
By: **Delegate Crumlin**

Introduced and read first time: January 26, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Parole Eligibility - First Degree Murder**

3 FOR the purpose of prohibiting persons convicted of murder in the first degree from
4 receiving parole; exempting certain persons from this prohibition; altering
5 certain sentencing procedures for persons convicted of murder in the first
6 degree; providing for the application of this Act; making stylistic changes; and
7 generally relating to parole eligibility of persons convicted of murder in the first
8 degree.

9 BY repealing and reenacting, with amendments,
10 Article 27 - Crimes and Punishments
11 Section 412 and 413(a), (c)(3), and (k)
12 Annotated Code of Maryland
13 (1996 Replacement Volume and 1997 Supplement)

14 BY repealing and reenacting, with amendments,
15 Article 41 - Governor - Executive and Administrative Departments
16 Section 4-516
17 Annotated Code of Maryland
18 (1997 Replacement Volume and 1997 Supplement)

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**

22 412.

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

26 (b) Except as provided under subsection [(g)] (F) of this section, a person
27 found guilty of murder in the first degree shall be sentenced to death[, imprisonment

1 for life,] or imprisonment for life without the possibility of parole. The sentence shall
2 be imprisonment for life WITHOUT THE POSSIBILITY OF PAROLE unless:

3 (1) [(i) the] THE State notified the person in writing at least 30 days
4 prior to trial that it intended to seek a sentence of death, and advised the person of
5 each aggravating circumstance upon which it intended to rely[, and (ii)]; AND

6 (2) [a] A sentence of death is imposed in accordance with § 413[; or (2)
7 the State notified the person in writing at least 30 days prior to trial that it intended
8 to seek a sentence of imprisonment for life without the possibility of parole under §
9 412 or § 413] of this article.

10 (c) (1) If a State's Attorney files or withdraws a notice of intent to seek a
11 sentence of death, the State's Attorney shall file a copy of the notice or withdrawal
12 with the clerk of the Court of Appeals.

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

17 (d) A person found guilty of murder in the second degree shall be sentenced to
18 imprisonment for not more than 30 years.

19 (e) [Except as provided by § 413 of this article, the court shall decide whether
20 to impose a sentence of life imprisonment or life imprisonment without the possibility
21 of parole.

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

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

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

31 [(g)] (F) (1) If a person found guilty of murder in the first degree was, at the
32 time the murder was committed, less than 18 years old or if the person establishes by
33 a preponderance of the evidence that the person was, at the time the murder was
34 committed, mentally retarded, the person shall be sentenced to imprisonment for life
35 or imprisonment for life without the possibility of parole and may not be sentenced to
36 death.

37 (2) The sentence shall be imprisonment for life unless the State notified
38 the person in writing at least 30 days prior to trial that the State intended to seek a

1 sentence of imprisonment for life without the possibility of parole under this section
2 or § 413 of this article.

3 413.

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

8 (c) (3) After presentation of the evidence in a proceeding before a jury, in
9 addition to any other appropriate instructions permitted by law, the court shall
10 instruct the jury as to the findings it must make in order to determine whether the
11 sentence shall be death[,] OR imprisonment for life without the possibility of parole[,]
12 or imprisonment for life,] and the burden of proof applicable to these findings in
13 accordance with subsection (f) or subsection (h) of this section.

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

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

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

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

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
29 but does not give notice of intention to seek the death penalty, the court shall conduct
30 a separate sentencing proceeding as soon as practicable after the trial has been
31 completed to determine whether to impose a sentence of imprisonment for life or
32 imprisonment for 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
36 jury determines that a sentence of death may not be imposed under the provisions of
37 this section, that court or jury shall determine whether to impose a sentence of
38 imprisonment for life or imprisonment for life without the possibility of parole.

1 (7) (i) In determining whether to impose a sentence of imprisonment
2 for life without the possibility of parole, a jury shall agree unanimously on the
3 imposition of 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
6 sentence 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
14 practicable after the trial has been completed to determine whether to impose a
15 sentence of imprisonment for life or imprisonment for life without the possibility of
16 parole.]

17 **Article 41 - Governor - Executive and Administrative Departments**

18 4-516.

19 (a) [It] EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, IT shall
20 be the duty of the Commission of its own initiative to request the Division to make
21 such investigation as may enable the Commission to determine the advisability of
22 granting parole to persons sentenced to a term of 6 months or more under the laws of
23 this State to the jurisdiction of the Division of Correction, or to any other place of
24 confinement or detention of violators of the criminal laws of the State whenever the
25 prisoner shall have served in confinement one-fourth of the term or consecutive
26 terms.

27 (b) A PERSON CONVICTED OF MURDER IN THE FIRST DEGREE MAY NOT
28 RECEIVE PAROLE UNLESS:

29 (1) THE PERSON WAS, AT THE TIME THE MURDER WAS COMMITTED,
30 LESS THAN 18 YEARS OLD; OR

31 (2) THE PERSON ESTABLISHES BY A PREPONDERANCE OF THE
32 EVIDENCE THAT THE PERSON WAS MENTALLY RETARDED AT THE TIME THE MURDER
33 WAS COMMITTED.

34 (C) A person who has been sentenced to more than one term of confinement,
35 including a term during which the person is eligible for parole and a term during
36 which the person is not eligible for parole, is not eligible for parole consideration
37 under subsection (a) of this section until the person has served the greater of:

38 (1) One-fourth of the aggregate terms sentenced; or

1 (2) A period of time equal to the term during which the person is not
2 eligible for parole.

3 [(c)] (D) Notwithstanding the provisions of subsections (a) and [(b)] (C) of this
4 section:

5 (1) (i) A person who has been sentenced to the Division of Correction
6 after being convicted of a violent crime EXCEPT FOR MURDER IN THE FIRST DEGREE
7 is not eligible for parole until the person has served one-half of the term or
8 consecutive terms; and

9 (ii) A person who has been sentenced to the Division of Correction
10 after being convicted of a violent crime EXCEPT FOR MURDER IN THE FIRST DEGREE
11 and who has been sentenced to more than one term of confinement, including a term
12 during which the person is eligible for parole and a term during which the person is
13 not eligible for parole, is not eligible for parole until the person has served the greater
14 of:

15 1. One-half of the aggregate terms sentenced; or

16 2. A period of time equal to the term during which the person
17 is not eligible for parole.

18 (2) (i) Except as provided in subparagraph (ii) of this paragraph, a
19 person who is serving a term of confinement for a violent crime shall receive an
20 administrative review of the inmate's progress in the institution after the person has
21 served one-fourth of the term of confinement.

22 (ii) A person who is serving a term of confinement that includes a
23 mandatory term during which the person is not eligible for parole need not be given a
24 review under this paragraph until the person has served the period of confinement
25 during which the person is not eligible for parole.

26 [(d)] (E) (1) Except as provided in [paragraphs (2) and (3)] PARAGRAPH (2)
27 of this subsection, a person who has been sentenced to life imprisonment is not
28 eligible for parole consideration until the person has served 15 years or the equal of 15
29 years when considering the allowances for diminution of period of confinement
30 provided for in Article 27, [§ 700 and Article 27, § 638C,] §§ 638C AND 700 of the Code.

31 (2) [A person who has been sentenced to life imprisonment as a result of
32 a proceeding under Article 27, § 413 is not eligible for parole consideration until the
33 person has served 25 years or the equal of 25 years when considering the allowances
34 for diminution of period of confinement provided for in Article 27, § 700 and Article
35 27, § 638C, of the Code.

36 (3)] (i) If a person is sentenced to imprisonment for life without the
37 possibility of parole under Article 27, § 412 or § 413 of the Code, the person is not
38 eligible for parole consideration and may not be granted parole at any time during the
39 term of the sentence.

1 (ii) Nothing contained in this paragraph may be construed to
2 restrict the authority of the Governor to pardon or remit any part of a sentence under
3 the provisions of § 4-513 of this article.

4 [(4)] (3) If eligible for parole under this subsection, an inmate serving a
5 term of life imprisonment and a person serving a term of life imprisonment who is
6 confined at Patuxent Institution as an eligible person shall only be paroled with the
7 approval of the Governor.

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be
9 construed only prospectively and may not be applied or interpreted to have any effect
10 on or application to any criminal action commenced before the effective date of this
11 Act.

12 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
13 October 1, 1998.