

CF 7r0588

**By: The Speaker (Administration) and Delegates Harkins, Hutchins, Workman,
Rudolph, DeCarlo, Cadden, and Proctor**

Introduced and read first time: January 27, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Homicide - Penalties**

3 FOR the purpose of altering the list of aggravating circumstances that must be considered
4 by a court or jury when determining whether to impose a sentence of death;
5 providing that the court or jury must consider whether one or more persons,
6 including principals in the first and second degree, committed the murder of a law
7 enforcement officer while the officer was in the performance of his duties; defining
8 a certain term; and generally relating to the imposition of the death penalty.

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

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

16 **Article 27 - Crimes and Punishments**

17 413.

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

22 (b) This proceeding shall be conducted:

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

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

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

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

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

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

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

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

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

10 (ii) Evidence relating to any aggravating circumstance listed in
11 subsection (d) of this section of which the State had notified the defendant pursuant to §
12 412(b) of this article;

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

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

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

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

23 (3) After presentation of the evidence in a proceeding before a jury, in
24 addition to any other appropriate instructions permitted by law, the court shall instruct
25 the jury as to the findings it must make in order to determine whether the sentence shall
26 be death, imprisonment for life without the possibility of parole, or imprisonment for life,
27 and the burden of proof applicable to these findings in accordance with subsection (f) or
28 subsection (h) of this section.

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

32 (1) [The victim was] ONE OR MORE PERSONS COMMITTED THE
33 MURDER OF a law enforcement officer [who was murdered] while in the performance of
34 his duties;

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

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

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

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

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

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

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

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

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

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

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

20 (1) (I) THE TERMS "DEFENDANT" AND "PERSON", EXCEPT AS THOSE
21 TERMS APPEAR IN SUBSECTION (D)(1) OF THIS SECTION, INCLUDE ONLY A PRINCIPAL
22 IN THE FIRST DEGREE.

23 (II) IN SUBSECTION (D)(1) OF THIS SECTION, THE TERMS INCLUDE
24 PRINCIPALS IN THE FIRST AND SECOND DEGREE.

25 (2) The term "correctional institution" includes any institution for the
26 detention or confinement of persons charged with or convicted of a crime, including
27 Patuxent Institution, any institution for the detention or confinement of juveniles charged
28 with or adjudicated as being delinquent, and any hospital in which the person was
29 confined pursuant to an order of a court exercising criminal jurisdiction.

30 (3) (i) The term "law enforcement officer" has the meaning given in §
31 727 of [Article 27] THIS ARTICLE.

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

34 1. An officer serving in a probationary status;

35 2. A parole and probation officer;

36 3. A law enforcement officer of a jurisdiction outside of
37 Maryland; and

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

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

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

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

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

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

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

13 (3) Whether any aggravating circumstances found under subsection (d) of
14 this section outweigh the mitigating circumstances found under subsection (g) of this
15 section;

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

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

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

21 (2) If the jury, within a reasonable time, is not able to agree as to whether a
22 sentence of death shall be imposed, the court may not impose a sentence of death.

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

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

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

36 (6) If the State gives the notice required under § 412(b) of this article of
37 intention to seek the death penalty in addition to the notice of intention to seek a
38 sentence of imprisonment for life without the possibility of parole, and the court or jury
39 determines that a sentence of death may not be imposed under the provisions of this

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1 section, that court or jury shall determine whether to impose a sentence of imprisonment
2 for life or imprisonment for life without the possibility of parole.

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

6 (ii) If the jury agrees unanimously to impose a sentence of
7 imprisonment for life without the possibility of parole, the court shall impose a sentence
8 of imprisonment for life without the possibility of parole.

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

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

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

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

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

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

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

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

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

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