Unofficial Copy SB 566/98 - JPR 1999 Regular Session 9lr1677

By: Senators Colburn and Baker

Introduced and read first time: February 5, 1999

Assigned to: Judicial Proceedings

A BILL ENTITLED

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1	$\Delta I I$	ΔCI	COHCCHIIII

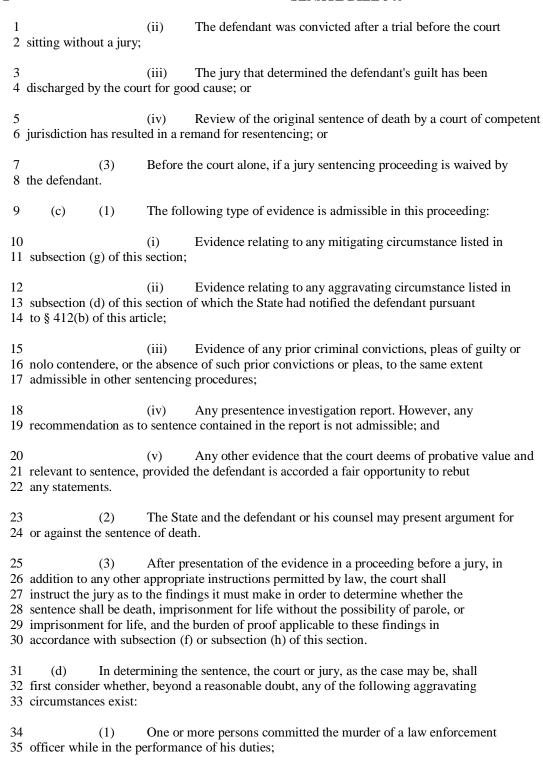
2 Death Penalty - Aggravating Circumstances - Drug Trafficking

- 3 FOR the purpose of identifying murder in the first degree committed during the
- commission of a violation of certain offenses relating to manufacturing, 4
- 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;
- and generally relating to aggravating circumstances in determining criminal 7
- 8 sentencing.
- 9 BY repealing and reenacting, with amendments,
- Article 27 Crimes and Punishments 10
- 11 Section 413
- Annotated Code of Maryland 12
- (1996 Replacement Volume and 1998 Supplement) 13
- SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 14
- 15 MARYLAND, That the Laws of Maryland read as follows:

16 **Article 27 - Crimes and Punishments**

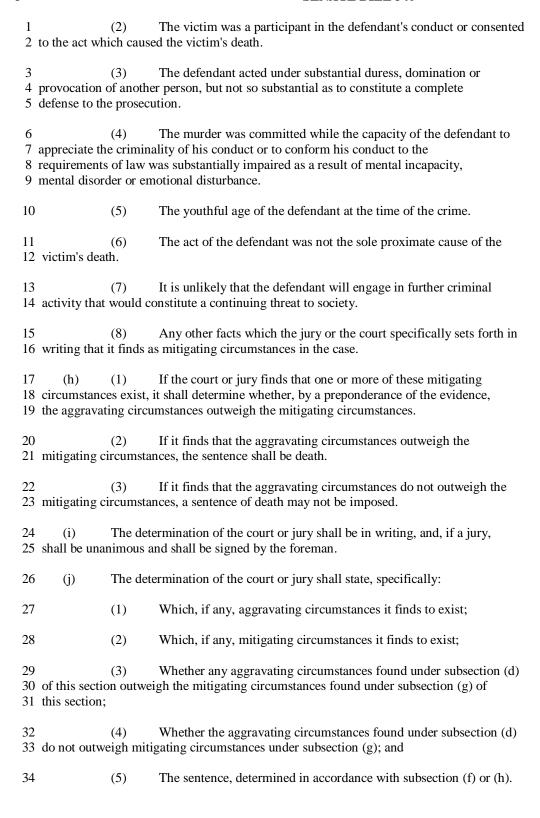
17 413.

- 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 2	(2) The defendant committed the murder at a time when he was confined in any correctional institution;					
	(3) The defendant committed the murder in furtherance of an escape or an attempt to escape from or evade the lawful custody, arrest, or detention of or by an officer or guard of a correctional institution or by a law enforcement officer;					
6 7	(4) The victim was taken or attempted to be taken in the course of a 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 10	(6) The defendant committed the murder pursuant to an agreement or contract for remuneration or the promise of remuneration to commit the murder;					
	(7) The defendant engaged or employed another person to commit the murder and the murder was committed pursuant to an agreement or contract for remuneration or the promise of remuneration;					
14 15	(8) At the time of the murder, the defendant was under sentence of death or imprisonment for life;					
16 17	(9) The defendant committed more than one offense of murder in the first degree arising out of the same incident; [or]					
	(10) The defendant committed the murder while committing or attempting to commit a carjacking, armed carjacking, robbery, arson in the first degree, rape or sexual offense in the first degree; OR					
21 22	(11) THE DEFENDANT COMMITTED THE MURDER WHILE COMMITTING A VIOLATION OF § 286(G), § 286A, § 286C, OR § 286E OF THIS ARTICLE.					
	(e) As used in this section, the following terms have the meanings indicated unless a contrary meaning is clearly intended from the context in which the term appears:					
	(1) (i) The terms "defendant" and "person", except as those terms appear in subsection (d)(1) and (7) of this section, include only a principal in the first 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 33	A. Willfully, deliberately, and with premedication intended 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.			
4 5	(2) The term "correctional institution" includes any institution for the detention or confinement of persons charged with or convicted of a crime, including Patuxent Institution, any institution for the detention or confinement of juveniles charged with or adjudicated as being delinquent, and any hospital in which the person was confined pursuant to an order of a court exercising criminal jurisdiction.					
7 8	(3) (i) 727 of this article.	The ter	m "law enforcement officer" has the meaning given in §			
9 10	(ii) this section, includes:	The ter	m "law enforcement officer", as used in subsection (d) of			
11		1.	An officer serving in a probationary status;			
12		2.	A parole and probation officer;			
13 14	Maryland; and	3.	A law enforcement officer of a jurisdiction outside of			
17 18	4. If the law enforcement officer is wearing the uniform work by the law enforcement officer while acting in an official capacity or is prominently displaying his official badge or other insignia of office, a law enforcement officer privately employed as a security officer or special policeman under the provisions of Article 41, §§ 4-901 through 4-913 of the Code.					
	(4) "Imprisonment for life without the possibility of parole" means imprisonment for the natural life of an inmate under the custody of a correctional institution, including the Patuxent Institution.					
	(f) If the court or jury does not find, beyond a reasonable doubt, that one or more of these aggravating circumstances exist, it shall state that conclusion in writing, and a sentence of death may not be imposed.					
	(g) If the court or jury finds, beyond a reasonable doubt, that one or more of these aggravating circumstances exist, it shall then consider whether, based upon a preponderance of the evidence, any of the following mitigating circumstances exist:					
31 32 33 34 35 36	(1) The defendant has not previously (i) been found guilty of a crime of violence; (ii) entered a plea of guilty or nolo contendere to a charge of a crime of violence; or (iii) had a judgment of probation on stay of entry of judgment entered on a charge of a crime of violence. As used in this paragraph, "crime of violence" means abduction, arson in the first degree, escape, kidnapping, manslaughter, except involuntary manslaughter, mayhem, murder, robbery, carjacking or armed carjacking, or rape or sexual offense in the first or second degree, or an attempt to commit any of these offenses, or the use of a handgun in the commission of a felony or another crime of violence.					



1 (k) If the jury determines that a sentence of death shall be imposed (1) 2 under the provisions of this section, then the court shall impose a sentence of death. 3 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 If the sentencing proceeding is conducted before a court without a (3) 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 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 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 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 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 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. If the jury, within a reasonable time, is not able to agree 31 (iii) 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. If the State gives the notice required under § 412 of this article of the 35 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.

3	a sentencing pro	oceeding condu	eals may adopt rules of procedure to govern the conduct of cted pursuant to this section, including any forms to be king its written findings and determinations of			
5 6	(m) (1 jury for any pro		shall appoint at least 2 alternate jurors when impaneling a			
7 8	death penalty m	(i) nay be imposed;	In which the defendant is being tried for a crime for which the or			
9		(ii)	Which is held under the provisions of this section.			
10 11	(2 proceedings un		rnate jurors shall be retained during the length of the tions and regulations as the judge may impose.			
14	(3) (i) If any juror dies, becomes incapacitated, or disqualified, or is discharged for any other reason before the jury begins its deliberations on sentencing, an alternate juror becomes a juror in the order in which selected, and serves in all respects as those selected on the regular trial panel.					
	during the actu or on the issue		An alternate juror may not replace a juror who is discharged of the jury on the guilt or innocence of the defendant,			
19 20	SECTION October 1, 199		FURTHER ENACTED, That this Act shall take effect			