
By: Delegates Malone and Rudolph

Introduced and read first time: January 31, 1997

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Death Penalty - Procedural Delays**

3 FOR the purpose of clarifying that a certain requirement governing notice of intent to
4 seek a sentence of death and notice of intent to seek a sentence of life without the
5 possibility of parole shall apply to any trial date so as to allow the State to comply
6 with the requirement by filing notice at least a certain number of days before a trial
7 date even if the State did not file notice at least a certain number of days before a
8 previously scheduled trial date; requiring that a death penalty sentencing
9 proceeding be conducted before a judge rather than a jury if the defendant was
10 convicted after a trial before a judge sitting without a jury; providing that this
11 requirement does not apply if review of the original sentence of death has resulted
12 in a remand for resentencing; requiring a party who seeks to obtain automatic
13 removal of a case under a certain constitutional provision to file a certain motion
14 within a certain time period; prohibiting a court from granting a party's request for
15 removal after the time period has expired unless the party seeking removal
16 establishes that the party cannot obtain a fair trial or sentencing proceeding in the
17 jurisdiction in which the case is pending; making certain provisions of this Act
18 contingent upon the passage of a certain Constitutional Amendment; providing for
19 the application of this Act; and generally relating to the death penalty.

20 BY repealing and reenacting, with amendments,

21 Article 27 - Crimes and Punishments
22 Section 412 and 413(b)
23 Annotated Code of Maryland
24 (1996 Replacement Volume)

25 BY repealing and reenacting, without amendments,

26 Article 27 - Crimes and Punishments
27 Section 413(a)
28 Annotated Code of Maryland
29 (1996 Replacement Volume)

30 BY adding to

31 Article 27 - Crimes and Punishments
32 Section 412A

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1 Annotated Code of Maryland
2 (1996 Replacement Volume)

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

5 **Article 27 - Crimes and Punishments**

6 412.

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

10 (b) Except as provided under subsection (g) of this section, a person found guilty
11 of murder in the first degree shall be sentenced to death, imprisonment for life, or
12 imprisonment for life without the possibility of parole. The sentence shall be
13 imprisonment for life unless: (1)(i) the State notified the person in writing at least 30 days
14 prior to trial that it intended to seek a sentence of death, and advised the person of each
15 aggravating circumstance upon which it intended to rely, and (ii) a sentence of death is
16 imposed in accordance with § 413; or (2) the State notified the person in writing at least
17 30 days prior to trial that it intended to seek a sentence of imprisonment for life without
18 the possibility of parole under § 412 or § 413 of this article.

19 (C) THE 30-DAY DEADLINE ESTABLISHED UNDER SUBSECTION (B) OF THIS
20 SECTION FOR PROVISION OF NOTICE OF INTENT TO SEEK A SENTENCE OF DEATH OR
21 NOTICE OF INTENT TO SEEK A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF
22 PAROLE SHALL APPLY TO ANY TRIAL DATE SO AS TO PERMIT THE STATE TO
23 COMPLY WITH THE DEADLINE BY PROVIDING NOTICE AT LEAST 30 DAYS PRIOR TO A
24 TRIAL DATE EVEN IF THE STATE DID NOT PROVIDE NOTICE AT LEAST 30 DAYS
25 PRIOR TO A PREVIOUSLY SCHEDULED TRIAL DATE.

26 [(c)] (D) (1) If a State's Attorney files or withdraws a notice of intent to seek a
27 sentence of death, the State's Attorney shall file a copy of the notice or withdrawal with
28 the clerk of the Court of Appeals.

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

33 [(d)] (E) A person found guilty of murder in the second degree shall be sentenced
34 to imprisonment for not more than 30 years.

35 [(e)] (F) Except as provided by § 413 of this article, the court shall decide
36 whether to impose a sentence of life imprisonment or life imprisonment without the
37 possibility of parole.

38 [(f)] (G) (1) In this section, the following terms have the meanings indicated.

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

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

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

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

14 413.

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

19 (b) This proceeding shall be conducted:

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

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

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

23 (ii) [The defendant was convicted after a trial before the court sitting
 24 without a jury;

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

27 [(iv)] (III) Review of the original sentence of death by a court of
 28 competent jurisdiction has resulted in a remand for resentencing; or

29 (3) Before the court alone[, if a jury sentencing proceeding is waived by the
 30 defendant] IF:

31 (I) EXCEPT AS PROVIDED IN PARAGRAPH (2)(III) OF THIS
 32 SUBSECTION, THE DEFENDANT WAS CONVICTED AFTER A TRIAL BEFORE THE
 33 COURT SITTING WITHOUT A JURY; OR

34 (II) A JURY SENTENCING PROCEEDING IS WAIVED BY THE
 35 DEFENDANT.

36 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
 37 read as follows:

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1 **Article 27 - Crimes and Punishments**

2 412A.

3 (A) IF A PARTY SEEKS TO OBTAIN AUTOMATIC REMOVAL UNDER ARTICLE IV,
4 § 8 OF THE MARYLAND CONSTITUTION, THE PARTY SHALL FILE A MOTION
5 REQUESTING REMOVAL AT LEAST 30 DAYS BEFORE TRIAL OR, IF THERE IS NO
6 TRIAL, THE SENTENCING PROCEEDING OR WITHIN 15 DAYS AFTER THE STATE
7 PROVIDES NOTICE TO THE DEFENDANT OF ITS INTENT TO SEEK A SENTENCE OF
8 DEATH, WHICHEVER OCCURS LATER.

9 (B) IF A PARTY DOES NOT FILE A MOTION SEEKING REMOVAL WITHIN THE
10 TIME PERIOD SPECIFIED IN SUBSECTION (A) OF THIS SECTION, A COURT MAY NOT
11 GRANT A PARTY'S REQUEST FOR REMOVAL UNLESS THE PARTY SEEKING THE
12 REMOVAL ESTABLISHES THAT THE PARTY CANNOT OBTAIN A FAIR TRIAL OR
13 SENTENCING PROCEEDING IN THE JURISDICTION IN WHICH THE CASE IS PENDING.

14 SECTION 3. AND BE IT FURTHER ENACTED, That the provisions of this Act
15 shall apply to all criminal cases, regardless of whether the case arises out of an offense
16 that is committed before or after the effective date of this Act or whether the trial or
17 sentencing of the defendant occurs before or after the effective date of this Act.

18 SECTION 4. AND BE IT FURTHER ENACTED, That the taking effect of
19 Section 2 of this Act is contingent on the passage of Chapter _____
20 (S.B._____/H.B._____) (7lr0973) of the Acts of the General Assembly of 1997, a
21 Constitutional Amendment, and its ratification by the voters of the State.

22 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 October 1, 1997.