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SB 58/95 - JPR

CF 7r0649

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

Requested: September 24, 1996

Introduced and read first time: January 8, 1997

Assigned to: Judicial Proceedings

Committee Report: Favorable with amendments

Senate action: Adopted

Read second time: March 5, 1997

CHAPTER ____

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; making a
7 principal in the second degree eligible for the death penalty under certain
8 circumstances; and generally relating to the ~~aggravating circumstances that a judge~~
9 ~~or jury may consider when determining whether to impose the death penalty.~~

10 BY repealing and reenacting, without amendments,
11 Article 27 - Crimes and Punishments
12 Section 413(a), (b), (c), ~~(e)~~, (f), (g), and (h)
13 Annotated Code of Maryland
14 (1996 Replacement Volume)

15 BY repealing and reenacting, with amendments,
16 Article 27 - Crimes and Punishments
17 Section 413(d) and (e)
18 Annotated Code of Maryland
19 (1996 Replacement Volume)

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

2

1 **Article 27 - Crimes and Punishments**

2 413.

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

7 (b) This proceeding shall be conducted:

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

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

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

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

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

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

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

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

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

22 (ii) Evidence relating to any aggravating circumstance listed in
23 subsection (d) of this section of which the State had notified the defendant pursuant to §
24 412(b) of this article;

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

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

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

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

35 (3) After presentation of the evidence in a proceeding before a jury, in
36 addition to any other appropriate instructions permitted by law, the court shall instruct
37 the jury as to the findings it must make in order to determine whether the sentence shall

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1 be death, imprisonment for life without the possibility of parole, or imprisonment for life,
2 and the burden of proof applicable to these findings in accordance with subsection (f) or
3 subsection (h) of this section.

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

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

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

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

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

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

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

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

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

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

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

29 (11) ~~THE DEFENDANT COMMITTED THE MURDER IN THE COURSE OF~~
30 ~~COMMITTING, ATTEMPTING TO COMMIT, OR CONSPIRING TO COMMIT A VIOLATION~~
31 ~~OF CONNECTION WITH A VIOLATION OF OR AN ATTEMPT TO VIOLATE ANY OF THE~~
32 ~~PROVISIONS OF § 286, § 286A, OR § 286B OF THIS ARTICLE.~~

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

35 (1) (I) The terms "defendant" and "person", except as those terms
36 appear in subsection (d)(7) AND (11) of this section, include only a principal in the first
37 degree.

38 (II) IN SUBSECTION (D)(11) OF THIS SECTION, THE TERM
39 "DEFENDANT" MEANS:

1 1. A PRINCIPAL IN THE FIRST DEGREE: OR

2 2. A PRINCIPAL IN THE SECOND DEGREE WHO EXHIBITED A
3 RECKLESS DISREGARD FOR HUMAN LIFE.

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

9 (3) (i) The term "law enforcement officer" has the meaning given in §
10 727 of Article 27.

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

- 13 1. An officer serving in a probationary status;
- 14 2. A parole and probation officer;
- 15 3. A law enforcement officer of a jurisdiction outside of
16 Maryland; and
- 17 4. If the law enforcement officer is wearing the uniform worn by
18 the law enforcement officer while acting in an official capacity or is prominently
19 displaying his official badge or other insignia of office, a law enforcement officer privately
20 employed as a security officer or special policeman under the provisions of Article 41, §§
21 4-901 through 4-913 of the Code.

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

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

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

31 (1) The defendant has not previously (i) been found guilty of a crime of
32 violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of
33 violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a
34 charge of a crime of violence. As used in this paragraph, "crime of violence" means
35 abduction, arson in the first degree, escape, kidnapping, manslaughter, except involuntary
36 manslaughter, mayhem, murder, robbery, carjacking or armed carjacking, or rape or
37 sexual offense in the first or second degree, or an attempt to commit any of these
38 offenses, or the use of a handgun in the commission of a felony or another crime of
39 violence.

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

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

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

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

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

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

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

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

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

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

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