
By: **Delegates Kelly, DeBoy, Edwards, Fulton, Goodwin, McKee, Miller,
Myers, Shank, and Weldon**

Introduced and read first time: January 21, 2005

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes - Death Penalty - Murder of Off-Duty Law Enforcement Officer**

3 FOR the purpose of providing that a certain defendant found guilty of murder in the
4 first degree may be sentenced to death under certain circumstances if that
5 defendant murdered a law enforcement officer while the officer was not on duty
6 and the murder was committed in retaliation for the officer's actions while on
7 duty; and generally relating to the death penalty.

8 BY repealing and reenacting, without amendments,
9 Article - Criminal Law
10 Section 2-201 and 2-202(a)
11 Annotated Code of Maryland
12 (2002 Volume and 2004 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article - Criminal Law
15 Section 2-303
16 Annotated Code of Maryland
17 (2002 Volume and 2004 Supplement)

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

20 **Article - Criminal Law**

21 2-201.

- 22 (a) A murder is in the first degree if it is:
- 23 (1) a deliberate, premeditated, and willful killing;
 - 24 (2) committed by lying in wait;
 - 25 (3) committed by poison; or

- 1 (4) committed in the perpetration of or an attempt to perpetrate:
- 2 (i) arson in the first degree;
- 3 (ii) burning a barn, stable, tobacco house, warehouse, or other
4 outbuilding that:
- 5 1. is not parcel to a dwelling; and
- 6 2. contains cattle, goods, wares, merchandise, horses, grain,
7 hay, or tobacco;
- 8 (iii) burglary in the first, second, or third degree;
- 9 (iv) carjacking or armed carjacking;
- 10 (v) escape in the first degree from a State correctional facility or a
11 local correctional facility;
- 12 (vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;
- 13 (vii) mayhem;
- 14 (viii) rape;
- 15 (ix) robbery under § 3-402 or § 3-403 of this article;
- 16 (x) sexual offense in the first or second degree;
- 17 (xi) sodomy; or
- 18 (xii) a violation of § 4-503 of this article concerning destructive
19 devices.
- 20 (b) (1) A person who commits a murder in the first degree is guilty of a
21 felony and on conviction shall be sentenced to:
- 22 (i) death;
- 23 (ii) imprisonment for life without the possibility of parole; or
- 24 (iii) imprisonment for life.
- 25 (2) Unless a sentence of death is imposed in compliance with § 2-202 of
26 this subtitle and Subtitle 3 of this title, or a sentence of imprisonment for life without
27 the possibility of parole is imposed in compliance with § 2-203 of this subtitle and §
28 2-304 of this title, the sentence shall be imprisonment for life.

1 2-202.

2 (a) A defendant found guilty of murder in the first degree may be sentenced to
3 death only if:

4 (1) at least 30 days before trial, the State gave written notice to the
5 defendant of:

6 (i) the State's intention to seek a sentence of death; and

7 (ii) each aggravating circumstance on which the State intends to
8 rely;

9 (2) (i) with respect to § 2-303(g) of this title, except for § 2-303(g)(1)(i)
10 and (vii) of this title, the defendant was a principal in the first degree; or

11 (ii) with respect to § 2-303(g)(1)(i) of this title, a law enforcement
12 officer, as defined in § 2-303(a) of this title, was murdered and the defendant was:

13 1. a principal in the first degree; or

14 2. a principal in the second degree who:

15 A. willfully, deliberately, and with premeditation
16 intended the death of the law enforcement officer;

17 B. was a major participant in the murder; and

18 C. was actually present at the time and place of the
19 murder; and

20 (3) the sentence of death is imposed in accordance with § 2-303 of this
21 title.

22 2-303.

23 (a) (1) In this section the following words have the meanings indicated.

24 (2) (i) "Correctional facility" has the meaning stated in § 1-101 of this
25 article.

26 (ii) "Correctional facility" includes:

27 1. an institution for the confinement or detention of juveniles
28 charged with or adjudicated as being delinquent; and

29 2. a hospital in which a person is confined under an order of
30 a court exercising criminal jurisdiction.

1 (3) (i) "Law enforcement officer" means a law enforcement officer as
2 defined under the Law Enforcement Officers' Bill of Rights, § 3-101 of the Public
3 Safety Article.

4 (ii) "Law enforcement officer" includes:

5 1. a law enforcement officer of a jurisdiction outside of the
6 State;

7 2. an officer serving in a probationary status;

8 3. a parole and probation officer; and

9 4. a law enforcement officer while privately employed as a
10 security officer or special police officer under Title 3, Subtitle 3 of the Public Safety
11 Article if the law enforcement officer is wearing the uniform worn while acting in an
12 official capacity or is displaying prominently the officer's official badge or other
13 insignia of office.

14 (b) If the State gave notice under § 2-202(a)(1) of this title, a separate
15 sentencing proceeding shall be held as soon as practicable after a defendant is found
16 guilty of murder in the first degree to determine whether the defendant shall be
17 sentenced to death.

18 (c) The sentencing proceeding under subsection (b) of this section shall be
19 conducted:

20 (1) before the jury that determined the defendant's guilt;

21 (2) before a jury impaneled for purposes of the proceeding if:

22 (i) the defendant was convicted based on a guilty plea;

23 (ii) the defendant was convicted after a trial by a court sitting
24 without a jury;

25 (iii) the court, for good cause, discharged the jury that convicted the
26 defendant; or

27 (iv) a court of competent jurisdiction remanded the case for
28 resentencing following a review of the original sentence of death; or

29 (3) before the court, if the defendant waives a jury sentencing
30 proceeding.

31 (d) (1) A judge shall appoint at least two alternate jurors when impaneling a
32 jury for any proceeding:

33 (i) in which the defendant is being tried for a crime for which the
34 death penalty may be imposed; or

1 (ii) that is held under this section.

2 (2) The alternate jurors shall be retained throughout the proceedings
3 under any restrictions that the judge imposes.

4 (3) Subject to paragraph (4) of this subsection, if a juror dies, is
5 disqualified, becomes incapacitated, or is discharged for any other reason before the
6 jury begins its deliberations on sentencing, an alternate juror becomes a juror in the
7 order selected, and serves in all respects as a juror selected on the regular trial panel.

8 (4) An alternate juror may not replace a juror who is discharged during
9 the actual deliberations of the jury on the guilt or innocence of the defendant or on
10 sentencing.

11 (e) (1) The following type of evidence is admissible in a sentencing
12 proceeding:

13 (i) evidence relating to a mitigating circumstance that is listed
14 under subsection (h) of this section;

15 (ii) evidence relating to an aggravating circumstance:

16 1. that is listed under subsection (g) of this section; and

17 2. of which the State provided notice under § 2-202(a)(1)(ii)
18 of this title;

19 (iii) evidence of a prior criminal conviction, guilty plea, plea of nolo
20 contendere, or the absence of any prior convictions or pleas, to the same extent that
21 the evidence would be admissible in other sentencing procedures;

22 (iv) subject to paragraph (2) of this subsection, any presentence
23 investigation report; and

24 (v) any other evidence the court finds to have probative value and
25 relevance to sentencing, if the defendant has a fair opportunity to rebut any
26 statement.

27 (2) A recommendation in a presentence investigation report as to a
28 sentence is not admissible in a sentencing proceeding.

29 (3) The State and the defendant or counsel for the defendant may
30 present argument for or against the sentence of death.

31 (f) (1) After the evidence is presented to the jury in the sentencing
32 proceeding, the court shall:

33 (i) give any appropriate instructions allowed by law; and

34 (ii) instruct the jury as to:

1 (ix) the defendant committed more than one murder in the first
2 degree arising out of the same incident; or

3 (x) the defendant committed the murder while committing, or
4 attempting to commit:

- 5 1. arson in the first degree;
- 6 2. carjacking or armed carjacking;
- 7 3. rape in the first degree;
- 8 4. robbery under § 3-402 or § 3-403 of this article; or
- 9 5. sexual offense in the first degree.

10 (2) If the court or jury does not find that one or more of the aggravating
11 circumstances exist beyond a reasonable doubt:

12 (i) it shall state that conclusion in writing; and

13 (ii) a death sentence may not be imposed.

14 (h) (1) In this subsection, "crime of violence" means:

15 (i) abduction;

16 (ii) arson in the first degree;

17 (iii) carjacking or armed carjacking;

18 (iv) escape in the first degree;

19 (v) kidnapping;

20 (vi) mayhem;

21 (vii) murder;

22 (viii) rape in the first or second degree;

23 (ix) robbery under § 3-402 or § 3-403 of this article;

24 (x) sexual offense in the first or second degree;

25 (xi) manslaughter other than involuntary manslaughter;

26 (xii) an attempt to commit any crime listed in items (i) through (xi)
27 of this paragraph; or

28 (xiii) the use of a handgun in the commission of a felony or other
29 crime of violence.

1 (2) If the court or jury finds beyond a reasonable doubt that one or more
2 of the aggravating circumstances under subsection (g) of this section exist, it then
3 shall consider whether any of the following mitigating circumstances exists based on
4 a preponderance of the evidence:

5 (i) the defendant previously has not:

- 6 1. been found guilty of a crime of violence;
7 2. entered a guilty plea or a plea of nolo contendere to a
8 charge of a crime of violence; or
9 3. received probation before judgment for a crime of violence;

10 (ii) the victim was a participant in the conduct of the defendant or
11 consented to the act that caused the victim's death;

12 (iii) the defendant acted under substantial duress, domination, or
13 provocation of another, but not so substantial as to constitute a complete defense to
14 the prosecution;

15 (iv) the murder was committed while the capacity of the defendant
16 to appreciate the criminality of the defendant's conduct or to conform that conduct to
17 the requirements of law was substantially impaired due to emotional disturbance,
18 mental disorder, or mental incapacity;

19 (v) the defendant was of a youthful age at the time of the murder;

20 (vi) the act of the defendant was not the sole proximate cause of the
21 victim's death;

22 (vii) it is unlikely that the defendant will engage in further criminal
23 activity that would be a continuing threat to society; or

24 (viii) any other fact that the court or jury specifically sets forth in
25 writing as a mitigating circumstance in the case.

26 (i) (1) If the court or jury finds that one or more of the mitigating
27 circumstances under subsection (h) of this section exists, it shall determine by a
28 preponderance of the evidence whether the aggravating circumstances under
29 subsection (g) of this section outweigh the mitigating circumstances.

30 (2) If the court or jury finds that the aggravating circumstances:

31 (i) outweigh the mitigating circumstances, a death sentence shall
32 be imposed; or

33 (ii) do not outweigh the mitigating circumstances, a death sentence
34 may not be imposed.

1 (3) If the determination is by a jury, a decision to impose a death
2 sentence must be unanimous and shall be signed by the jury foreperson.

3 (4) A court or jury shall put its determination in writing and shall state
4 specifically:

5 (i) each aggravating circumstance found;

6 (ii) each mitigating circumstance found;

7 (iii) whether any aggravating circumstances found under subsection
8 (g) of this section outweigh the mitigating circumstances found under subsection (h)
9 of this section;

10 (iv) whether the aggravating circumstances found under subsection
11 (g) of this section do not outweigh the mitigating circumstances found under
12 subsection (h) of this section; and

13 (v) the sentence determined under subsection (g)(2) of this section
14 or paragraphs (1) and (2) of this subsection.

15 (j) (1) If a jury determines that a death sentence shall be imposed under the
16 provisions of this section, the court shall impose a death sentence.

17 (2) If, within a reasonable time, the jury is unable to agree as to whether
18 a death sentence shall be imposed, the court may not impose a death sentence.

19 (3) If the sentencing proceeding is conducted before a court without a
20 jury, the court shall determine whether a death sentence shall be imposed under the
21 provisions of this section.

22 (4) If the court or jury determines that a death sentence may not be
23 imposed and the State gave notice under § 2-203(1) of this title, a determination shall
24 be made concerning imprisonment for life without the possibility of parole under §
25 2-304 of this subtitle.

26 (5) If the court or jury determines that a death sentence may not be
27 imposed and if the State did not give notice under § 2-203(1) of this title, the court
28 shall impose a sentence of imprisonment for life.

29 (k) (1) Immediately after the imposition of a death sentence:

30 (i) the clerk of the court in which sentence is imposed, if different
31 from the court where the indictment or information was filed, shall certify the
32 proceedings to the clerk of the court where the indictment or information was filed;
33 and

34 (ii) the clerk of the court where the indictment or information was
35 filed shall copy the docket entries in the inmate's case, sign the copies, and deliver
36 them to the Governor.

1 (2) The docket entries shall show fully the sentence of the court and the
2 date that the sentence was entered.

3 (1) If the defendant is sentenced to death, the court before which the
4 defendant is tried and convicted shall sentence the defendant to death by intravenous
5 administration of a lethal quantity of an ultrashort-acting barbiturate or other
6 similar drug in combination with a chemical paralytic agent.

7 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
8 October 1, 2005.