) The provisions of this section do not preclude the sentencing of a mentally  
2 retarded offender to any other sentence authorized by ~~G.S. 14-17-14-17.2~~ for the crime  
3 of ~~murder in the first degree~~. capital murder."

4               **SECTION 7.** This act becomes effective December 1, 2007, and applies to  
5 offenses committed on or after that date. Prosecutions for offenses committed before  
6 the effective date of this act are not abated or affected by this act, and the statutes that  
7 would be applicable but for this act remain applicable to those prosecutions. If any  
8 provision of this act or its application is held invalid, the invalidity does not affect other  
9 provisions or applications of this act that can be given effect without the invalid  
10 provisions or application, and to this end the provisions of this act are severable.