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By: **Delegate O'Donnell**

Introduced and read first time: February 2, 2005

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Sentencing - Death Penalty - Murder of Individual Under Protective Order**

3 FOR the purpose of adding to the list of aggravating circumstances to be considered

4 for imposing the death penalty for the crime of murder in the first degree;

5 providing that it is an aggravating circumstance if the victim, whom the

6 defendant murdered, was a certain person eligible for relief under an existing

7 temporary ex parte order or a protective order; providing that, under certain

8 circumstances, certain provisions of law can be applied to a defendant who is not

9 a principal in the first degree; and generally relating to sentencing for first

10 degree murder.

11 BY repealing and reenacting, with amendments,

12 Article - Criminal Law

13 Section 2-202(a) and 2-303(g)

14 Annotated Code of Maryland

15 (2002 Volume and 2004 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

17 MARYLAND, That the Laws of Maryland read as follows:

18 **Article - Criminal Law**

19 2-202.

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

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

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

25 (ii) each aggravating circumstance on which the State intends to  
26 rely;

1 (2) (i) with respect to § 2-303(g) of this title, except for §  
2 [2-303(g)(1)(i) and (vii)] 2-303(G)(1)(I), (VII), AND (XI) of this title, the defendant was a  
3 principal in the first degree; or

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

6 1. a principal in the first degree; or

7 2. a principal in the second degree who:

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

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

11 C. was actually present at the time and place of the murder;  
12 and

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

15 2-303.

16 (g) (1) In determining a sentence under subsection (b) of this section, the  
17 court or jury first shall consider whether any of the following aggravating  
18 circumstances exists beyond a reasonable doubt:

19 (i) one or more persons committed the murder of a law  
20 enforcement officer while the officer was performing the officer's duties;

21 (ii) the defendant committed the murder while confined in a  
22 correctional facility;

23 (iii) the defendant committed the murder in furtherance of an  
24 escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody,  
25 or detention by:

26 1. a guard or officer of a correctional facility; or

27 2. a law enforcement officer;

28 (iv) the victim was taken or attempted to be taken in the course of  
29 an abduction, kidnapping, or an attempt to abduct or kidnap;

30 (v) the victim was a child abducted in violation of § 3-503(a)(1) of  
31 this article;

32 (vi) the defendant committed the murder under an agreement or  
33 contract for remuneration or promise of remuneration to commit the murder;

1 (vii) the defendant employed or engaged another to commit the  
2 murder and the murder was committed under an agreement or contract for  
3 remuneration or promise of remuneration;

4 (viii) the defendant committed the murder while under a sentence  
5 of death or imprisonment for life;

6 (ix) the defendant committed more than one murder in the first  
7 degree arising out of the same incident; [or]

8 (x) the defendant committed the murder while committing, or  
9 attempting to commit:

- 10 1. arson in the first degree;
- 11 2. carjacking or armed carjacking;
- 12 3. rape in the first degree;
- 13 4. robbery under § 3-402 or § 3-403 of this article; or
- 14 5. sexual offense in the first degree; OR

15 (XI) THE VICTIM, WHOM THE DEFENDANT MURDERED, WAS A  
16 PERSON ELIGIBLE FOR RELIEF UNDER AN EXISTING TEMPORARY EX PARTE ORDER  
17 ENTERED UNDER § 4-505 OF THE FAMILY LAW ARTICLE OR AN EXISTING PROTECTIVE  
18 ORDER ISSUED UNDER § 4-506 OF THE FAMILY LAW ARTICLE.

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

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

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

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