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1997 Regular Session

(PRE-FILED)

E2
SB 58/95 - JPR7lr0511
CF 7lr0649

By: Senators Colburn, Baker, Stoltzfus, Collins, Dorman, Ferguson, Hafer, Haines, Jimeno, Middlebrooks, and Stone

Requested: September 24, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 First Degree Murder - Death Penalty - Controlled Dangerous Substances

3 FOR the purpose of expanding the list of aggravating circumstances that may be
4 considered by a judge or jury when determining whether to impose a sentence of
5 death on a person who has been convicted of first degree murder to include certain
6 circumstances involving certain controlled dangerous substance offenses; and
7 generally relating to the aggravating circumstances that a judge or jury may consider
8 when determining whether to impose the death penalty.

9 BY repealing and reenacting, without amendments,
10 Article 27 - Crimes and Punishments
11 Section 413(a), (b), (c), (e), (f), (g), and (h)
12 Annotated Code of Maryland
13 (1996 Replacement Volume)

14 BY repealing and reenacting, with amendments,
15 Article 27 - Crimes and Punishments
16 Section 413(d)
17 Annotated Code of Maryland
18 (1996 Replacement Volume)

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

21 Article 27 - Crimes and Punishments

22 413.

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

27 (b) This proceeding shall be conducted:

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

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

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

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

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

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

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

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

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

14 (ii) Evidence relating to any aggravating circumstance listed in
15 subsection (d) of this section of which the State had notified the defendant pursuant to §
16 412(b) of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (11) THE DEFENDANT COMMITTED THE MURDER IN THE COURSE OF
22 COMMITTING, ATTEMPTING TO COMMIT, OR CONSPIRING TO COMMIT A VIOLATION
23 OF ANY OF THE PROVISIONS OF § 286, § 286A, OR § 286B OF THIS ARTICLE.

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

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

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

33 (3) (i) The term "law enforcement officer" has the meaning given in §
34 727 of Article 27.

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

37 1. An officer serving in a probationary status;

38 2. A parole and probation officer;

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1 3. A law enforcement officer of a jurisdiction outside of
2 Maryland; and

3 4. If the law enforcement officer is wearing the uniform worn by
4 the law enforcement officer while acting in an official capacity or is prominently
5 displaying his official badge or other insignia of office, a law enforcement officer privately
6 employed as a security officer or special policeman under the provisions of Article 41, §§
7 4-901 through 4-913 of the Code.

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

11 (f) If the court or jury does not find, beyond a reasonable doubt, that one or more
12 of these aggravating circumstances exist, it shall state that conclusion in writing, and a
13 sentence of death may not be imposed.

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

17 (1) The defendant has not previously (i) been found guilty of a crime of
18 violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of
19 violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a
20 charge of a crime of violence. As used in this paragraph, "crime of violence" means
21 abduction, arson in the first degree, escape, kidnapping, manslaughter, except involuntary
22 manslaughter, mayhem, murder, robbery, carjacking or armed carjacking, or rape or
23 sexual offense in the first or second degree, or an attempt to commit any of these
24 offenses, or the use of a handgun in the commission of a felony or another crime of
25 violence.

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

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

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

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

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

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

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

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