

Bill No.: \_\_\_\_\_  
Requested: \_\_\_\_\_  
Committee: \_\_\_\_\_

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By: **Delegate Rosenberg**

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Death Penalty – Repeal**

3 FOR the purpose of repealing the death penalty; repealing procedures and  
4 requirements related to the death penalty; providing that certain inmates who  
5 have been sentenced to death may not be executed and shall be considered as  
6 having received a sentence of life imprisonment without the possibility of parole  
7 under certain circumstances; providing that in certain cases in which the State  
8 has filed a notice to seek a sentence of death the notice shall be considered  
9 withdrawn and it shall be considered a notice to seek a sentence of life  
10 imprisonment without the possibility of parole under certain circumstances;  
11 providing that certain persons serving life sentences are not eligible persons for  
12 Patuxent Institution under certain circumstances; altering the circumstance  
13 concerning parole for persons serving life sentences when the State sought a  
14 certain penalty; making conforming and clarifying changes; and generally  
15 relating to the repeal of the death penalty.

16 BY repealing

17 Article – Correctional Services

18 Section 3–901 through 3–909 and the subtitle “Subtitle 9. Death Penalty  
19 Procedures”

20 Annotated Code of Maryland

21 (1999 Volume and 2006 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 22 BY repealing  
23 Article – Criminal Procedure  
24 Section 7–201 through 7–204 and the subtitle “Subtitle 2. Proceedings After  
25 Death Sentences”; 8–108 and 11–404  
26 Annotated Code of Maryland  
27 (2001 Volume and 2006 Supplement)
- 28 BY repealing and reenacting, with amendments,  
29 Article – Correctional Services  
30 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)  
31 Annotated Code of Maryland  
32 (1999 Volume and 2006 Supplement)
- 33 BY repealing and reenacting, with amendments,  
34 Article – Courts and Judicial Proceedings  
35 Section 8–404, 8–420, 9–204, and 12–307  
36 Annotated Code of Maryland  
37 (2006 Replacement Volume)
- 38 BY repealing and reenacting, with amendments,  
39 Article – Criminal Procedure  
40 Section 3–105(b), 3–106(a), 3–107(a), 5–101(c), 7–101, 7–103(b), and 7–107(b)  
41 Annotated Code of Maryland  
42 (2001 Volume and 2006 Supplement)
- 43 BY repealing and reenacting, with amendments,  
44 Article – Criminal Law  
45 Section 2–201(b), 2–304(a), 2–305, and 14–101  
46 Annotated Code of Maryland  
47 (2002 Volume and 2006 Supplement)
- 48 BY repealing  
49 Article – Criminal Law  
50 Section 2–202, 2–301, 2–303, and 2–401  
51 Annotated Code of Maryland  
52 (2002 Volume and 2006 Supplement)

53 BY repealing and reenacting, with amendments,  
54 Article – Health – General  
55 Section 8–505(b)  
56 Annotated Code of Maryland  
57 (2005 Replacement Volume and 2006 Supplement)

58 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
59 MARYLAND, That Section(s) 3–901 through 3–909 and the subtitle “Subtitle 9. Death  
60 Penalty Procedures” of Article – Correctional Services of the Annotated Code of  
61 Maryland be repealed.

62 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through  
63 7–204 and the subtitle “Subtitle 2. Proceedings After Death Sentences”; 8–108 and  
64 11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be  
65 repealed.

66 SECTION 3. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
67 read as follows:

68 **Article – Correctional Services**

69 4–101.

70 (e) (2) “Eligible person” does not include an individual who:

71 (i) is serving two or more sentences of imprisonment for life  
72 under § 2–201, **FORMER** § 2–303, or § 2–304 of the Criminal Law Article;

73 (ii) is serving one or more sentences of imprisonment for life  
74 when a court or jury has found under **FORMER** § 2–303 of the Criminal Law Article,  
75 beyond a reasonable doubt, that one or more aggravating circumstances existed; or

76 (iii) has been convicted of murder in the first degree, rape in the  
77 first degree, or a sexual offense in the first degree, unless the sentencing judge, at the  
78 time of sentencing or in the exercise of the judge’s revisory power under the Maryland  
79 Rules, recommends that the individual be referred to the Institution for evaluation.

80 4–305.

81           (b)   (2)   An inmate sentenced to life imprisonment as a result of a  
82 proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not  
83 eligible for parole consideration until the inmate has served 25 years or the equivalent  
84 of 25 years when considering allowances for diminution of the inmate’s period of  
85 confinement as provided under Title 3, Subtitle 7 of this article and § 6–218 of the  
86 Criminal Procedure Article.

87   6–112.

88           (c)   (1)   The Division shall complete a presentence investigation report in  
89 each case in which [the death penalty or] imprisonment for life without the possibility  
90 of parole is requested under [§ 2–202 or] § 2–203 of the Criminal Law Article.

91                   (2)   The report shall include a victim impact statement as provided  
92 under § 11–402 of the Criminal Procedure Article.

93                   (3)   The court or jury before which the separate sentencing proceeding  
94 is conducted under [§ 2–303 or] § 2–304 of the Criminal Law Article shall consider the  
95 report.

96   7–301.

97           (d)   (2)   An inmate who has been sentenced to life imprisonment as a result  
98 of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not  
99 eligible for parole consideration until the inmate has served 25 years or the equivalent  
100 of 25 years considering the allowances for diminution of the inmate’s term of  
101 confinement under § 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of  
102 this article.

103   7–601.

104           (a)   On giving the notice required by the Constitution, the Governor may:

105                   (1)   [commute or change a sentence of death into a period of  
106 confinement that the Governor considers expedient;



133 (3) A trial judge may not strike an individual under paragraph (2)(iii)3  
134 of this subsection, unless the judge states on the record:

135 (i) Each reason for the strike; and

136 (ii) A finding that the strike is warranted and not inconsistent  
137 with §§ 8–102(a) and (b) and 8–104 of this title.

138 (4) An individual struck under this subsection may serve on another  
139 jury for which the basis for the strike is irrelevant.

140 [(c) (1) A trial judge may strike an individual on the basis of the  
141 individual’s belief for or against capital punishment only if the judge finds that the  
142 belief would prevent or substantially impair the individual from returning an  
143 impartial verdict according to law.

144 (2) An individual struck under this subsection may serve on another  
145 jury for which the basis for the strike is irrelevant.]

146 8–420.

147 (a) (1) This subsection applies only in a criminal trial in which a  
148 defendant is subject, on any single count, to[:

149 (i) A death sentence because the State has given notice of  
150 intention to seek a death sentence in accordance with § 2–202 of the Criminal Law  
151 Article; or

152 (ii) A] A sentence of life imprisonment, [including a case in  
153 which the State has not given notice of intention to seek a death sentence in  
154 accordance with § 2–202 of the Criminal Law Article but] excluding a common law  
155 offense for which no specific statutory penalty is provided.

156 (2) Each defendant is allowed 20 peremptory challenges.

157 (3) The State is allowed 10 peremptory challenges for each defendant.

158 (b) (1) This subsection applies only in a criminal trial in which a  
159 defendant is subject, on any single count, to a sentence of at least 20 years, excluding a  
160 case subject to subsection (a) of this section or a common law offense for which no  
161 specific statutory penalty is provided.

162 (2) Each defendant is allowed 10 peremptory challenges.

163 (3) The State is allowed five peremptory challenges for each  
164 defendant.

165 (c) In every other criminal trial, each party is allowed four peremptory  
166 challenges.

167 9–204.

168 [(a)] The court which issued an execution on a forfeited recognizance for a  
169 witness who failed to appear may discharge the witness from execution upon motion  
170 showing good and sufficient cause for the failure.

171 [(b) This section does not apply in a case if capital punishment may be  
172 involved.]

173 12–307.

174 The Court of Appeals has:

175 (1) Jurisdiction to review a case or proceeding pending in or decided by  
176 the Court of Special Appeals in accordance with Subtitle 2 of this title;

177 (2) Jurisdiction to review a case or proceeding decided by a circuit  
178 court, in accordance with § 12–305 of this subtitle; **AND**

179 (3) Exclusive appellate jurisdiction with respect to a question of law  
180 certified to it under the Uniform Certification of Questions of Law Act[; and

181 (4) Exclusive appellate jurisdiction over a criminal case in which the  
182 death penalty is imposed and any appellate proceeding under § 3–904 of the  
183 Correctional Services Article].

184 **Article – Criminal Procedure**

185 3–105.

186 (b) [Except in a capital case, on] **ON** consideration of the nature of the  
187 charge, the court:

188 (1) may require or allow the examination to be done on an outpatient  
189 basis; and

190 (2) if an outpatient examination is authorized, shall set bail for the  
191 defendant or authorize release of the defendant on recognizance.

192 3–106.

193 (a) [Except in a capital case, if,] **IF**, after a hearing, the court finds that the  
194 defendant is incompetent to stand trial but is not dangerous, as a result of a mental  
195 disorder or mental retardation, to self or the person or property of others, the court  
196 may set bail for the defendant or authorize release of the defendant on recognizance.

197 3–107.

198 (a) Whether or not the defendant is confined and unless the State petitions  
199 the court for extraordinary cause to extend the time, the court shall dismiss the charge  
200 against a defendant found incompetent to stand trial under this subtitle:

201 (1) [when charged with a capital offense, after the expiration of 10  
202 years;

203 (2)] when charged with a felony or a crime of violence as defined under  
204 § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or  
205 the maximum sentence for the most serious offense charged; or

206 [(3)] **(2)** when charged with an offense not covered under paragraph  
207 (1) [or (2)] of this subsection, after the lesser of the expiration of 3 years or the  
208 maximum sentence for the most serious offense charged.

209 5–101.

210 (c) A defendant may not be released on personal recognizance if the  
211 defendant is charged with:

212 (1) a crime listed in § 5–202(d) of this title after having been convicted  
213 of a crime listed in § 5–202(d) of this title; or

214 (2) a crime punishable by [death or] life imprisonment without parole.

215 7–101.

216 This title applies to a person convicted in any court in the State who is:

217 (1) confined under sentence of [death or] imprisonment; or

218 (2) on parole or probation.

219 7–103.

220 (b) [(1)] Unless extraordinary cause is shown, [in a case in which a  
221 sentence of death has not been imposed,] a petition under this subtitle may not be  
222 filed more than 10 years after the sentence was imposed.

223 [(2)] In a case in which a sentence of death has been imposed, Subtitle 2  
224 of this title governs the time of filing a petition.]

225 7–107.

226 (b) (1) In a case in which a person challenges the validity of confinement  
227 under a sentence of [death or] imprisonment by seeking the writ of habeas corpus or  
228 the writ of coram nobis or by invoking a common law or statutory remedy other than  
229 this title, a person may not appeal to the Court of Appeals or the Court of Special  
230 Appeals.

231 (2) This subtitle does not bar an appeal to the Court of Special  
232 Appeals:

- 233 (i) in a habeas corpus proceeding begun under § 9–110 of this  
234 article; or  
235 (ii) in any other proceeding in which a writ of habeas corpus is  
236 sought for a purpose other than to challenge the legality of a conviction of a crime or  
237 sentence of [death or] imprisonment for the conviction of the crime, including  
238 confinement as a result of a proceeding under Title 4 of the Correctional Services  
239 Article.

240 **Article – Criminal Law**

241 2–201.

242 (b) (1) A person who commits a murder in the first degree is guilty of a  
243 felony and on conviction shall be sentenced to:

244 (i) [death;

245 (ii)] imprisonment for life without the possibility of parole; or

246 [(iii)] (II) imprisonment for life.

247 (2) Unless a [sentence of death is imposed in compliance with § 2–202  
248 of this subtitle and Subtitle 3 of this title, or a] sentence of imprisonment for life  
249 without the possibility of parole is imposed in compliance with § 2–203 of this subtitle  
250 and § 2–304 of this title, the sentence shall be imprisonment for life.

251 [2–202.

252 (a) A defendant found guilty of murder in the first degree may be sentenced  
253 to death only if:

254 (1) at least 30 days before trial, the State gave written notice to the  
255 defendant of:

256 (i) the State’s intention to seek a sentence of death; and

257 (ii) each aggravating circumstance on which the State intends  
258 to rely;

259 (2) (i) with respect to § 2–303(g) of this title, except for §  
260 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

261 (ii) with respect to § 2–303(g)(1)(i) of this title, a law  
262 enforcement officer, as defined in § 2–303(a) of this title, was murdered and the  
263 defendant was:

264 1. a principal in the first degree; or

265 2. a principal in the second degree who:

266 A. willfully, deliberately, and with premeditation  
267 intended the death of the law enforcement officer;

268 B. was a major participant in the murder; and

269 C. was actually present at the time and place of the  
270 murder; and

271 (3) the sentence of death is imposed in accordance with § 2–303 of this  
272 title.

273 (b) (1) In this subsection, a defendant is “mentally retarded” if:

274 (i) the defendant had significantly below average intellectual  
275 functioning, as shown by an intelligence quotient of 70 or below on an individually  
276 administered intelligence quotient test and an impairment in adaptive behavior; and

277 (ii) the mental retardation was manifested before the age of 22  
278 years.

279 (2) A defendant may not be sentenced to death, but shall be sentenced  
280 to imprisonment for life without the possibility of parole subject to the requirements of  
281 § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

282 (i) was under the age of 18 years at the time of the murder; or

283 (ii) proves by a preponderance of the evidence that at the time of  
284 the murder the defendant was mentally retarded.]

285 [2–301.

286 (a) The State’s Attorney shall file with the Clerk of the Court of Appeals a  
287 copy of each:

288 (1) notice of intent to seek a sentence of death; and

289 (2) withdrawal of notice of intent to seek a sentence of death.

290 (b) The failure of a State’s Attorney to give timely notice to the Clerk of the  
291 Court of Appeals under subsection (a)(1) of this section does not affect the validity of a  
292 notice of intent to seek a sentence of death that is served on the defendant in a timely  
293 manner.]

294 [2–303.

295 (a) (1) In this section the following words have the meanings indicated.

296 (2) (i) “Correctional facility” has the meaning stated in § 1–101 of  
297 this article.

298 (ii) “Correctional facility” includes:

299 1. an institution for the confinement or detention of  
300 juveniles charged with or adjudicated as being delinquent; and

301 2. a hospital in which a person is confined under an  
302 order of a court exercising criminal jurisdiction.

303 (3) (i) “Law enforcement officer” means a law enforcement officer  
304 as defined under the Law Enforcement Officers’ Bill of Rights, § 3–101 of the Public  
305 Safety Article.

306 (ii) “Law enforcement officer” includes:

- 307                                   1.     a law enforcement officer of a jurisdiction outside of  
308 the State;
- 309                                   2.     an officer serving in a probationary status;
- 310                                   3.     a parole and probation officer; and
- 311                                   4.     a law enforcement officer while privately employed as  
312 a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety  
313 Article if the law enforcement officer is wearing the uniform worn while acting in an  
314 official capacity or is displaying prominently the officer's official badge or other  
315 insignia of office.

316           (b)    If the State gave notice under § 2–202(a)(1) of this title, a separate  
317 sentencing proceeding shall be held as soon as practicable after a defendant is found  
318 guilty of murder in the first degree to determine whether the defendant shall be  
319 sentenced to death.

320           (c)    The sentencing proceeding under subsection (b) of this section shall be  
321 conducted:

- 322                   (1)   before the jury that determined the defendant's guilt;
- 323                   (2)   before a jury impaneled for purposes of the proceeding if:
- 324                           (i)   the defendant was convicted based on a guilty plea;
- 325                           (ii)  the defendant was convicted after a trial by a court sitting  
326 without a jury;
- 327                           (iii) the court, for good cause, discharged the jury that convicted  
328 the defendant; or
- 329                           (iv)  a court of competent jurisdiction remanded the case for  
330 resentencing following a review of the original sentence of death; or
- 331                   (3)   before the court, if the defendant waives a jury sentencing  
332 proceeding.

333 (d) (1) A judge shall appoint at least two alternate jurors when  
334 impaneling a jury for any proceeding:

335 (i) in which the defendant is being tried for a crime for which  
336 the death penalty may be imposed; or

337 (ii) that is held under this section.

338 (2) The alternate jurors shall be retained throughout the proceedings  
339 under any restrictions that the judge imposes.

340 (3) Subject to paragraph (4) of this subsection, if a juror dies, is  
341 disqualified, becomes incapacitated, or is discharged for any other reason before the  
342 jury begins its deliberations on sentencing, an alternate juror becomes a juror in the  
343 order selected, and serves in all respects as a juror selected on the regular trial panel.

344 (4) An alternate juror may not replace a juror who is discharged  
345 during the actual deliberations of the jury on the guilt or innocence of the defendant or  
346 on sentencing.

347 (e) (1) The following type of evidence is admissible in a sentencing  
348 proceeding:

349 (i) evidence relating to a mitigating circumstance that is listed  
350 under subsection (h) of this section;

351 (ii) evidence relating to an aggravating circumstance:

352 1. that is listed under subsection (g) of this section; and

353 2. of which the State provided notice under § 2–  
354 202(a)(1)(ii) of this title;

355 (iii) evidence of a prior criminal conviction, guilty plea, plea of  
356 nolo contendere, or the absence of any prior convictions or pleas, to the same extent  
357 that the evidence would be admissible in other sentencing procedures;

358 (iv) subject to paragraph (2) of this subsection, any presentence  
359 investigation report; and

360 (v) any other evidence the court finds to have probative value  
361 and relevance to sentencing, if the defendant has a fair opportunity to rebut any  
362 statement.

363 (2) A recommendation in a presentence investigation report as to a  
364 sentence is not admissible in a sentencing proceeding.

365 (3) The State and the defendant or counsel for the defendant may  
366 present argument for or against the sentence of death.

367 (f) (1) After the evidence is presented to the jury in the sentencing  
368 proceeding, the court shall:

369 (i) give any appropriate instructions allowed by law; and

370 (ii) instruct the jury as to:

371 1. the findings that the jury must make to determine  
372 whether the defendant shall be sentenced to death, imprisonment for life without the  
373 possibility of parole, or imprisonment for life; and

374 2. the burden of proof applicable to the findings under  
375 subsection (g)(2) or (i)(1) and (2) of this section.

376 (2) The court may not instruct the jury that the jury is to assume that  
377 a sentence of life imprisonment is for the natural life of the defendant.

378 (g) (1) In determining a sentence under subsection (b) of this section, the  
379 court or jury first shall consider whether any of the following aggravating  
380 circumstances exists beyond a reasonable doubt:

381 (i) one or more persons committed the murder of a law  
382 enforcement officer while the officer was performing the officer's duties;

383 (ii) the defendant committed the murder while confined in a  
384 correctional facility;

385 (iii) the defendant committed the murder in furtherance of an  
386 escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody,  
387 or detention by:

388 1. a guard or officer of a correctional facility; or

389 2. a law enforcement officer;

390 (iv) the victim was taken or attempted to be taken in the course  
391 of an abduction, kidnapping, or an attempt to abduct or kidnap;

392 (v) the victim was a child abducted in violation of § 3–503(a)(1)  
393 of this article;

394 (vi) the defendant committed the murder under an agreement or  
395 contract for remuneration or promise of remuneration to commit the murder;

396 (vii) the defendant employed or engaged another to commit the  
397 murder and the murder was committed under an agreement or contract for  
398 remuneration or promise of remuneration;

399 (viii) the defendant committed the murder while under a sentence  
400 of death or imprisonment for life;

401 (ix) the defendant committed more than one murder in the first  
402 degree arising out of the same incident; or

403 (x) the defendant committed the murder while committing, or  
404 attempting to commit:

405 1. arson in the first degree;

406 2. carjacking or armed carjacking;

407 3. rape in the first degree;

- 408 4. robbery under § 3–402 or § 3–403 of this article; or
- 409 5. sexual offense in the first degree.

410 (2) If the court or jury does not find that one or more of the  
411 aggravating circumstances exist beyond a reasonable doubt:

- 412 (i) it shall state that conclusion in writing; and
- 413 (ii) a death sentence may not be imposed.

414 (h) (1) In this subsection, “crime of violence” means:

- 415 (i) abduction;
- 416 (ii) arson in the first degree;
- 417 (iii) carjacking or armed carjacking;
- 418 (iv) escape in the first degree;
- 419 (v) kidnapping;
- 420 (vi) mayhem;
- 421 (vii) murder;
- 422 (viii) rape in the first or second degree;
- 423 (ix) robbery under § 3–402 or § 3–403 of this article;
- 424 (x) sexual offense in the first or second degree;
- 425 (xi) manslaughter other than involuntary manslaughter;
- 426 (xii) an attempt to commit any crime listed in items (i) through  
427 (xi) of this paragraph; or

428 (xiii) the use of a handgun in the commission of a felony or other  
429 crime of violence.

430 (2) If the court or jury finds beyond a reasonable doubt that one or  
431 more of the aggravating circumstances under subsection (g) of this section exist, it  
432 then shall consider whether any of the following mitigating circumstances exists based  
433 on a preponderance of the evidence:

434 (i) the defendant previously has not:

435 1. been found guilty of a crime of violence;

436 2. entered a guilty plea or a plea of nolo contendere to a  
437 charge of a crime of violence; or

438 3. received probation before judgment for a crime of  
439 violence;

440 (ii) the victim was a participant in the conduct of the defendant  
441 or consented to the act that caused the victim's death;

442 (iii) the defendant acted under substantial duress, domination,  
443 or provocation of another, but not so substantial as to constitute a complete defense to  
444 the prosecution;

445 (iv) the murder was committed while the capacity of the  
446 defendant to appreciate the criminality of the defendant's conduct or to conform that  
447 conduct to the requirements of law was substantially impaired due to emotional  
448 disturbance, mental disorder, or mental incapacity;

449 (v) the defendant was of a youthful age at the time of the  
450 murder;

451 (vi) the act of the defendant was not the sole proximate cause of  
452 the victim's death;

453 (vii) it is unlikely that the defendant will engage in further  
454 criminal activity that would be a continuing threat to society; or

455 (viii) any other fact that the court or jury specifically sets forth in  
456 writing as a mitigating circumstance in the case.

457 (i) (1) If the court or jury finds that one or more of the mitigating  
458 circumstances under subsection (h) of this section exists, it shall determine by a  
459 preponderance of the evidence whether the aggravating circumstances under  
460 subsection (g) of this section outweigh the mitigating circumstances.

461 (2) If the court or jury finds that the aggravating circumstances:

462 (i) outweigh the mitigating circumstances, a death sentence  
463 shall be imposed; or

464 (ii) do not outweigh the mitigating circumstances, a death  
465 sentence may not be imposed.

466 (3) If the determination is by a jury, a decision to impose a death  
467 sentence must be unanimous and shall be signed by the jury foreperson.

468 (4) A court or jury shall put its determination in writing and shall  
469 state specifically:

470 (i) each aggravating circumstance found;

471 (ii) each mitigating circumstance found;

472 (iii) whether any aggravating circumstances found under  
473 subsection (g) of this section outweigh the mitigating circumstances found under  
474 subsection (h) of this section;

475 (iv) whether the aggravating circumstances found under  
476 subsection (g) of this section do not outweigh the mitigating circumstances found  
477 under subsection (h) of this section; and

478                   (v)    the sentence determined under subsection (g)(2) of this  
479 section or paragraphs (1) and (2) of this subsection.

480           (j)    (1)    If a jury determines that a death sentence shall be imposed under  
481 the provisions of this section, the court shall impose a death sentence.

482                   (2)    If, within a reasonable time, the jury is unable to agree as to  
483 whether a death sentence shall be imposed, the court may not impose a death  
484 sentence.

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

488                   (4)    If the court or jury determines that a death sentence may not be  
489 imposed and the State gave notice under § 2–203(1) of this title, a determination shall  
490 be made concerning imprisonment for life without the possibility of parole under §  
491 2–304 of this subtitle.

492                   (5)    If the court or jury determines that a death sentence may not be  
493 imposed and if the State did not give notice under § 2–203(1) of this title, the court  
494 shall impose a sentence of imprisonment for life.

495           (k)    (1)    Immediately after the imposition of a death sentence:

496                   (i)    the clerk of the court in which sentence is imposed, if  
497 different from the court where the indictment or information was filed, shall certify  
498 the proceedings to the clerk of the court where the indictment or information was filed;  
499 and

500                   (ii)   the clerk of the court where the indictment or information  
501 was filed shall copy the docket entries in the inmate’s case, sign the copies, and deliver  
502 them to the Governor.

503                   (2)    The docket entries shall show fully the sentence of the court and  
504 the date that the sentence was entered.

505 (1) If the defendant is sentenced to death, the court before which the  
506 defendant is tried and convicted shall sentence the defendant to death by intravenous  
507 administration of a lethal quantity of an ultrashort-acting barbiturate or other similar  
508 drug in combination with a chemical paralytic agent.]

509 2-304.

510 (a) [(1)] If the State gave notice under § 2-203(1) of this title, [but did not  
511 give notice of intent to seek the death penalty under § 2-202(a)(1) of this title,] the  
512 court shall conduct a separate sentencing proceeding as soon as practicable after the  
513 defendant is found guilty of murder in the first degree to determine whether the  
514 defendant shall be sentenced to imprisonment for life without the possibility of parole  
515 or to imprisonment for life.

516 [(2) If the State gave notice under both §§ 2-202(a)(1) and 2-203(1) of  
517 this title, but the court or jury determines that the death sentence may not be  
518 imposed, that court or jury shall determine whether the defendant shall be sentenced  
519 to imprisonment for life without the possibility of parole or to imprisonment for life.]

520 2-305.

521 The Court of Appeals may adopt:

522 (1) rules of procedure to govern the conduct of sentencing proceedings  
523 under [ §§ 2-303 and 2-304 ] § **2-304** of this subtitle; and

524 (2) forms for a court or jury to use in making written findings and  
525 sentence determinations.

526 [2-401.

527 (a) (1) After a death sentence is imposed and the judgment becomes final,  
528 the Court of Appeals shall review the sentence on the record.

529 (2) The Court of Appeals shall consolidate an appeal from the verdict  
530 with the sentence review.

531 (b) The clerk of the trial court shall send to the Clerk of the Court of Appeals:

532                   (1)    the entire record and the transcript of the sentencing proceeding  
533 within 10 days after receiving the transcript;

534                   (2)    the determination and written findings of the court or jury; and

535                   (3)    a report of the trial court that:

536                   (i)    is in the form of a standard questionnaire supplied by the  
537 Court of Appeals; and

538                   (ii)   includes a recommendation by the trial court as to whether  
539 the death sentence is justified.

540           (c)    The defendant and the State may submit briefs and present oral  
541 arguments to the Court of Appeals within the time allowed by the Court.

542           (d)    (1)   In addition to any error properly before the Court on appeal, the  
543 Court of Appeals shall consider the imposition of the death sentence.

544                   (2)    With regard to the death sentence, the Court of Appeals shall  
545 determine whether:

546                   (i)    the imposition of the death sentence was influenced by  
547 passion, prejudice, or any other arbitrary factor;

548                   (ii)   the evidence supports the finding by the court or jury of a  
549 statutory aggravating circumstance under § 2–303(g) of this title; and

550                   (iii)  the evidence supports a finding by the court or jury that the  
551 aggravating circumstances outweigh the mitigating circumstances under § 2–303(h)  
552 and (i)(1) of this title.

553                   (3)    In addition to its review under any direct appeal, with regard to  
554 the death sentence, the Court of Appeals shall:

555                   (i)    affirm the death sentence;

556 (ii) set the death sentence aside and remand the case for a new  
557 sentencing proceeding under § 2–303 of this title; or

558 (iii) set the death sentence aside and remand the case for  
559 modification of the sentence to imprisonment for life.

560 (e) The Court of Appeals may adopt rules of procedure for the expedited  
561 review of death sentences under this section.]

562 14–101.

563 (a) In this section, “crime of violence” means:

564 (1) abduction;

565 (2) arson in the first degree;

566 (3) kidnapping;

567 (4) manslaughter, except involuntary manslaughter;

568 (5) mayhem;

569 (6) maiming, as previously proscribed under former Article 27, §§ 385  
570 and 386 of the Code;

571 (7) murder;

572 (8) rape;

573 (9) robbery under § 3–402 or § 3–403 of this article;

574 (10) carjacking;

575 (11) armed carjacking;

576 (12) sexual offense in the first degree;

- 577                   (13) sexual offense in the second degree;
- 578                   (14) use of a handgun in the commission of a felony or other crime of  
579 violence;
- 580                   (15) child abuse in the first degree under § 3–601 of this article;
- 581                   (16) an attempt to commit any of the crimes described in items (1)  
582 through (15) of this subsection;
- 583                   (17) assault in the first degree;
- 584                   (18) assault with intent to murder;
- 585                   (19) assault with intent to rape;
- 586                   (20) assault with intent to rob;
- 587                   (21) assault with intent to commit a sexual offense in the first degree;  
588 and
- 589                   (22) assault with intent to commit a sexual offense in the second  
590 degree.

591           (b)    [This section does not apply if a person is sentenced to death.

592           (c)]   (1)   Except as provided in [subsection (g)] **SUBSECTION (F)** of this  
593 section, on conviction for a fourth time of a crime of violence, a person who has served  
594 three separate terms of confinement in a correctional facility as a result of three  
595 separate convictions of any crime of violence shall be sentenced to life imprisonment  
596 without the possibility of parole.

597                   (2)   Notwithstanding any other law, the provisions of this subsection  
598 are mandatory.

599           [(d)]   (C)   (1)   Except as provided in [subsection (g)] **SUBSECTION (F)** of  
600 this section, on conviction for a third time of a crime of violence, a person shall be

601 sentenced to imprisonment for the term allowed by law but not less than 25 years, if  
602 the person:

603 (i) has been convicted of a crime of violence on two prior  
604 separate occasions:

605 1. in which the second or succeeding crime is committed  
606 after there has been a charging document filed for the preceding occasion; and

607 2. for which the convictions do not arise from a single  
608 incident; and

609 (ii) has served at least one term of confinement in a correctional  
610 facility as a result of a conviction of a crime of violence.

611 (2) The court may not suspend all or part of the mandatory 25-year  
612 sentence required under this subsection.

613 (3) A person sentenced under this subsection is not eligible for parole  
614 except in accordance with the provisions of § 4-305 of the Correctional Services  
615 Article.

616 [(e)] (D) (1) On conviction for a second time of a crime of violence  
617 committed on or after October 1, 1994, a person shall be sentenced to imprisonment  
618 for the term allowed by law, but not less than 10 years, if the person:

619 (i) has been convicted on a prior occasion of a crime of violence,  
620 including a conviction for a crime committed before October 1, 1994; and

621 (ii) served a term of confinement in a correctional facility for  
622 that conviction.

623 (2) The court may not suspend all or part of the mandatory 10-year  
624 sentence required under this subsection.

625 [(f)] (E) If the State intends to proceed against a person as a subsequent  
626 offender under this section, it shall comply with the procedures set forth in the  
627 Maryland Rules for the indictment and trial of a subsequent offender.



7lr1092

653           SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
654   October 1, 2007.