
By: The President (Administration)

Introduced and read first time: January 17, 1997

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Homicide - Penalties**

3 FOR the purpose of altering the list of aggravating circumstances that must be considered
4 by a court or jury when determining whether to impose a sentence of death;
5 providing that the court or jury must consider whether one or more persons,
6 including principals in the first and second degree, committed the murder of a law
7 enforcement officer while the officer was in the performance of his duties; defining
8 a certain term; and generally relating to the imposition of the death penalty.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 413
12 Annotated Code of Maryland
13 (1996 Replacement Volume)

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

16 **Article 27 - Crimes and Punishments**

17 413.

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

22 (b) This proceeding shall be conducted:

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

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

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

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

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

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

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

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

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

8 (ii) Evidence relating to any aggravating circumstance listed in
9 subsection (d) of this section of which the State had notified the defendant pursuant to §
10 412(b) of this article;

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

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

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

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

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

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

30 (1) [The victim was] ONE OR MORE PERSONS COMMITTED THE
31 MURDER OF a law enforcement officer [who was murdered] while in the performance of
32 his duties;

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

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

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

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

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

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

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

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

11 (10) The defendant committed the murder while committing or attempting to
12 commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual
13 offense in the first degree.

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

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

18 (1) (I) THE TERMS "DEFENDANT" AND "PERSON", EXCEPT AS THOSE
19 TERMS APPEAR IN SUBSECTION (D)(1) OF THIS SECTION, INCLUDE ONLY A PRINCIPAL
20 IN THE FIRST DEGREE.

21 (II) IN SUBSECTION (D)(1) OF THIS SECTION, THE TERMS INCLUDE
22 PRINCIPALS IN THE FIRST AND SECOND DEGREE.

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

28 (3) (i) The term "law enforcement officer" has the meaning given in §
29 727 of [Article 27] THIS ARTICLE.

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

32 1. An officer serving in a probationary status;

33 2. A parole and probation officer;

34 3. A law enforcement officer of a jurisdiction outside of
35 Maryland; and

36 4. If the law enforcement officer is wearing the uniform worn by
37 the law enforcement officer while acting in an official capacity or is prominently
38 displaying his official badge or other insignia of office, a law enforcement officer privately

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1 employed as a security officer or special policeman under the provisions of Article 41, §§
2 4-901 through 4-913 of the Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (i) The determination of the court or jury shall be in writing, and, if a jury, shall
6 be unanimous and shall be signed by the foreman.

7 (j) The determination of the court or jury shall state, specifically:

8 (1) Which, if any, aggravating circumstances it finds to exist;

9 (2) Which, if any, mitigating circumstances it finds to exist;

10 (3) Whether any aggravating circumstances found under subsection (d) of
11 this section outweigh the mitigating circumstances found under subsection (g) of this
12 section;

13 (4) Whether the aggravating circumstances found under subsection (d) do
14 not outweigh mitigating circumstances under subsection (g); and

15 (5) The sentence, determined in accordance with subsection (f) or (h).

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

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

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

23 (4) If the court or jury determines that a sentence of death may not be
24 imposed, and the State did not give the notice required under § 412(b) of this article of
25 intention to seek a sentence of life imprisonment without the possibility of parole, the
26 court shall impose a sentence of life imprisonment.

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

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

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

4 (ii) If the jury agrees unanimously to impose a sentence of
5 imprisonment for life without the possibility of parole, the court shall impose a sentence
6 of imprisonment for life without the possibility of parole.

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

11 (8) If the State gives the notice required under § 412 of this article of the
12 State's intention to seek a sentence of imprisonment for life without the possibility of
13 parole, the court shall conduct a separate sentencing proceeding as soon as practicable
14 after the trial has been completed to determine whether to impose a sentence of
15 imprisonment for life or imprisonment for life without the possibility of parole.

16 (l) The Court of Appeals may adopt rules of procedure to govern the conduct of
17 a sentencing proceeding conducted pursuant to this section, including any forms to be
18 used by the court or jury in making its written findings and determinations of sentence.

19 (m) (1) A judge shall appoint at least 2 alternate jurors when impaneling a jury
20 for any proceeding:

21 (i) In which the defendant is being tried for a crime for which the
22 death penalty may be imposed; or

23 (ii) Which is held under the provisions of this section.

24 (2) The alternate jurors shall be retained during the length of the
25 proceedings under such restrictions and regulations as the judge may impose.

26 (3) (i) If any juror dies, becomes incapacitated, or disqualified, or is
27 discharged for any other reason before the jury begins its deliberations on sentencing, an
28 alternate juror becomes a juror in the order in which selected, and serves in all respects
29 as those selected on the regular trial panel.

30 (ii) An alternate juror may not replace a juror who is discharged
31 during the actual deliberations of the jury on the guilt or innocence of the defendant, or
32 on the issue of sentencing.

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