

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

D

SENATE DRS85036-LH-3A (08/21)

Short Title: Alternate Jurors/Jury Trial Deliberations.

(Public)

Sponsors: Senator Rand.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT AN ALTERNATE JUROR MAY REPLACE A JUROR WHO IS UNABLE TO PERFORM THE JUROR'S DUTIES, IS DISQUALIFIED FROM PERFORMING THE JUROR'S DUTIES, OR IS DISCHARGED FOR MISCONDUCT OR OTHER EXTRAORDINARY CAUSE DURING DELIBERATION BY THE JURY ON THE ISSUES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 9-18(a) reads as rewritten:

"(a) Civil Cases. Whenever the presiding judge deems it appropriate, one or more alternate jurors may be selected in the same manner as the regular trial panel of jurors in the case. Each party shall be entitled to two peremptory challenges as to each such alternate juror, in addition to any unexpended challenges the party may have after the selection of the regular trial panel. Alternate jurors shall be sworn and seated near the jury with equal opportunity to see and hear the proceedings and shall attend the trial at all times with the jury and shall obey all orders and admonitions of the court to the jury. When the jurors are ordered kept together in any case, the alternate jurors shall be kept with them. An alternate juror shall receive the same compensation as other jurors and, ~~except as hereinafter provided, shall be discharged upon the final submission of the case to the jury. If before that time~~ jurors. If, before final submission of the case to the jury, any juror dies, becomes incapacitated or disqualified, or is discharged for any reason, an alternate juror shall become a part of the jury and serve in all respects as those selected on the regular trial panel. If, during deliberations, any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or other extraordinary cause not substantially related to the substance of the jury's deliberations, an alternate juror may become a part of the jury and serve in all respects as those selected on the regular trial panel; however, if an alternate juror replaces a juror after deliberations have begun, the court shall instruct the jury to begin its deliberations anew. If more than one alternate

1 juror has been selected, they shall be available to become a part of the jury in the order
2 in which they were selected."

3 **SECTION 2.** G.S. 15A-1215 reads as rewritten:

4 "**§ 15A-1215. Alternate jurors.**

5 (a) The judge may permit the seating of one or more alternate jurors. Alternate
6 jurors must be sworn and seated near the jury with equal opportunity to see and hear the
7 proceedings. They must attend the trial at all times with the jury, and obey all orders and
8 admonitions of the judge. When the jurors are ordered kept together, the alternate jurors
9 must be kept with them. ~~If before final submission of the case to the jury, any juror dies,~~
10 ~~becomes incapacitated or disqualified, or is discharged for any other reason, an alternate~~
11 ~~juror becomes a juror, in the order in which selected, and serves in all respects as those~~
12 ~~selected on the regular trial panel. Alternate jurors receive the same compensation as~~
13 ~~other jurors and, unless they become jurors, must be discharged upon the final~~
14 ~~submission of the case to the jury.~~ jurors. The court may retain alternate jurors after the
15 jury retires to deliberate. The court shall ensure that a retained alternate juror does not
16 discuss the case with anyone until that alternate juror replaces a juror or is discharged. If
17 any juror dies, becomes incapacitated or disqualified, or is discharged for misconduct or
18 other extraordinary cause not substantially related to the substance of the jury's
19 deliberations once the jury has begun its deliberations, an alternate juror may become
20 part of the jury and serve in all respects as those selected on the regular trial panel. If an
21 alternate juror replaces a juror after deliberations have begun, the court shall instruct the
22 jury to begin its deliberations anew.

23 (b) In all criminal actions in which one or more defendants is to be tried for a
24 capital offense, or enter a plea of guilty to a capital offense, the presiding judge shall
25 provide for the selection of at least two alternate jurors, or more as he deems
26 appropriate. The alternate jurors shall be retained during the deliberations of the jury on
27 the issue of guilt or innocence under such restrictions, regulations and instructions as the
28 presiding judge shall direct. In case of sequestration of a jury during deliberations in a
29 capital case, alternates shall be sequestered in the same manner as is the trial jury, but
30 such alternates shall also be sequestered from the trial jury. If any juror dies, becomes
31 incapacitated or disqualified, or is discharged for misconduct or other extraordinary
32 cause not substantially related to the substance of the jury's deliberations once the jury
33 has begun its deliberations, an alternate juror may become part of the jury and serve in
34 all respects as those selected on the regular trial panel. If an alternate juror replaces a
35 juror after deliberations have begun, the court shall instruct the jury to begin its
36 deliberations anew. In no event shall more than 12 jurors participate in the jury's
37 deliberations."

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

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

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

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

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

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

1 trial jury is unable to reconvene for a hearing on the issue of penalty
2 after having determined the guilt of the accused, the trial judge shall
3 impanel a new jury to determine the issue of the punishment. If the
4 defendant pleads guilty, the sentencing proceeding shall be conducted
5 before a jury impaneled for that purpose. A jury selected for the
6 purpose of determining punishment in a capital case shall be selected
7 in the same manner as juries are selected for the trial of capital cases.

8 (3) In the proceeding there shall not be any requirement to resubmit
9 evidence presented during the guilt determination phase of the case,
10 unless a new jury is impaneled, but all such evidence is competent for
11 the jury's consideration in passing on punishment. Evidence may be
12 presented as to any matter that the court deems relevant to sentence,
13 and may include matters relating to any of the aggravating or
14 mitigating circumstances enumerated in subsections (e) and (f) of this
15 section. Any evidence which the court deems to have probative value
16 may be received.

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

20 **SECTION 5.** G.S. 20-179(a1) reads as rewritten:

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

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

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

- 1 (3) Convening the jury. – If prior to the time that the trial jury begins its
2 deliberations on the issue of whether one or more aggravating factors
3 exist, any juror dies, becomes incapacitated or disqualified, or is
4 discharged for any reason, an alternate juror shall become a part of the
5 jury and serve in all respects as those selected on the regular trial
6 panel. If any juror dies, becomes incapacitated or disqualified, or is
7 discharged for misconduct or other extraordinary cause not
8 substantially related to the substance of the jury's deliberations once
9 the jury has begun its deliberation on the issue of whether one or more
10 aggravating factors exist, an alternate juror may become a part of the
11 jury and serve in all respects as those selected on the regular trial
12 panel; however, if an alternate juror replaces a juror after deliberations
13 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
15 which the juror was selected. If the trial jury is unable to reconvene for
16 a hearing on the issue of whether one or more aggravating factors exist
17 after having determined the guilt of the accused, the trial judge shall
18 impanel a new jury to determine the issue.
- 19 (4) Jury selection. – A jury selected to determine whether one or more
20 aggravating factors exist shall be selected in the same manner as juries
21 are selected for the trial of criminal cases."

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

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

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