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**By: Delegates Crumlin, Mossburg, Kelly, Schade, Morhaim, McClenahan, Ports, Leopold, Klima, M. Burns, Frank, Hubbard, Fulton, Conroy, B. Hughes, Hutchins, Malone, Pitkin, DeCarlo, Holt, and Dypski**

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

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A BILL ENTITLED

1 AN ACT concerning

2 **Parole Eligibility - First Degree Murder**

3 FOR the purpose of prohibiting persons convicted of murder in the first degree from  
4 receiving parole; exempting certain persons from this prohibition; altering certain  
5 sentencing procedures for persons convicted of murder in the first degree; providing  
6 for the application of this Act; making stylistic changes; and generally relating to  
7 parole eligibility of persons convicted of murder in the first degree.

8 BY repealing and reenacting, with amendments,  
9 Article 27 - Crimes and Punishments  
10 Section 412 and 413(a), (c)(3), and (k)  
11 Annotated Code of Maryland  
12 (1996 Replacement Volume)

13 BY repealing and reenacting, with amendments,  
14 Article 41 - Governor - Executive and Administrative Departments  
15 Section 4-516  
16 Annotated Code of Maryland  
17 (1993 Replacement Volume and 1996 Supplement)

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

20 **Article 27 - Crimes and Punishments**

21 412.

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

25 (b) Except as provided under subsection (g) of this section, a person found guilty  
26 of murder in the first degree shall be sentenced to death[, imprisonment for life,] or  
27 imprisonment for life without the possibility of parole. The sentence shall be  
28 imprisonment for life WITHOUT THE POSSIBILITY OF PAROLE unless:

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1 (1) [(i) the] THE State notified the person in writing at least 30 days prior  
2 to trial that it intended to seek a sentence of death, and advised the person of each  
3 aggravating circumstance upon which it intended to rely[, and (ii)]; AND

4 (2) [a] A sentence of death is imposed in accordance with § 413[; or (2) the  
5 State notified the person in writing at least 30 days prior to trial that it intended to seek  
6 a sentence of imprisonment for life without the possibility of parole under § 412 or § 413  
7 of this article].

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

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

15 (d) A person found guilty of murder in the second degree shall be sentenced to  
16 imprisonment for not more than 30 years.

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

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

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

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

28 [(g)] (F) (1) If a person found guilty of murder in the first degree was, at the  
29 time the murder was committed, less than 18 years old or if the person establishes by a  
30 preponderance of the evidence that the person was, at the time the murder was  
31 committed, mentally retarded, the person shall be sentenced to imprisonment for life or  
32 imprisonment for life without the possibility of parole and may not be sentenced to death.

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

37 413.

38 (a) If a person is found guilty of murder in the first degree, and if the State had  
39 given the notice required under § 412(b), a separate sentencing proceeding shall be  
40 conducted as soon as practicable after the trial has been completed to determine whether  
41 [he] THE PERSON shall be sentenced to death.

1 (c) (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[,] OR imprisonment for life without the possibility of parole[, or imprisonment  
5 for life,] and the burden of proof applicable to these findings in accordance with  
6 subsection (f) or subsection (h) of this section.

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

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

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

14 (4) If the court or jury determines that a sentence of death may not be  
15 imposed[, and the State did not give the notice required under § 412(b) of this article of  
16 intention to seek a sentence of life imprisonment without the possibility of parole,] the  
17 court shall impose a sentence of life imprisonment WITHOUT THE POSSIBILITY OF  
18 PAROLE.

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

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

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

34 (ii) If the jury agrees unanimously to impose a sentence of  
35 imprisonment for life without the possibility of parole, the court shall impose a sentence  
36 of imprisonment for life without the possibility of parole.

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

41 (8) If the State gives the notice required under § 412 of this article of the  
42 State's intention to seek a sentence of imprisonment for life without the possibility of

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1 parole, the court shall conduct a separate sentencing proceeding as soon as practicable  
2 after the trial has been completed to determine whether to impose a sentence of  
3 imprisonment for life or imprisonment for life without the possibility of parole.]

4 **Article 41 - Governor - Executive and Administrative Departments**

5 4-516.

6 (a) [It] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IT shall  
7 be the duty of the Commission of its own initiative to request the Division to make such  
8 investigation as may enable the Commission to determine the advisability of granting  
9 parole to persons sentenced to a term of 6 months or more under the laws of this State to  
10 the jurisdiction of the Division of Correction, or to any other place of confinement or  
11 detention of violators of the criminal laws of the State whenever the prisoner shall have  
12 served in confinement one-fourth of the term or consecutive terms.

13 (b) A PERSON CONVICTED OF MURDER IN THE FIRST DEGREE MAY NOT  
14 RECEIVE PAROLE UNLESS:

15 (1) THE PERSON WAS, AT THE TIME THE MURDER WAS COMMITTED,  
16 LESS THAN 18 YEARS OLD; OR

17 (2) THE PERSON ESTABLISHES BY A PREPONDERANCE OF THE  
18 EVIDENCE THAT THE PERSON WAS MENTALLY RETARDED AT THE TIME THE  
19 MURDER WAS COMMITTED.

20 (C) A person who has been sentenced to more than one term of confinement,  
21 including a term during which the person is eligible for parole and a term during which  
22 the person is not eligible for parole, is not eligible for parole consideration under  
23 subsection (a) of this section until the person has served the greater of:

24 (1) One-fourth of the aggregate terms sentenced; or

25 (2) A period of time equal to the term during which the person is not  
26 eligible for parole.

27 [(c)] (D) Notwithstanding the provisions of subsections (a) and [(b)] (C) of this  
28 section:

29 (1) (i) A person who has been sentenced to the Division of Correction  
30 after being convicted of a violent crime EXCEPT FOR MURDER IN THE FIRST DEGREE is  
31 not eligible for parole until the person has served one-half of the term or consecutive  
32 terms; and

33 (ii) A person who has been sentenced to the Division of Correction  
34 after being convicted of a violent crime EXCEPT FOR MURDER IN THE FIRST DEGREE  
35 and who has been sentenced to more than one term of confinement, including a term  
36 during which the person is eligible for parole and a term during which the person is not  
37 eligible for parole, is not eligible for parole until the person has served the greater of:

38 1. One-half of the aggregate terms sentenced; or

39 2. A period of time equal to the term during which the person is  
40 not eligible for parole.

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1 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a person  
2 who is serving a term of confinement for a violent crime shall receive an administrative  
3 review of the inmate's progress in the institution after the person has served one-fourth  
4 of the term of confinement.

5 (ii) A person who is serving a term of confinement that includes a  
6 mandatory term during which the person is not eligible for parole need not be given a  
7 review under this paragraph until the person has served the period of confinement during  
8 which the person is not eligible for parole.

9 [(d)] (E) (1) Except as provided in paragraphs (2) and (3) of this subsection, a  
10 person who has been sentenced to life imprisonment is not eligible for parole  
11 consideration until the person has served 15 years or the equal of 15 years when  
12 considering the allowances for diminution of period of confinement provided for in  
13 Article 27, [§ 700 and Article 27, § 638C,] §§ 638C AND 700 of the Code.

14 (2) [A person who has been sentenced to life imprisonment as a result of a  
15 proceeding under Article 27, § 413 is not eligible for parole consideration until the person  
16 has served 25 years or the equal of 25 years when considering the allowances for  
17 diminution of period of confinement provided for in Article 27, § 700 and Article 27, §  
18 638C, of the Code.

19 (3) (i) If a person is sentenced to imprisonment for life without the  
20 possibility of parole under Article 27, § 412 or § 413 of the Code, the person is not eligible  
21 for parole consideration and may not be granted parole at any time during the term of the  
22 sentence.

23 (ii) Nothing contained in this paragraph may be construed to restrict  
24 the authority of the Governor to pardon or remit any part of a sentence under the  
25 provisions of § 4-513 of this article.

26 [(4)] (3) If eligible for parole under this subsection, an inmate serving a  
27 term of life imprisonment and a person serving a term of life imprisonment who is  
28 confined at Patuxent Institution as an eligible person shall only be paroled with the  
29 approval of the Governor.

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed  
31 only prospectively and may not be applied or interpreted to have any effect on or  
32 application to any criminal action commenced before the effective date of this Act.

33 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
34 October 1, 1997.