
By: Senator Baker

Introduced and read first time: January 31, 1996

Assigned to: Judicial Proceedings

Committee Report: Favorable

Senate action: Adopted

Read second time: March 20, 1996

CHAPTER ____

1 AN ACT concerning

2 **Homicide - Penalties**

3 FOR the purpose of increasing the maximum term of imprisonment for manslaughter;
4 making the penalty for first degree murder either death or life imprisonment
5 without the possibility of parole, depending on certain circumstances; making the
6 penalty for second degree murder either life imprisonment or imprisonment for life
7 without the possibility of parole, as determined by the court; making stylistic and
8 clarifying changes; and generally relating to the penalties for manslaughter and
9 murder.

10 BY repealing and reenacting, with amendments,
11 Article 27 - Crimes and Punishments
12 Section 387, 412, and 413
13 Annotated Code of Maryland
14 (1992 Replacement Volume and 1995 Supplement)

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

17 **Article 27 - Crimes and Punishments**

18 387.

19 [Every] A person WHO IS convicted of the crime of manslaughter shall be
20 sentenced to [the penitentiary for not more than ten years, or in the discretion of the
21 court may be fined not more than five hundred dollars, or be imprisoned in jail for not
22 more than two years, or be both fined and imprisoned in jail] A TERM OF
23 IMPRISONMENT NOT EXCEEDING 30 YEARS.

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1 412.

2 (a) If a person is found guilty of murder, the court or jury that determined the
3 person's guilt shall state in the verdict whether the person is guilty of murder in the first
4 degree or murder in the second degree.

5 (b) Except as provided under subsection [(f)] (G) of this section, a person found
6 guilty of murder in the first degree shall be sentenced to death[, imprisonment for life,]
7 or imprisonment for life without the possibility of parole. The sentence shall be
8 imprisonment for life WITHOUT THE POSSIBILITY OF PAROLE unless: (1) [(i)] the State
9 notified the person in writing at least 30 days prior to trial that it intended to seek a
10 sentence of death, and advised the person of each aggravating circumstance upon which
11 it intended to rely[, and (ii)]; AND (2) a sentence of death is imposed in accordance with
12 § 413[; or (2) the State notified the person in writing at least 30 days prior to trial that it
13 intended to seek a sentence of imprisonment for life without the possibility of parole
14 under § 412 or § 413 of this article].

15 (c) (1) If a State's Attorney files or withdraws a notice of intent to seek a
16 sentence of death, the State's Attorney shall file a copy of the notice or withdrawal with
17 the clerk of the Court of Appeals.

18 (2) The validity of a notice of intent to seek a sentence of death that is
19 served on a defendant in a timely manner shall in no way be affected by the State's
20 Attorney's failure to file a copy of the death notice in a timely manner with the clerk of
21 the Court of Appeals.

22 (d) A person found guilty of murder in the second degree shall be sentenced to
23 imprisonment for [not more than 30 years] LIFE OR LIFE WITHOUT THE POSSIBILITY
24 OF PAROLE.

25 (e) Except as provided by § 413 of this article, the court shall decide whether to
26 impose a sentence of life imprisonment or life imprisonment without the possibility of
27 parole.

28 (f) (1) In this section, the following terms have the meanings indicated.

29 (2) "Imprisonment for life without the possibility of parole" means
30 imprisonment for the natural life of an inmate under the custody of a correctional
31 institution, including the Patuxent Institution.

32 (3) "Mentally retarded" means the individual has significantly subaverage
33 intellectual functioning as evidenced by an intelligence quotient of 70 or below on an
34 individually administered intelligence quotient test and impairment in adaptive behavior,
35 and the mental retardation is manifested before the individual attains the age of 22.

36 (g) (1) If a person found guilty of murder in the first degree was, at the time the
37 murder was committed, less than 18 years old or if the person establishes by a
38 preponderance of the evidence that the person was, at the time the murder was
39 committed, mentally retarded, the person shall be sentenced to imprisonment for life or
40 imprisonment for life without the possibility of parole and may not be sentenced to death.

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1 (2) The sentence shall be imprisonment for life unless the State notified the
2 person in writing at least 30 days prior to trial that the State intended to seek a sentence
3 of imprisonment for life without the possibility of parole under this section or § 413 of this
4 article.

5 413.

6 (a) If a person is found guilty of murder in the first degree, and if the State had
7 given the notice required under § 412(b), a separate sentencing proceeding shall be
8 conducted as soon as practicable after the trial has been completed to determine whether
9 he shall be sentenced to death.

10 (b) This proceeding shall be conducted:

11 (1) Before the jury that determined the defendant's guilt; or

12 (2) Before a jury impaneled for the purpose of the proceeding if:

13 (i) The defendant was convicted upon a plea of guilty;

14 (ii) The defendant was convicted after a trial before the court sitting
15 without a jury;

16 (iii) The jury that determined the defendant's guilt has been discharged
17 by the court for good cause; or

18 (iv) Review of the original sentence of death by a court of competent
19 jurisdiction has resulted in a remand for resentencing; or

20 (3) Before the court alone, if a jury sentencing proceeding is waived by the
21 defendant.

22 (c) (1) The following type of evidence is admissible in this proceeding:

23 (i) Evidence relating to any mitigating circumstance listed in
24 subsection (g) of this section;

25 (ii) Evidence relating to any aggravating circumstance listed in
26 subsection (d) of this section of which the State had notified the defendant pursuant to §
27 412(b) of this article;

28 (iii) Evidence of any prior criminal convictions, pleas of guilty or nolo
29 contendere, or the absence of such prior convictions or pleas, to the same extent
30 admissible in other sentencing procedures;

31 (iv) Any presentence investigation report. However, any
32 recommendation as to sentence contained in the report is not admissible; and

33 (v) Any other evidence that the court deems of probative value and
34 relevant to sentence, provided the defendant is accorded a fair opportunity to rebut any
35 statements.

36 (2) The State and the defendant or his counsel may present argument for or
37 against the sentence of death.

1 (3) After presentation of the evidence in a proceeding before a jury, in
2 addition to any other appropriate instructions permitted by law, the court shall instruct
3 the jury as to the findings it must make in order to determine whether the sentence shall
4 be death[, imprisonment for life without the possibility of parole, or imprisonment for
5 life,] OR IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE and the
6 burden of proof applicable to these findings in accordance with subsection (f) or
7 subsection (h) of this section.

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

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

13 (2) The defendant committed the murder at a time when he was confined in
14 any correctional institution;

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

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

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

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

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

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

28 (9) The defendant committed more than one offense of murder in the first
29 degree arising out of the same incident; or

30 (10) The defendant committed the murder while committing or attempting to
31 commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual
32 offense in the first degree.

33 (e) As used in this section, the following terms have the meanings indicated unless
34 a contrary meaning is clearly intended from the context in which the term appears:

35 (1) The terms "defendant" and "person", except as those terms appear in
36 subsection (d)(7) of this section, include only a principal in the first degree.

37 (2) The term "correctional institution" includes any institution for the
38 detention or confinement of persons charged with or convicted of a crime, including
39 Patuxent Institution, any institution for the detention or confinement of juveniles charged

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1 with or adjudicated as being delinquent, and any hospital in which the person was
2 confined pursuant to an order of a court exercising criminal jurisdiction.

3 (3) (i) The term "law enforcement officer" has the meaning given in
4 Section 727 of Article 27.

5 (ii) The term "law enforcement officer", as used in subsection (d) of
6 this section, includes:

- 7 1. An officer serving in a probationary status;
- 8 2. A parole and probation officer;
- 9 3. A law enforcement officer of a jurisdiction outside of
10 Maryland; and
- 11 4. If the law enforcement officer is wearing the uniform worn by
12 the law enforcement officer while acting in an official capacity or is prominently
13 displaying his official badge or other insignia of office, a law enforcement officer privately
14 employed as a security officer or special policeman under the provisions of Article 41, §§
15 4-901 through 4-913 of the Code.

16 (4) "Imprisonment for life without the possibility of parole" means
17 imprisonment for the natural life of an inmate under the custody of a correctional
18 institution, including the Patuxent Institution.

19 (f) If the court or jury does not find, beyond a reasonable doubt, that one or more
20 of these aggravating circumstances exist, it shall state that conclusion in writing, and a
21 sentence of [death may not be imposed] IMPRISONMENT FOR LIFE WITHOUT THE
22 POSSIBILITY OF PAROLE SHALL BE IMPOSED.

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

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

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

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

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

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

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

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

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

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

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

17 (3) If it finds that the aggravating circumstances do not outweigh the
18 mitigating circumstances, [a sentence of death may not be imposed] THE SENTENCE
19 SHALL BE IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE.

20 (i) The determination of the court or jury shall be in writing, and, if a jury, shall
21 be unanimous and shall be signed by the foreman.

22 (j) The determination of the court or jury shall state, specifically:

23 (1) Which, if any, aggravating circumstances it finds to exist;

24 (2) Which, if any, mitigating circumstances it finds to exist;

25 (3) Whether any aggravating circumstances found under subsection (d) of
26 this section outweigh the mitigating circumstances found under subsection (g) of this
27 section;

28 (4) Whether the aggravating circumstances found under subsection (d) do
29 not outweigh mitigating circumstances under subsection (g); and

30 (5) The sentence, determined in accordance with subsection (f) or (h).

31 (k) (1) If the jury determines that a sentence of death shall be imposed under
32 the provisions of this section, then the court shall impose a sentence of death.

33 (2) If the jury, within a reasonable time, is not able to agree as to whether a
34 sentence of death shall be imposed, the court [may not impose a sentence of death]
35 SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE WITHOUT THE
36 POSSIBILITY OF PAROLE.

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

4 [(4) If the court or jury determines that a sentence of death may not be
 5 imposed, and the State did not give the notice required under § 412(b) of this article of
 6 intention to seek a sentence of life imprisonment without the possibility of parole, the
 7 court shall impose a sentence of life imprisonment.

8 (5) If the State gives the notice required under § 412(b) of this article of
 9 intention to seek a sentence of imprisonment for life without the possibility of parole but
 10 does not give notice of intention to seek the death penalty, the court shall conduct a
 11 separate sentencing proceeding as soon as practicable after the trial has been completed
 12 to determine whether to impose a sentence of imprisonment for life or imprisonment for
 13 life without the possibility of parole.

14 (6) If the State gives the notice required under § 412(b) of this article of
 15 intention to seek the death penalty in addition to the notice of intention to seek a
 16 sentence of imprisonment for life without the possibility of parole, and the court or jury
 17 determines that a sentence of death may not be imposed under the provisions of this
 18 section, that court or jury shall determine whether to impose a sentence of imprisonment
 19 for life or imprisonment for life without the possibility of parole.

20 (7) (i) In determining whether to impose a sentence of imprisonment for
 21 life without the possibility of parole, a jury shall agree unanimously on the imposition of
 22 a sentence of imprisonment for life without the possibility of parole.

23 (ii) If the jury agrees unanimously to impose a sentence of
 24 imprisonment for life without the possibility of parole, the court shall impose a sentence
 25 of imprisonment for life without the possibility of parole.

26 (iii) If the jury, within a reasonable time, is not able to agree
 27 unanimously on the imposition of a sentence of imprisonment for life without the
 28 possibility of parole, the court shall dismiss the jury and impose a sentence of
 29 imprisonment for life.

30 (8) If the State gives the notice required under § 412 of this article of the
 31 State's intention to seek a sentence of imprisonment for life without the possibility of
 32 parole, the court shall conduct a separate sentencing proceeding as soon as practicable
 33 after the trial has been completed to determine whether to impose a sentence of
 34 imprisonment for life or imprisonment for life without the possibility of parole.]

35 (l) The Court of Appeals may adopt rules of procedure to govern the conduct of
 36 a sentencing proceeding conducted pursuant to this section, including any forms to be
 37 used by the court or jury in making its written findings and determinations of sentence.

38 (m) (1) A judge shall appoint at least 2 alternate jurors when impaneling a jury
 39 for any proceeding:

40 (i) In which the defendant is being tried for a crime for which the
 41 death penalty may be imposed; or

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1 (ii) Which is held under the provisions of this section.

2 (2) The alternate jurors shall be retained during the length of the
3 proceedings under such restrictions and regulations as the judge may impose.

4 (3) (i) If any juror dies, becomes incapacitated, or disqualified, or is
5 discharged for any other reason before the jury begins its deliberations on sentencing, an
6 alternate juror becomes a juror in the order in which selected, and serves in all respects
7 as those selected on the regular trial panel.

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

11 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
12 October 1, 1996.