

VOIR DIRE INSTRUCTIONS TO JURORS IN CAPITAL CASES.
G.S. 15-176.3.¹

The defendant is accused of murder in the first degree. This is a crime for which the death penalty may be imposed. In the event that the defendant is convicted of murder in the first degree, the court will conduct a separate sentencing proceeding to determine whether the defendant should be sentenced to death or life imprisonment (without parole)². This proceeding may be conducted before the trial jury or another jury. It will be conducted, if necessary, as soon as practical after any verdict of first degree murder is returned. If that time comes, the sentencing jury will receive separate sentencing instructions. However, prior to that time the only concern of the trial jury is to determine whether the defendant is guilty of the crime charged or of any lesser included offenses about which it is instructed.

¹G.S. 15-176.3 provides "When a jury is being selected for a case in which the defendant is indicted for a crime for which the penalty is a sentence of death, the court, the defense, or the State may inform any person called to serve as a potential juror that the death penalty will be imposed upon the return of a verdict of guilty of that crime and may inquire of any person called to serve as a potential juror whether that person understands the consequences of a verdict of guilty of that crime."

G.S. 15-176.3 was enacted as part of the 1973 legislation which made the death penalty mandatory for certain crimes. It was not repealed or revised in 1977 when the death penalty was re-enacted on a non-mandatory basis.

This voir dire instruction is included on the assumption that the spirit of G.S. 15-176.3 still contemplates that some instruction on the death penalty may be given to the entire array from which the jury in a first degree murder case will be chosen. It is substantially the same as the instruction which will be given on request, as part of the jury instructions on first degree murder. See, N.C.P.I.--Crim. 206.10, 206.11, 206.12, 206.14, 206.15, and 206.16.

Note also that G.S. 15-176.5 allows either party in its argument to the jury to indicate the consequences of a verdict of guilty of a capital charge.

²The parenthetical phrase, without parole, must be used for offenses occurring on or after October 1, 1994.

