

SENATE BILL 540

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SB 566/98 - JPR

1999 Regular Session  
9r1677

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By: **Senators Colburn and Baker**  
Introduced and read first time: February 5, 1999  
Assigned to: Judicial Proceedings

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A BILL ENTITLED

1 AN ACT concerning

2 **Death Penalty - Aggravating Circumstances - Drug Trafficking**

3 FOR the purpose of identifying murder in the first degree committed during the  
4 commission of a violation of certain offenses relating to manufacturing,  
5 distributing, or dispensing controlled dangerous substances as an aggravating  
6 circumstance for a court or jury to consider in determining a sentence of death;  
7 and generally relating to aggravating circumstances in determining criminal  
8 sentencing.

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 and 1998 Supplement)

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  
19 had given the notice required under § 412(b), a separate sentencing proceeding shall  
20 be conducted as soon as practicable after the trial has been completed to determine  
21 whether 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;

- 1 (ii) The defendant was convicted after a trial before the court  
2 sitting without a jury;
- 3 (iii) The jury that determined the defendant's guilt has been  
4 discharged by the court for good cause; or
- 5 (iv) Review of the original sentence of death by a court of competent  
6 jurisdiction has resulted in a remand for resentencing; or
- 7 (3) Before the court alone, if a jury sentencing proceeding is waived by  
8 the defendant.
- 9 (c) (1) The following type of evidence is admissible in this proceeding:
- 10 (i) Evidence relating to any mitigating circumstance listed in  
11 subsection (g) of this section;
- 12 (ii) Evidence relating to any aggravating circumstance listed in  
13 subsection (d) of this section of which the State had notified the defendant pursuant  
14 to § 412(b) of this article;
- 15 (iii) Evidence of any prior criminal convictions, pleas of guilty or  
16 nolo contendere, or the absence of such prior convictions or pleas, to the same extent  
17 admissible in other sentencing procedures;
- 18 (iv) Any presentence investigation report. However, any  
19 recommendation as to sentence contained in the report is not admissible; and
- 20 (v) Any other evidence that the court deems of probative value and  
21 relevant to sentence, provided the defendant is accorded a fair opportunity to rebut  
22 any statements.
- 23 (2) The State and the defendant or his counsel may present argument for  
24 or against the sentence of death.
- 25 (3) After presentation of the evidence in a proceeding before a jury, in  
26 addition to any other appropriate instructions permitted by law, the court shall  
27 instruct the jury as to the findings it must make in order to determine whether the  
28 sentence shall be death, imprisonment for life without the possibility of parole, or  
29 imprisonment for life, and the burden of proof applicable to these findings in  
30 accordance with subsection (f) or subsection (h) of this section.
- 31 (d) In determining the sentence, the court or jury, as the case may be, shall  
32 first consider whether, beyond a reasonable doubt, any of the following aggravating  
33 circumstances exist:
- 34 (1) One or more persons committed the murder of a law enforcement  
35 officer while in the performance of his duties;

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

3           (3)     The defendant committed the murder in furtherance of an escape or  
4 an attempt to escape from or evade the lawful custody, arrest, or detention of or by an  
5 officer 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  
15 or imprisonment for life;

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

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

21          (11)    **THE DEFENDANT COMMITTED THE MURDER WHILE COMMITTING A**  
22 **VIOLATION OF § 286(G), § 286A, § 286C, OR § 286E OF THIS ARTICLE.**

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

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

29               (ii)    In subsection (d)(1) of this section, the term "person" means:

30                   1.     A principal in the first degree; or

31                   2.     A principal in the second degree who:

32                       A.    Willfully, deliberately, and with premeditation intended  
33 the death of the law enforcement officer;

34                       B.    Was a major participant in the murder; and

1 C. Was actually present at the time and place of the murder.

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

7 (3) (i) The term "law enforcement officer" has the meaning given in §  
8 727 of this article.

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

11 1. An officer serving in a probationary status;

12 2. A parole and probation officer;

13 3. A law enforcement officer of a jurisdiction outside of  
14 Maryland; and

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

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

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

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

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

- 1           (2)     The victim was a participant in the defendant's conduct or consented  
2 to 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  
5 defense 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  
8 requirements of law was substantially impaired as a result of mental incapacity,  
9 mental disorder or 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  
12 victim's death.
- 13          (7)     It is unlikely that the defendant will engage in further criminal  
14 activity 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,  
19 the aggravating circumstances outweigh the mitigating circumstances.
- 20          (2)     If it finds that the aggravating circumstances outweigh the  
21 mitigating 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   (i)    The determination of the court or jury shall be in writing, and, if a jury,  
25 shall be unanimous and shall be signed by the foreman.
- 26   (j)    The determination of the court or jury shall state, specifically:
- 27          (1)     Which, if any, aggravating circumstances it finds to exist;
- 28          (2)     Which, if any, mitigating circumstances it finds to exist;
- 29          (3)     Whether any aggravating circumstances found under subsection (d)  
30 of this section outweigh the mitigating circumstances found under subsection (g) of  
31 this section;
- 32          (4)     Whether the aggravating circumstances found under subsection (d)  
33 do not outweigh mitigating circumstances under subsection (g); and
- 34          (5)     The sentence, determined in accordance with subsection (f) or (h).

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

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

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

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

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

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

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

28 (ii) If the jury agrees unanimously to impose a sentence of  
29 imprisonment for life without the possibility of parole, the court shall impose a  
30 sentence of imprisonment for life without the possibility of parole.

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

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

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

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

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

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

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

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

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

19 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
20 October 1, 1999.