

## SUBCHAPTER III. OFFENSES AGAINST THE PERSON.

### Article 6.

#### Homicide.

#### § 14-17. Murder in the first and second degree defined; punishment.

(a) A murder which shall be perpetrated by means of a nuclear, biological, or chemical weapon of mass destruction as defined in G.S. 14-288.21, poison, lying in wait, imprisonment, starving, torture, or by any other kind of willful, deliberate, and premeditated killing, or which shall be committed in the perpetration or attempted perpetration of any arson, rape or a sex offense, robbery, kidnapping, burglary, or other felony committed or attempted with the use of a deadly weapon shall be deemed to be murder in the first degree, a Class A felony, and any person who commits such murder shall be punished with death or imprisonment in the State's prison for life without parole as the court shall determine pursuant to G.S. 15A-2000, except that any such person who was under 18 years of age at the time of the murder shall be punished in accordance with Part 2A of Article 81B of Chapter 15A of the General Statutes.

(a1) If a murder was perpetrated with malice as described in subdivision (1) of subsection (b) of this section, and committed against a spouse, former spouse, a person with whom the defendant lives or has lived as if married, a person with whom the defendant is or has been in a dating relationship as defined in G.S. 50B-1(b)(6), or a person with whom the defendant shares a child in common, there shall be a rebuttable presumption that the murder is a "willful, deliberate, and premeditated killing" under subsection (a) of this section and shall be deemed to be murder in the first degree, a Class A felony, if the perpetrator has previously been convicted of one of the following offenses involving the same victim:

- (1) An act of domestic violence as defined in G.S. 50B-1(a).
- (2) A violation of a domestic violence protective order under G.S. 50B-4.1(a), (f), (g), or (g1) or G.S. 14-269.8 when the same victim is the subject of the domestic violence protective order.
- (3) Communicating a threat under G.S. 14-277.1.
- (4) Stalking as defined in G.S. 14-277.3A.
- (5) Cyberstalking as defined in G.S. 14-196.3.
- (6) Domestic criminal trespass as defined in G.S. 14-134.3.

(b) A murder other than described in subsection (a) or (a1) of this section or in G.S. 14-23.2 shall be deemed second degree murder. Any person who commits second degree murder shall be punished as a Class B1 felon, except that a person who commits second degree murder shall be punished as a Class B2 felon in either of the following circumstances:

- (1) The malice necessary to prove second degree murder is based on an inherently dangerous act or omission, done in such a reckless and wanton manner as to manifest a mind utterly without regard for human life and social duty and deliberately bent on mischief.
- (2) The murder is one that was proximately caused by the unlawful distribution of any opium, opiate, or opioid; any synthetic or natural salt, compound, derivative, or preparation of opium, or opiate, or opioid; cocaine or other substance described in G.S. 90-90(1)d.; methamphetamine; or a depressant described in G.S. 90-92(a)(1), and the ingestion of such substance caused the death of the user.

(c) For the purposes of this section, it shall constitute murder where a child is born alive but dies as a result of injuries inflicted prior to the child being born alive. The degree of murder shall be determined as described in subsections (a) and (b) of this section. (1893, cc. 85, 281; Rev., s. 3631; C.S., s. 4200; 1949, c. 299, s. 1; 1973, c. 1201, s. 1; 1977, c. 406, s. 1; 1979, c.

682, s. 6; 1979, c. 760, s. 5; 1979, 2nd Sess., c. 1251, ss. 1, 2; c. 1316, s. 47; 1981, c. 63, s. 1; c. 179, s. 14; c. 662, s. 1; 1987, c. 693; 1989, c. 694; 1993, c. 539, s. 112; 1994, Ex. Sess., c. 21, s. 1; c. 22, s. 4; c. 24, s. 14(c); 2001-470, s. 2; 2004-178, s. 1; 2007-81, s. 1; 2012-165, s. 1; 2013-47, s. 2; 2013-410, s. 3(a); 2017-94, s. 1; 2017-115, s. 9.)