
By: Delegate Kach

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Death Penalty - Aggravating Circumstances - Stalking**

3 FOR the purpose of expanding the list of aggravating circumstances to be considered by
4 a court or jury in a death penalty case to include a murder that was committed by a
5 defendant who had been convicted of stalking the victim; and generally relating to
6 the death penalty.

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

12 BY repealing and reenacting, without amendments,
13 Article 27 - Crimes and Punishments
14 Section 413(f), (g), and (h)
15 Annotated Code of Maryland
16 (1996 Replacement Volume)

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

19 **Article 27 - Crimes and Punishments**

20 413.

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

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

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

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

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

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

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

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

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

14 (9) The defendant committed more than one offense of murder in the first
15 degree arising out of the same incident; [or]

16 (10) The defendant committed the murder while committing or attempting to
17 commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual
18 offense in the first degree; OR

19 (11) THE DEFENDANT HAD BEEN CONVICTED OF STALKING THE VICTIM.

20 (f) If the court or jury does not find, beyond a reasonable doubt, that one or more
21 of these aggravating circumstances exist, it shall state that conclusion in writing, and a
22 sentence of death may not 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 a crime 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.

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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.

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