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HB 1239/95 - JUD

1996 Regular Session
6lr2428

By: Delegates Pitkin, Vallario, R. Baker, Menes, Grosfeld, Howard, B. Hughes, Hubbard, Marriott, Healey, Krysiak, Eckardt, Perry, Frush, Cryor, Crumlin, Petzold, Nathan-Pulliam, Benson, and Kopp

Introduced and read first time: February 9, 1996

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Manslaughter - Inadequate Provocation - Spousal Adultery**

3 FOR the purpose of establishing that the discovery of one's spouse engaged in sexual
4 activity or sexual intercourse with another person does not constitute legally
5 adequate provocation for the purpose of mitigating a killing of the spouse from the
6 crime of murder to voluntary manslaughter; and generally relating to legally
7 adequate provocation as it relates to mitigating a killing from murder to voluntary
8 manslaughter.

9 BY adding to

10 Article 27 - Crimes and Punishments
11 Section 387A
12 Annotated Code of Maryland
13 (1992 Replacement Volume and 1995 Supplement)

14 Preamble

15 WHEREAS, Under the common law of Maryland, voluntary manslaughter is a
16 killing that would be murder were it not for the presence of mitigation, *Girouard v. State*,
17 321 Md. 532 (1991); and

18 WHEREAS, Under the common law, one type of mitigation that turns a killing into
19 voluntary manslaughter is a hot-blooded, heat of passion response to legally adequate
20 provocation; and

21 WHEREAS, Under the common law, legally adequate provocation consists of four
22 elements:

23 (1) There must have been adequate provocation;

24 (2) The killing must have been in the heat of passion;

25 (3) It must have been a sudden heat of passion: the killing must have
26 followed the provocation before there had been a reasonable time for the passion to cool;
27 and

2

1 (4) There must have been a causal connection between the provocation, the
2 passion, and the killing, Tripp v. State, 36 Md. App. 459 (1977); and

3 WHEREAS, Under the common law, in certain circumstances discovering one's
4 spouse engaged in sexual activity with another person constitutes legally adequate
5 provocation to mitigate a killing of the spouse from murder to voluntary manslaughter,
6 Girouard v. State, 321 Md. 532 (1991); and

7 WHEREAS, It is the intent of the General Assembly by enactment of this Act, to
8 eliminate any injustice that results from allowing the discovery of spousal adultery to
9 mitigate a killing of a spouse from murder to voluntary manslaughter; now, therefore,

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

12 **Article 27 - Crimes and Punishments**

13 387A.

14 THE DISCOVERY OF ONE'S SPOUSE ENGAGED IN SEXUAL ACTIVITY OR SEXUAL
15 INTERCOURSE WITH ANOTHER PERSON DOES NOT CONSTITUTE LEGALLY
16 ADEQUATE PROVOCATION FOR THE PURPOSE OF MITIGATING A KILLING OF THE
17 SPOUSE FROM THE CRIME OF MURDER TO VOLUNTARY MANSLAUGHTER WHEN THE
18 KILLING WAS PROVOKED BY THAT DISCOVERY.

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
20 only prospectively and may not be applied or interpreted to have any effect on or
21 application to any crimes committed before the effective date of this Act.

22 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 1996.