

CF 7r1938

By: The President (Administration)

Introduced and read first time: January 17, 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 **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; providing for the application of this Act; and generally relating to
 9 the imposition of the death penalty.

10 BY repealing and reenacting, with amendments,
 11 Article 27 - Crimes and Punishments
 12 Section 413
 13 Annotated Code of Maryland
 14 (1996 Replacement Volume)

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

17 **Article 27 - Crimes and Punishments**

18 413.

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

23 (b) This proceeding shall be conducted:

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

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

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

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

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

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

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

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

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

15 (ii) Evidence relating to any aggravating circumstance listed in
16 subsection (d) of this section of which the State had notified the defendant pursuant to §
17 412(b) of this article;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 (1) (I) THE TERMS "DEFENDANT" AND "PERSON", EXCEPT AS THOSE
29 TERMS APPEAR IN SUBSECTION (D)(1) AND (7) OF THIS SECTION, INCLUDE ONLY A
30 PRINCIPAL IN THE FIRST DEGREE.

31 (II) IN SUBSECTION (D)(1) OF THIS SECTION, THE TERMS ~~INCLUDE~~
32 ~~PRINCIPALS IN THE FIRST AND SECOND DEGREE~~ MEAN:

33 1. A PRINCIPAL IN THE FIRST DEGREE; OR

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

36 (2) The term "correctional institution" includes any institution for the
37 detention or confinement of persons charged with or convicted of a crime, including
38 Patuxent Institution, any institution for the detention or confinement of juveniles charged

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1 with or adjudicated as being delinquent, and any hospital in which the person was
2 confined pursuant to an order of a court exercising criminal jurisdiction.

3 (3) (i) The term "law enforcement officer" has the meaning given in §
4 727 of [Article 27] THIS ARTICLE.

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

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

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

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

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

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

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

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

39 (4) The murder was committed while the capacity of the defendant to
40 appreciate the criminality of his conduct or to conform his conduct to the requirements of

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1 law was substantially impaired as a result of mental incapacity, mental disorder or
2 emotional disturbance.

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

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

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

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

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

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

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

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

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

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

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

22 (3) Whether any aggravating circumstances found under subsection (d) of
23 this section outweigh the mitigating circumstances found under subsection (g) of this
24 section;

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

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

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

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

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

35 (4) If the court or jury determines that a sentence of death may not be
36 imposed, and the State did not give the notice required under § 412(b) of this article of

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1 intention to seek a sentence of life imprisonment without the possibility of parole, the
2 court shall impose a sentence of life imprisonment.

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

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

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

18 (ii) If the jury agrees unanimously to impose a sentence of
19 imprisonment for life without the possibility of parole, the court shall impose a sentence
20 of imprisonment for life without the possibility of parole.

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

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

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

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

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

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

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

40 (3) (i) If any juror dies, becomes incapacitated, or disqualified, or is
41 discharged for any other reason before the jury begins its deliberations on sentencing, an

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1 alternate juror becomes a juror in the order in which selected, and serves in all respects
2 as those selected on the regular trial panel.

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

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed
7 only prospectively to apply to offenses that are committed after October 1, 1997, and may
8 not be applied or interpreted to have any effect on or application to offenses committed
9 before October 1, 1997.

10 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
11 October 1, 1997.