

HOUSE BILL 1328

E2
SB 211/07 – JPR

8lr2399
CF SB 645

By: **Delegates Rosenberg, Ali, Anderson, Barnes, Benson, Bobo, Branch, Burns, Cane, Carter, V. Clagett, Conaway, Dumais, Feldman, Frick, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Guzzone, Harrison, Haynes, Healey, Heller, Hixson, Holmes, Howard, Hubbard, Huckler, Jones, Kaiser, Kirk, Krysiak, Lafferty, Lee, Love, Manno, McIntosh, Mizeur, Montgomery, Murphy, Nathan-Pulliam, Niemann, Oaks, Pena-Melnyk, Proctor, Ramirez, Reznik, Robinson, Stukes, Tarrant, Taylor, V. Turner, Valderrama, and Vaughn**

Introduced and read first time: February 8, 2008
Assigned to: Judiciary

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9 withdrawn and it shall be considered a notice to seek a sentence of life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 2007 Supplement)

22 BY repealing

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Criminal Procedure
2 Section 7–201 through 7–204 and the subtitle “Subtitle 2. Proceedings After
3 Death Sentences”; 8–108 and 11–404
4 Annotated Code of Maryland
5 (2001 Volume and 2007 Supplement)

6 BY repealing and reenacting, with amendments,
7 Article – Correctional Services
8 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)
9 Annotated Code of Maryland
10 (1999 Volume and 2007 Supplement)

11 BY repealing and reenacting, with amendments,
12 Article – Courts and Judicial Proceedings
13 Section 8–404, 8–420, 9–204, and 12–307
14 Annotated Code of Maryland
15 (2006 Replacement Volume and 2007 Supplement)

16 BY repealing and reenacting, with amendments,
17 Article – Criminal Procedure
18 Section 3–105(b), 3–106(a), 3–107(a), 5–101(c), 7–101, 7–103(b), and 7–107(b)
19 Annotated Code of Maryland
20 (2001 Volume and 2007 Supplement)

21 BY repealing and reenacting, with amendments,
22 Article – Criminal Law
23 Section 2–201(b), 2–304(a), 2–305, and 14–101
24 Annotated Code of Maryland
25 (2002 Volume and 2007 Supplement)

26 BY repealing
27 Article – Criminal Law
28 Section 2–202, 2–301, and 2–303; and 2–401 and the subtitle “Subtitle 4.
29 Review by Court of Appeals”
30 Annotated Code of Maryland
31 (2002 Volume and 2007 Supplement)

32 BY repealing and reenacting, with amendments,
33 Article – Health – General
34 Section 8–505(b)
35 Annotated Code of Maryland
36 (2005 Replacement Volume and 2007 Supplement)

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

1 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through
2 7–204 and the subtitle “Subtitle 2. Proceedings After Death Sentences”; 8–108 and
3 11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be
4 repealed.

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

7 **Article – Correctional Services**

8 4–101.

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

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

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

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

19 4–305.

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

26 6–112.

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

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

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

1 7-301.

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

8 7-601.

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

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

12 (2)] pardon an individual convicted of a crime subject to any conditions
13 the Governor requires; or

14 [(3)] (2) remit any part of a sentence of imprisonment subject to any
15 conditions the Governor requires, without the remission operating as a full pardon.

16 **Article - Courts and Judicial Proceedings**

17 8-404.

18 (a) Notwithstanding § 8-103(a) of this title, a trial judge may strike an
19 individual who is party in a civil case while the individual is entitled to a jury trial in
20 the county.

21 (b) (1) Whenever more individuals than are needed to impanel a jury
22 have been summoned, an individual may be excused but only in accordance with rule
23 or other law.

24 (2) An individual who is summoned for jury service may be struck
25 from a particular jury only:

26 (i) In accordance with rule or other law, by a party on
27 peremptory challenge;

28 (ii) For good cause shown, by a trial judge on a challenge by a
29 party; or

30 (iii) Subject to paragraph (3) of this subsection, by a trial judge
31 who finds that:

- 1 1. The individual may be unable to render impartial jury
- 2 service;
- 3 2. The individual’s service likely would disrupt the
- 4 proceeding; or
- 5 3. The individual’s service may threaten the secrecy of a
- 6 proceeding or otherwise affect the integrity of the jury deliberations adversely.

7 (3) A trial judge may not strike an individual under paragraph (2)(iii)3

8 of this subsection, unless the judge states on the record:

- 9 (i) Each reason for the strike; and
- 10 (ii) A finding that the strike is warranted and not inconsistent
- 11 with §§ 8–102(a) and (b) and 8–104 of this title.

12 (4) An individual struck under this subsection may serve on another

13 jury for which the basis for the strike is irrelevant.

14 [(c) (1) A trial judge may strike an individual on the basis of the

15 individual’s belief for or against capital punishment only if the judge finds that the

16 belief would prevent or substantially impair the individual from returning an

17 impartial verdict according to law.

18 (2) An individual struck under this subsection may serve on another

19 jury for which the basis for the strike is irrelevant.]

20 8–420.

21 (a) (1) This subsection applies only in a criminal trial in which a

22 defendant is subject, on any single count, to[:

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

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

- 30 (2) Each defendant is allowed 20 peremptory challenges.

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

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

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

6 (3) The State is allowed five peremptory challenges for each
7 defendant.

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

10 9–204.

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

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

16 12–307.

17 The Court of Appeals has:

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

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

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

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

27 **Article – Criminal Procedure**

28 3–105.

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

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

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

5 3–106.

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

10 3–107.

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

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

16 (2)] when charged with a felony or a crime of violence as defined under
17 § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or
18 the maximum sentence for the most serious offense charged; or

19 [(3)] **(2)** when charged with an offense not covered under paragraph
20 (1) [or (2)] of this subsection, after the lesser of the expiration of 3 years or the
21 maximum sentence for the most serious offense charged.

22 5–101.

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

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

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

28 7–101.

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

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

31 (2) on parole or probation.

1 7-103.

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

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

7 7-107.

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

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

15 (i) in a habeas corpus proceeding begun under § 9-110 of this
16 article; or

17 (ii) in any other proceeding in which a writ of habeas corpus is
18 sought for a purpose other than to challenge the legality of a conviction of a crime or
19 sentence of [death or] imprisonment for the conviction of the crime, including
20 confinement as a result of a proceeding under Title 4 of the Correctional Services
21 Article.

22 Article - Criminal Law

23 2-201.

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

26 (i) [death;

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

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

29 (2) Unless a [sentence of death is imposed in compliance with § 2-202
30 of this subtitle and Subtitle 3 of this title, or a] sentence of imprisonment for life
31 without the possibility of parole is imposed in compliance with § 2-203 of this subtitle
32 and § 2-304 of this title, the sentence shall be imprisonment for life.

1 [2-202.

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

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

6 (i) the State's intention to seek a sentence of death; and

7 (ii) each aggravating circumstance on which the State intends
8 to rely;

9 (2) (i) with respect to § 2-303(g) of this title, except for §
10 2-303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

11 (ii) with respect to § 2-303(g)(1)(i) of this title, a law
12 enforcement officer, as defined in § 2-303(a) of this title, was murdered and the
13 defendant was:

14 1. a principal in the first degree; or

15 2. a principal in the second degree who:

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

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

19 C. was actually present at the time and place of the
20 murder; and

21 (3) the sentence of death is imposed in accordance with § 2-303 of this
22 title.

23 (b) (1) In this subsection, a defendant is "mentally retarded" if:

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

27 (ii) the mental retardation was manifested before the age of 22
28 years.

29 (2) A defendant may not be sentenced to death, but shall be sentenced
30 to imprisonment for life without the possibility of parole subject to the requirements of
31 § 2-203(1) of this subtitle or imprisonment for life, if the defendant:

- 1 (i) was under the age of 18 years at the time of the murder; or
2 (ii) proves by a preponderance of the evidence that at the time of
3 the murder the defendant was mentally retarded.]

4 [2–301.

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

- 7 (1) notice of intent to seek a sentence of death; and
8 (2) withdrawal of notice of intent to seek a sentence of death.

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

13 [2–303.

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

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

17 (ii) “Correctional facility” includes:

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

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

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

25 (ii) “Law enforcement officer” includes:

26 1. a law enforcement officer of a jurisdiction outside of
27 the State;

28 2. an officer serving in a probationary status;

29 3. a parole and probation officer; and

1 4. a law enforcement officer while privately employed as
2 a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety
3 Article if the law enforcement officer is wearing the uniform worn while acting in an
4 official capacity or is displaying prominently the officer's official badge or other
5 insignia of office.

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

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

12 (1) before the jury that determined the defendant's guilt;

13 (2) before a jury impaneled for purposes of the proceeding if:

14 (i) the defendant was convicted based on a guilty plea;

15 (ii) the defendant was convicted after a trial by a court sitting
16 without a jury;

17 (iii) the court, for good cause, discharged the jury that convicted
18 the defendant; or

19 (iv) a court of competent jurisdiction remanded the case for
20 resentencing following a review of the original sentence of death; or

21 (3) before the court, if the defendant waives a jury sentencing
22 proceeding.

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

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

27 (ii) that is held under this section.

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

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

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

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

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

8 (ii) evidence relating to an aggravating circumstance:

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

10 2. of which the State provided notice under §
11 2-202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

27 (ii) instruct the jury as to:

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

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

- 1 1. been found guilty of a crime of violence;
2 2. entered a guilty plea or a plea of nolo contendere to a
3 charge of a crime of violence; or
4 3. received probation before judgment for a crime of
5 violence;

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

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

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

15 (v) the defendant was of a youthful age at the time of the
16 murder;

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

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

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

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

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

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

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

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

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

3 (i) each aggravating circumstance found;

4 (ii) each mitigating circumstance found;

5 (iii) whether any aggravating circumstances found under
6 subsection (g) of this section outweigh the mitigating circumstances found under
7 subsection (h) of this section;

8 (iv) whether the aggravating circumstances found under
9 subsection (g) of this section do not outweigh the mitigating circumstances found
10 under subsection (h) of this section; and

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

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

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

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

21 (4) If the court or jury determines that a death sentence may not be
22 imposed and the State gave notice under § 2-203(1) of this title, a determination shall
23 be made concerning imprisonment for life without the possibility of parole under §
24 2-304 of this subtitle.

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

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

29 (i) the clerk of the court in which sentence is imposed, if
30 different from the court where the indictment or information was filed, shall certify
31 the proceedings to the clerk of the court where the indictment or information was filed;
32 and

1 (ii) the clerk of the court where the indictment or information
2 was filed shall copy the docket entries in the inmate's case, sign the copies, and deliver
3 them to the Governor.

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

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

10 2-304.

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

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

21 2-305.

22 The Court of Appeals may adopt:

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

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

27 [Subtitle 4. Review by Court of Appeals.]

28 [2-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (i) affirm the death sentence;

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

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

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

31 14–101.

- 1 (a) In this section, “crime of violence” means:
- 2 (1) abduction;
- 3 (2) arson in the first degree;
- 4 (3) kidnapping;
- 5 (4) manslaughter, except involuntary manslaughter;
- 6 (5) mayhem;
- 7 (6) maiming, as previously proscribed under former Article 27, §§ 385
8 and 386 of the Code;
- 9 (7) murder;
- 10 (8) rape;
- 11 (9) robbery under § 3–402 or § 3–403 of this article;
- 12 (10) carjacking;
- 13 (11) armed carjacking;
- 14 (12) sexual offense in the first degree;
- 15 (13) sexual offense in the second degree;
- 16 (14) use of a handgun in the commission of a felony or other crime of
17 violence;
- 18 (15) child abuse in the first degree under § 3–601 of this article;
- 19 (16) sexual abuse of a minor under § 3–602 of this article if:
- 20 (i) the victim is under the age of 13 years and the offender is an
21 adult at the time of the offense; and
- 22 (ii) the offense involved:
- 23 1. vaginal intercourse, as defined in § 3–301 of this
24 article;
- 25 2. a sexual act, as defined in § 3–301 of this article;
- 26 3. an act in which a part of the offender’s body
27 penetrates, however slightly, into the victim’s genital opening or anus; or

1 4. the intentional touching, not through the clothing, of
2 the victim's or the offender's genital, anal, or other intimate area for sexual arousal,
3 gratification, or abuse;

4 (17) an attempt to commit any of the crimes described in items (1)
5 through (16) of this subsection;

6 (18) continuing course of conduct with a child under §
7 3-315 of this article;

8 (19) assault in the first degree;

9 (20) assault with intent to murder;

10 (21) assault with intent to rape;

11 (22) assault with intent to rob;

12 (23) assault with intent to commit a sexual offense in the first degree;
13 and

14 (24) assault with intent to commit a sexual offense in the second
15 degree.

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

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

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

24 [(d)] (C) (1) Except as provided in subsection [(g)] (F) of this section, on
25 conviction for a third time of a crime of violence, a person shall be sentenced to
26 imprisonment for the term allowed by law but not less than 25 years, if the person:

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

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

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

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

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

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

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

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

15 (ii) served a term of confinement in a correctional facility for
16 that conviction.

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

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

22 [(g)] (F) (1) A person sentenced under this section may petition for and
23 be granted parole if the person:

24 (i) is at least 65 years old; and

25 (ii) has served at least 15 years of the sentence imposed under
26 this section.

27 (2) The Maryland Parole Commission shall adopt regulations to
28 implement this subsection.

29 **Article - Health - General**

30 8-505.

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

1 (1) May require or permit an examination to be conducted on an
2 outpatient basis; and

3 (2) If an outpatient examination is authorized, shall set bail for the
4 defendant or authorize the release of the defendant on personal recognizance.

5 SECTION 4. AND BE IT FURTHER ENACTED, That an inmate who has been
6 sentenced to death before the effective date of this Act and who has not been executed
7 may not be executed and shall be considered as having received a sentence of life
8 imprisonment without the possibility of parole.

9 SECTION 5. AND BE IT FURTHER ENACTED, That in any case in which the
10 State has properly filed notice that it intended to seek a sentence of death under
11 § 2-202 of the Criminal Law Article in which a sentence has not been imposed, the
12 notice of intention to seek a sentence of death shall be considered withdrawn and it
13 shall be considered that the State properly filed notice under § 2-203 of the Criminal
14 Law Article to seek a sentence of life imprisonment without the possibility of parole.

15 SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect
16 October 1, 2008.