

HOUSE BILL 949

E2
HB 1075/11 – JUD

2lr0411
CF SB 872

By: **Delegates Rosenberg, Alston, Anderson, Arora, Aumann, Barnes, Bobo, Branch, Braveboy, Burns, Cane, Carr, Carter, Conaway, Cullison, Dumais, Feldman, Frick, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Guzzone, Harrison, Haynes, Healey, Hixson, Holmes, Howard, Hubbard, Hucker, Ivey, Jones, Kaiser, A. Kelly, Kramer, Lafferty, Lee, Love, Luedtke, McIntosh, A. Miller, Mitchell, Mizeur, Murphy, Nathan–Pulliam, Niemann, Oaks, Pena–Melnik, Pendergrass, Proctor, Reznik, B. Robinson, S. Robinson, Ross, Simmons, Stukes, Summers, Tarrant, V. Turner, Valderrama, Valentino–Smith, Vaughn, Washington, and Zucker**

Introduced and read first time: February 10, 2012

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Death Penalty Repeal and Appropriation from Savings to Aid Survivors of**
3 **Homicide Victims**

4 FOR the purpose of repealing the death penalty; repealing procedures and
5 requirements related to the death penalty; providing that in certain cases in
6 which the State has filed a notice to seek a sentence of death, the notice shall be
7 considered withdrawn and it shall be considered a notice to seek a sentence of
8 life imprisonment without the possibility of parole under certain circumstances;
9 providing that certain persons serving life sentences are not eligible for
10 Patuxent Institution under certain circumstances; altering the circumstance
11 concerning parole for persons serving life sentences when the State sought a
12 certain penalty; requiring the Governor to include in the annual budget
13 submission for certain fiscal years a certain amount for the State Victims of
14 Crime Fund; making conforming and clarifying changes; and generally relating
15 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 (2008 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing
2 Article – Criminal Procedure
3 Section 7–201 through 7–204 and the subtitle “Subtitle 2. Proceedings After
4 Death Sentences”; 8–108, and 11–404
5 Annotated Code of Maryland
6 (2008 Replacement Volume and 2011 Supplement)
- 7 BY repealing and reenacting, with amendments,
8 Article – Correctional Services
9 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)
10 Annotated Code of Maryland
11 (2008 Replacement Volume and 2011 Supplement)
- 12 BY repealing and reenacting, with amendments,
13 Article – Courts and Judicial Proceedings
14 Section 3–8A–03(d)(1), 3–8A–06(a), 8–404, 8–420, 9–204, and 12–307
15 Annotated Code of Maryland
16 (2006 Replacement Volume and 2011 Supplement)
- 17 BY repealing and reenacting, with amendments,
18 Article – Criminal Procedure
19 Section 3–105(b), 3–106(a), 3–107(a), 4–204(b), 5–101(c), 7–101, 7–103(b),
20 7–107(b), and 11–916
21 Annotated Code of Maryland
22 (2008 Replacement Volume and 2011 Supplement)
- 23 BY repealing
24 Article – Criminal Law
25 Section 2–103(h), 2–202, 2–301, 2–303; and 2–401 and the subtitle “Subtitle 4.
26 Review by Court of Appeals”
27 Annotated Code of Maryland
28 (2002 Volume and 2011 Supplement)
- 29 BY repealing and reenacting, with amendments,
30 Article – Criminal Law
31 Section 2–201(b), 2–304(a), 2–305, and 14–101
32 Annotated Code of Maryland
33 (2002 Volume and 2011 Supplement)
- 34 BY repealing and reenacting, with amendments,
35 Article – Health – General
36 Section 8–505(b)
37 Annotated Code of Maryland
38 (2009 Replacement Volume and 2011 Supplement)
- 39 BY repealing and reenacting, with amendments,

1 Article – Transportation
2 Section 16–812(a)
3 Annotated Code of Maryland
4 (2009 Replacement Volume and 2011 Supplement)

5 Preamble

6 WHEREAS, The Maryland Commission on Capital Punishment was created by
7 Chapter 431 of the Acts of the General Assembly of 2008 for the purpose of studying
8 all aspects of capital punishment as currently and historically administered in the
9 State; and

10 WHEREAS, The Commission comprised 23 appointees representing a broad
11 diversity of views on capital punishment, as well as the racial, ethnic, gender, and
12 geographic diversity of the State; and

13 WHEREAS, The Commission held five public hearings at which testimony from
14 experts and members of the public was presented and discussed, as well as five
15 additional meetings to discuss the evidence presented at the hearings and in the
16 written submissions; and

17 WHEREAS, The Commission issued its final report to the General Assembly on
18 December 12, 2008, which included the Commission’s strong recommendation that, to
19 eliminate racial and jurisdictional bias, reduce unnecessary costs, lessen the misery
20 that capital cases force family members of victims to endure, and eliminate the risk
21 that an innocent person can be convicted, capital punishment be abolished in
22 Maryland; and

23 WHEREAS, The Commission, in its final report to the General Assembly,
24 recommended that the savings from repealing the death penalty be used to “increase
25 the services and resources already provided to families of victims”; and

26 WHEREAS, In 1988, the Maryland General Assembly created the State Board
27 of Victim Services in recognition of the unique and distinctive needs of crime victims,
28 and endeavored to ensure that all crime victims in Maryland are treated with dignity,
29 respect, and compassion during all phases of the criminal justice process; and

30 WHEREAS, In 1991, under the authority of the Governor’s Office of Crime
31 Control and Prevention, the Maryland General Assembly created the Maryland
32 Victims of Crime Fund to provide funding support for victim services whose mission is
33 to ensure that all crime victims in Maryland receive justice and are treated with
34 dignity and compassion through comprehensive victim services; and

35 WHEREAS, Repeal of the death penalty in Maryland will result in savings to
36 the General Fund; now, therefore,

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

5 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through
6 7–204 and the subtitle “Subtitle 2. Proceedings After Death Sentences”; 8–108, and
7 11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be
8 repealed.

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

11 **Article – Correctional Services**

12 4–101.

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

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

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

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

23 4–305.

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

30 6–112.

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

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

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

6 7-301.

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

13 7-601.

14 (a) On giving the notice required by the Maryland Constitution, the
15 Governor may:

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

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

20 [(3)] (2) remit any part of a sentence of imprisonment subject to any
21 conditions the Governor requires, without the remission operating as a full pardon.

22 **Article – Courts and Judicial Proceedings**

23 3-8A-03.

24 (d) The court does not have jurisdiction over:

25 (1) A child at least 14 years old alleged to have done an act which, if
26 committed by an adult, would be a crime punishable by [death or] life imprisonment,
27 as well as all other charges against the child arising out of the same incident, unless
28 an order removing the proceeding to the court has been filed under § 4-202 of the
29 Criminal Procedure Article;

30 3-8A-06.

31 (a) The court may waive the exclusive jurisdiction conferred by § 3-8A-03 of
32 this subtitle with respect to a petition alleging delinquency by:

1 (1) A child who is 15 years old or older; or

2 (2) A child who has not reached his 15th birthday, but who is charged
3 with committing an act which if committed by an adult, would be punishable by [death
4 or] life imprisonment.

5 8–404.

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

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

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

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

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

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

20 1. The individual may be unable to render impartial jury
21 service;

22 2. The individual's service likely would disrupt the
23 proceeding; or

24 3. The individual's service may threaten the secrecy of a
25 proceeding or otherwise affect the integrity of the jury deliberations adversely.

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

28 (i) Each reason for the strike; and

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

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

3 [(c) (1) A trial judge may strike an individual on the basis of the
4 individual's belief for or against capital punishment only if the judge finds that the
5 belief would prevent or substantially impair the individual from returning an
6 impartial verdict according to law.

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

9 8-420.

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

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

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

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

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

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

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

26 (3) The State is allowed five peremptory challenges for each
27 defendant.

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

30 9-204.

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

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

6 (2)] when charged with a felony or a crime of violence as defined under
7 § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or
8 the maximum sentence for the most serious offense charged; or

9 [(3)] (2) when charged with an offense not covered under paragraph
10 (1) [or (2)] of this subsection, after the lesser of the expiration of 3 years or the
11 maximum sentence for the most serious offense charged.

12 4–204.

13 (b) Except for a sentencing proceeding under [§ 2–303 or] § 2–304 of the
14 Criminal Law Article:

15 (1) the distinction between an accessory before the fact and a principal
16 is abrogated; and

17 (2) an accessory before the fact may be charged, tried, convicted, and
18 sentenced as a principal.

19 5–101.

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

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

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

25 7–101.

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

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

28 (2) on parole or probation.

29 7–103.

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

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

6 7–107.

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

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

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

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

21 11–916.

22 (a) There is a State Victims of Crime Fund.

23 (b) (1) The Fund shall be used to pay for:

24 (i) carrying out Article 47 of the Maryland Declaration of
25 Rights;

26 (ii) carrying out the guidelines for the treatment and assistance
27 for victims and witnesses of crimes and delinquent acts provided in §§ 11–1002 and
28 11–1003 of this title;

29 (iii) carrying out any laws enacted to benefit victims and
30 witnesses of crimes and delinquent acts; and

31 (iv) supporting child advocacy centers established under §
32 11–923(h) of this subtitle.

1 (ii) each aggravating circumstance on which the State intends
2 to rely;

3 (2) (i) with respect to § 2–303(g) of this title, except for §
4 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

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

8 1. a principal in the first degree; or

9 2. a principal in the second degree who:

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

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

13 C. was actually present at the time and place of the
14 murder;

15 (3) the State presents the court or jury with:

16 (i) biological evidence or DNA evidence that links the defendant
17 to the act of murder;

18 (ii) a video taped, voluntary interrogation and confession of the
19 defendant to the murder; or

20 (iii) a video recording that conclusively links the defendant to
21 the murder; and

22 (4) the sentence of death is imposed in accordance with § 2–303 of this
23 title.

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

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

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

1 (2) A defendant may not be sentenced to death, but shall be sentenced
2 to imprisonment for life without the possibility of parole subject to the requirements of
3 § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

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

5 (ii) proves by a preponderance of the evidence that at the time of
6 the murder the defendant was mentally retarded.

7 (c) A defendant may not be sentenced to death, but shall be sentenced to
8 imprisonment for life without the possibility of parole subject to the requirements of §
9 2–203(1) of this subtitle or imprisonment for life, if the State relies solely on evidence
10 provided by eyewitnesses.]

11 [2–301.

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

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

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

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

20 [2–303.

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

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

24 (ii) “Correctional facility” includes:

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

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

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

- 1 (ii) "Law enforcement officer" includes:
- 2 1. a law enforcement officer of a jurisdiction outside of
- 3 the State;
- 4 2. an officer serving in a probationary status;
- 5 3. a parole and probation officer; and
- 6 4. a law enforcement officer while privately employed as
- 7 a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety
- 8 Article if the law enforcement officer is wearing the uniform worn while acting in an
- 9 official capacity or is displaying prominently the officer's official badge or other
- 10 insignia of office.

11 (b) If the State gave notice under § 2-202(a)(1) of this title, a separate

12 sentencing proceeding shall be held as soon as practicable after a defendant is found

13 guilty of murder in the first degree to determine whether the defendant shall be

14 sentenced to death.

15 (c) The sentencing proceeding under subsection (b) of this section shall be

16 conducted:

- 17 (1) before the jury that determined the defendant's guilt;
- 18 (2) before a jury impaneled for purposes of the proceeding if:
- 19 (i) the defendant was convicted based on a guilty plea;
- 20 (ii) the defendant was convicted after a trial by a court sitting
- 21 without a jury;
- 22 (iii) the court, for good cause, discharged the jury that convicted
- 23 the defendant; or
- 24 (iv) a court of competent jurisdiction remanded the case for
- 25 resentencing following a review of the original sentence of death; or
- 26 (3) before the court, if the defendant waives a jury sentencing
- 27 proceeding.

28 (d) (1) A judge shall appoint at least two alternate jurors when

29 impaneling a jury for any proceeding:

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

1 (ii) that is held under this section.

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

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

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

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

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

15 (ii) evidence relating to an aggravating circumstance:

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

17 2. of which the State provided notice under §
18 2–202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

2 (ii) instruct the jury as to:

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

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

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

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

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

15 (ii) the defendant committed the murder while confined in a
16 correctional facility;

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

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

21 2. a law enforcement officer;

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

24 (v) the victim was a child abducted in violation of § 3-503(a)(1)
25 of this article;

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

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

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

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

3 (x) the defendant committed the murder while committing, or
4 attempting to commit:

5 1. arson in the first degree;

6 2. carjacking or armed carjacking;

7 3. rape in the first degree;

8 4. robbery under § 3–402 or § 3–403 of this article; or

9 5. sexual offense in the first degree.

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

12 (i) it shall state that conclusion in writing; and

13 (ii) a death sentence may not be imposed.

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

15 (i) abduction;

16 (ii) arson in the first degree;

17 (iii) carjacking or armed carjacking;

18 (iv) escape in the first degree;

19 (v) kidnapping;

20 (vi) mayhem;

21 (vii) murder;

22 (viii) rape in the first or second degree;

23 (ix) robbery under § 3–402 or § 3–403 of this article;

24 (x) sexual offense in the first or second degree;

25 (xi) manslaughter other than involuntary manslaughter;

1 (xii) an attempt to commit any crime listed in items (i) through
2 (xi) of this paragraph; or

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

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

9 (i) the defendant previously has not:

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

11 2. entered a guilty plea or a plea of nolo contendere to a
12 charge of a crime of violence; or

13 3. received probation before judgment for a crime of
14 violence;

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

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

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

24 (v) the defendant was of a youthful age at the time of the
25 murder;

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

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

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

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

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

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

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

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

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

14 (i) each aggravating circumstance found;

15 (ii) each mitigating circumstance found;

16 (iii) whether any aggravating circumstances found under
17 subsection (g) of this section outweigh the mitigating circumstances found under
18 subsection (h) of this section;

19 (iv) whether the aggravating circumstances found under
20 subsection (g) of this section do not outweigh the mitigating circumstances found
21 under subsection (h) of this section; and

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

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

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

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

32 (4) If the court or jury determines that a death sentence may not be
33 imposed and the State gave notice under § 2-203(1) of this title, a determination shall

1 be made concerning imprisonment for life without the possibility of parole under §
2 2–304 of this subtitle.

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

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

7 (i) the clerk of the court in which sentence is imposed, if
8 different from the court where the indictment or information was filed, shall certify
9 the proceedings to the clerk of the court where the indictment or information was filed;
10 and

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

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

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

20 2–304.

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

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

31 2–305.

32 The Court of Appeals may adopt:

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

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

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

4 [2-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (iii) the evidence supports a finding by the court or jury that the
29 aggravating circumstances outweigh the mitigating circumstances under § 2-303(h)
30 and (i)(1) of this title.

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

3 (i) affirm the death sentence;

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

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

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

10 14–101.

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

12 (1) abduction;

13 (2) arson in the first degree;

14 (3) kidnapping;

15 (4) manslaughter, except involuntary manslaughter;

16 (5) mayhem;

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

19 (7) murder;

20 (8) rape;

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

22 (10) carjacking;

23 (11) armed carjacking;

24 (12) sexual offense in the first degree;

25 (13) sexual offense in the second degree;

1 (14) use of a handgun in the commission of a felony or other crime of
2 violence;

3 (15) child abuse in the first degree under § 3–601 of this article;

4 (16) sexual abuse of a minor under § 3–602 of this article if:

5 (i) the victim is under the age of 13 years and the offender is an
6 adult at the time of the offense; and

7 (ii) the offense involved:

8 1. vaginal intercourse, as defined in § 3–301 of this
9 article;

10 2. a sexual act, as defined in § 3–301 of this article;

11 3. an act in which a part of the offender's body
12 penetrates, however slightly, into the victim's genital opening or anus; or

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

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

18 (18) continuing course of conduct with a child under §
19 3–315 of this article;

20 (19) assault in the first degree;

21 (20) assault with intent to murder;

22 (21) assault with intent to rape;

23 (22) assault with intent to rob;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (ii) served a term of confinement in a correctional facility for
30 that conviction.

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

1 (iv) A crime, other than a crime described in subsection (e) of
2 this section, that is punishable by [death or] imprisonment for a term exceeding 1
3 year;

4 (v) A violation of § 25–112 of this article; or

5 (vi) A violation of § 2–209, § 2–503, § 2–504, § 2–505, or § 2–506
6 of the Criminal Law Article[.];

7 (2) The individual holds a commercial driver’s license and is convicted
8 of committing any of the following offenses while driving a noncommercial motor
9 vehicle:

10 (i) A violation of § 21–902(a), (c), or (d) of this article;

11 (ii) A violation of a federal law or any other state’s law which is
12 substantially similar in nature to the provisions in § 21–902(a), (c), or (d) of this
13 article;

14 (iii) Leaving the scene of an accident which requires
15 disqualification as provided by the United States Secretary of Transportation; or

16 (iv) A crime, other than a crime described in subsection (e) of
17 this section, that is punishable by [death or] imprisonment for a term exceeding 1
18 year;

19 (3) The individual, while driving a commercial motor vehicle or while
20 holding a commercial driver’s license, refuses to undergo testing as provided in
21 § 16–205.1 of this title or as is required by any other state’s law or by federal law in
22 the enforcement of 49 C.F.R. § 383.51 Table 1, or 49 C.F.R. § 392.5(a)(2);

23 (4) The individual drives or attempts to drive a commercial motor
24 vehicle while the alcohol concentration of the person’s blood or breath is 0.04 or
25 greater; or

26 (5) The individual drives a commercial motor vehicle when, as a result
27 of prior violations committed while driving a commercial motor vehicle, the driver’s
28 commercial driver’s license is revoked, suspended, or canceled or the driver is
29 disqualified from driving a commercial motor vehicle.

30 SECTION 4. AND BE IT FURTHER ENACTED, That in any case in which the
31 State has properly filed notice that it intended to seek a sentence of death under
32 § 2–202 of the Criminal Law Article in which a sentence has not been imposed, the
33 notice of intention to seek a sentence of death shall be considered to have been
34 withdrawn and it shall be deemed that the State properly filed notice under § 2–203 of
35 the Criminal Law Article to seek a sentence of life imprisonment without the
36 possibility of parole.

1 SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect
2 October 1, 2012.