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**By: Delegate Kach**

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

**2 Death Penalty - Aggravating Circumstances - Murderer on Parole and Repeat Murderer**

3 FOR the purpose of expanding the list of aggravating circumstances to be considered by  
4 a court or jury in a death penalty case to include a murder committed by a  
5 defendant who committed the murder while on parole for a term of imprisonment  
6 imposed for a previous murder and a defendant who had previously been convicted  
7 of an offense of murder in the first degree arising out of a different incident; and  
8 generally relating to the death penalty.

9 BY repealing and reenacting, with amendments,  
10 Article 27 - Crimes and Punishments  
11 Section 413(d)  
12 Annotated Code of Maryland  
13 (1996 Replacement Volume)

14 BY repealing and reenacting, without amendments,  
15 Article 27 - Crimes and Punishments  
16 Section 413(f), (g), and (h)  
17 Annotated Code of Maryland  
18 (1996 Replacement Volume)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article 27 - Crimes and Punishments**

22 413.

23 (d) In determining the sentence, the court or jury, as the case may be, shall first  
24 consider whether, beyond a reasonable doubt, any of the following aggravating  
25 circumstances exist:

26 (1) The victim was a law enforcement officer who was murdered while in the  
27 performance of his duties;

28 (2) The defendant committed the murder at a time when he was confined in  
29 any correctional institution OR THE DEFENDENT COMMITTED THE MURDER WHILE  
30 ON PAROLE FOR A TERM OF IMPRISONMENT FOR A PREVIOUS MURDER;

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1 (3) The defendant committed the murder in furtherance of an escape or an  
2 attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer  
3 or guard of a correctional institution or by a law enforcement officer;

4 (4) The victim was taken or attempted to be taken in the course of a  
5 kidnapping or abduction or an attempt to kidnap or abduct;

6 (5) The victim was a child abducted in violation of § 2 of this article;

7 (6) The defendant committed the murder pursuant to an agreement or  
8 contract for remuneration or the promise of remuneration to commit the murder;

9 (7) The defendant engaged or employed another person to commit the  
10 murder and the murder was committed pursuant to an agreement or contract for  
11 remuneration or the promise of remuneration;

12 (8) At the time of the murder, the defendant was under sentence of death or  
13 imprisonment for life;

14 (9) The defendant committed more than one offense of murder in the first  
15 degree arising out of the same incident; [or]

16 (10) The defendant committed the murder while committing or attempting to  
17 commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual  
18 offense in the first degree; OR

19 (11) THE DEFENDANT PREVIOUSLY HAD BEEN CONVICTED OF AN  
20 OFFENSE OF MURDER IN THE FIRST DEGREE ARISING OUT OF A DIFFERENT  
21 INCIDENT.

22 (f) If the court or jury does not find, beyond a reasonable doubt, that one or more  
23 of these aggravating circumstances exist, it shall state that conclusion in writing, and a  
24 sentence of death may not be imposed.

25 (g) If the court or jury finds, beyond a reasonable doubt, that one or more of  
26 these aggravating circumstances exist, it shall then consider whether, based upon a  
27 preponderance of the evidence, any of the following mitigating circumstances exist:

28 (1) The defendant has not previously (i) been found guilty of a crime of  
29 violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of  
30 violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a  
31 charge of a crime of violence. As used in this paragraph, "crime of violence" means  
32 abduction, arson in the first degree, escape, kidnapping, manslaughter, except involuntary  
33 manslaughter, mayhem, murder, robbery, carjacking or armed carjacking, or rape or  
34 sexual offense in the first or second degree, or an attempt to commit any of these  
35 offenses, or the use of a handgun in the commission of a felony or another crime of  
36 violence.

37 (2) The victim was a participant in the defendant's conduct or consented to  
38 the act which caused the victim's death.

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1                   (3) The defendant acted under substantial duress, domination or  
2 provocation of another person, but not so substantial as to constitute a complete defense  
3 to the prosecution.

4                   (4) The murder was committed while the capacity of the defendant to  
5 appreciate the criminality of his conduct or to conform his conduct to the requirements of  
6 law was substantially impaired as a result of mental incapacity, mental disorder or  
7 emotional disturbance.

8                   (5) The youthful age of the defendant at the time of the crime.

9                   (6) The act of the defendant was not the sole proximate cause of the victim's  
10 death.

11                  (7) It is unlikely that the defendant will engage in further criminal activity  
12 that would constitute a continuing threat to society.

13                  (8) Any other facts which the jury or the court specifically sets forth in  
14 writing that it finds as mitigating circumstances in the case.

15                  (h) (1) If the court or jury finds that one or more of these mitigating  
16 circumstances exist, it shall determine whether, by a preponderance of the evidence, the  
17 aggravating circumstances outweigh the mitigating circumstances.

18                  (2) If it finds that the aggravating circumstances outweigh the mitigating  
19 circumstances, the sentence shall be death.

20                  (3) If it finds that the aggravating circumstances do not outweigh the  
21 mitigating circumstances, a sentence of death may not be imposed.

22                  SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
23 October 1, 1997.