

SENATE BILL 872

E2
SB 837/11 – SRU

2lr0717
CF 2lr0411

By: **Senators Gladden, Benson, Conway, Currie, Ferguson, Frosh, Jones–Rodwell, Kelley, King, Madaleno, Manno, McFadden, Montgomery, Muse, Peters, Pinsky, Pugh, Ramirez, and Raskin**

Introduced and read first time: February 3, 2012

Assigned to: Judicial Proceedings

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7 considered withdrawn and it shall be considered a notice to seek a sentence of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)

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 (2008 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, with amendments,
2 Article – Correctional Services
3 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)
4 Annotated Code of Maryland
5 (2008 Replacement Volume and 2011 Supplement)
- 6 BY repealing and reenacting, with amendments,
7 Article – Courts and Judicial Proceedings
8 Section 3–8A–03(d)(1), 3–8A–06(a), 8–404, 8–420, 9–204, and 12–307
9 Annotated Code of Maryland
10 (2006 Replacement Volume and 2011 Supplement)
- 11 BY repealing and reenacting, with amendments,
12 Article – Criminal Procedure
13 Section 3–105(b), 3–106(a), 3–107(a), 4–204(b), 5–101(c), 7–101, 7–103(b),
14 7–107(b), and 11–916
15 Annotated Code of Maryland
16 (2008 Replacement Volume and 2011 Supplement)
- 17 BY repealing
18 Article – Criminal Law
19 Section 2–103(h), 2–202, 2–301, 2–303; and 2–401 and the subtitle “Subtitle 4.
20 Review by Court of Appeals”
21 Annotated Code of Maryland
22 (2002 Volume and 2011 Supplement)
- 23 BY repealing and reenacting, with amendments,
24 Article – Criminal Law
25 Section 2–201(b), 2–304(a), 2–305, and 14–101
26 Annotated Code of Maryland
27 (2002 Volume and 2011 Supplement)
- 28 BY repealing and reenacting, with amendments,
29 Article – Health – General
30 Section 8–505(b)
31 Annotated Code of Maryland
32 (2009 Replacement Volume and 2011 Supplement)
- 33 BY repealing and reenacting, with amendments,
34 Article – Transportation
35 Section 16–812(a)
36 Annotated Code of Maryland
37 (2009 Replacement Volume and 2011 Supplement)
- 38 Preamble

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

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

8 WHEREAS, The Commission held five public hearings at which testimony from
9 experts and members of the public was presented and discussed, as well as five
10 additional meetings to discuss the evidence presented at the hearings and in the
11 written submissions; and

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

18 WHEREAS, The Commission, in its final report to the General Assembly,
19 recommended that the savings from repealing the death penalty be used to "increase
20 the services and resources already provided to families of victims"; and

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

25 WHEREAS, In 1991, under the authority of the Governor's Office of Crime
26 Control and Prevention, the Maryland General Assembly created the Maryland
27 Victims of Crime Fund to provide funding support for victim services whose mission is
28 to ensure that all crime victims in Maryland receive justice and are treated with
29 dignity and compassion through comprehensive victim services; and

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

32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
33 MARYLAND, That Section(s) 3-901 through 3-909 and the subtitle "Subtitle 9. Death
34 Penalty Procedures" of Article - Correctional Services of the Annotated Code of
35 Maryland be repealed.

36 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7-201 through
37 7-204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8-108, and

1 11-404 of Article – Criminal Procedure of the Annotated Code of Maryland be
2 repealed.

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

5 **Article – Correctional Services**

6 4-101.

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

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

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

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

17 4-305.

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

24 6-112.

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

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

30 (3) The court or jury before which the separate sentencing proceeding
31 is conducted under [§ 2-303 or] § 2-304 of the Criminal Law Article shall consider the
32 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 Maryland Constitution, the
10 Governor may:

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

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

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

17 **Article – Courts and Judicial Proceedings**

18 3-8A-03.

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

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

25 3-8A-06.

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

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

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

1 8–404.

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

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

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

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

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

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

16 1. The individual may be unable to render impartial jury
17 service;

18 2. The individual's service likely would disrupt the
19 proceeding; or

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

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

24 (i) Each reason for the strike; and

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

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

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

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

3 8–420.

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

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

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

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

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

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

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

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

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

24 9–204.

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

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

30 12–307.

31 The Court of Appeals has:

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

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

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

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

10 **Article – Criminal Procedure**

11 3–105.

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

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

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

18 3–106.

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

23 3–107.

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

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

29 (2)] when charged with a felony or a crime of violence as defined under
30 § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or
31 the maximum sentence for the most serious offense charged; or

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

4 4–204.

5 (b) Except for a sentencing proceeding under ~~[\§ 2–303 or]~~ § 2–304 of the
6 Criminal Law Article:

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

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

11 5–101.

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

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

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

17 7–101.

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

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

20 (2) on parole or probation.

21 7–103.

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

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

27 7–107.

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

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

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

10 (ii) in any other proceeding in which a writ of habeas corpus is
11 sought for a purpose other than to challenge the legality of a conviction of a crime or
12 sentence of [death or] imprisonment for the conviction of the crime, including
13 confinement as a result of a proceeding under Title 4 of the Correctional Services
14 Article.
15 11–916.

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

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

18 (i) carrying out Article 47 of the Maryland Declaration of
19 Rights;

20 (ii) carrying out the guidelines for the treatment and assistance
21 for victims and witnesses of crimes and delinquent acts provided in §§ 11–1002 and
22 11–1003 of this title;

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

25 (iv) supporting child advocacy centers established under §
26 11–923(h) of this subtitle.

27 (2) The Fund may pay for the administrative costs of the Fund.

28 (c) The Board shall administer the Fund.

29 (d) Grants awarded by the Board shall be equitably distributed among all
30 purposes of the Fund described in subsection (b) of this section.

31 **(E) FOR FISCAL YEAR 2014 AND EACH FISCAL YEAR THEREAFTER, THE**
32 **GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET SUBMISSION \$500,000**

1 FOR THE FUND, RE-DIRECTED FROM GENERAL FUND SAVINGS RESULTING
2 FROM REPEAL OF THE DEATH PENALTY.

3 Article – Criminal Law

4 2–103.

5 [(h) The commission of first degree murder of a viable fetus under this
6 section, in conjunction with the commission of another first degree murder arising out
7 of the same incident, does not constitute an aggravating circumstance subjecting a
8 defendant to the death penalty under § 2–303(g)(ix) of this title.]

9 2–201.

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

12 (i) [death;

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

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

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

19 [2–202.

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

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

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

25 (ii) each aggravating circumstance on which the State intends
26 to rely;

27 (2) (i) with respect to § 2–303(g) of this title, except for §
28 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

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

4 1. a principal in the first degree; or

5 2. a principal in the second degree who:

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

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

9 C. was actually present at the time and place of the
10 murder;

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

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

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

16 (iii) a video recording that conclusively links the defendant to
17 the murder; and

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

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

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

24 (ii) the mental retardation was manifested before the age of 22
25 years.

26 (2) A defendant may not be sentenced to death, but shall be sentenced
27 to imprisonment for life without the possibility of parole subject to the requirements of
28 § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

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

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

1 (c) A defendant may not be sentenced to death, but shall be sentenced to
2 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 State relies solely on evidence
4 provided by eyewitnesses.]

5 [2–301.

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

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

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

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

14 [2–303.

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

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

18 (ii) “Correctional facility” includes:

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

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

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

26 (ii) “Law enforcement officer” includes:

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

29 2. an officer serving in a probationary status;

30 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

1 jury begins its deliberations on sentencing, an alternate juror becomes a juror in the
2 order selected, and serves in all respects as a juror selected on the regular trial panel.

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

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

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

10 (ii) evidence relating to an aggravating circumstance:

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

12 2. of which the State provided notice under §
13 2–202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

29 (ii) instruct the jury as to:

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

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

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

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

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

10 (ii) the defendant committed the murder while confined in a
11 correctional facility;

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

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

16 2. a law enforcement officer;

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

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

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

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

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

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

30 (x) the defendant committed the murder while committing, or
31 attempting to commit:

- 1 1. arson in the first degree;
- 2 2. carjacking or armed carjacking;
- 3 3. rape in the first degree;
- 4 4. robbery under § 3-402 or § 3-403 of this article; or
- 5 5. sexual offense in the first degree.

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

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

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

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

11 (i) abduction;

12 (ii) arson in the first degree;

13 (iii) carjacking or armed carjacking;

14 (iv) escape in the first degree;

15 (v) kidnapping;

16 (vi) mayhem;

17 (vii) murder;

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

19 (ix) robbery under § 3-402 or § 3-403 of this article;

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

21 (xi) manslaughter other than involuntary manslaughter;

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

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

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

5 (i) the defendant previously has not:

- 6 1. been found guilty of a crime of violence;
7 2. entered a guilty plea or a plea of nolo contendere to a
8 charge of a crime of violence; or
9 3. received probation before judgment for a crime of
10 violence;

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

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

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

20 (v) the defendant was of a youthful age at the time of the
21 murder;

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

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

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

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

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

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

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

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

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

9 (i) each aggravating circumstance found;

10 (ii) each mitigating circumstance found;

11 (iii) whether any aggravating circumstances found under
12 subsection (g) of this section outweigh the mitigating circumstances found under
13 subsection (h) of this section;

14 (iv) whether the aggravating circumstances found under
15 subsection (g) of this section do not outweigh the mitigating circumstances found
16 under subsection (h) of this section; and

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

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

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

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

27 (4) If the court or jury determines that a death sentence may not be
28 imposed and the State gave notice under § 2–203(1) of this title, a determination shall
29 be made concerning imprisonment for life without the possibility of parole under §
30 2–304 of this subtitle.

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

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

2 (i) the clerk of the court in which sentence is imposed, if
3 different from the court where the indictment or information was filed, shall certify
4 the proceedings to the clerk of the court where the indictment or information was filed;
5 and

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

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

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

15 2-304.

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

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

26 2-305.

27 The Court of Appeals may adopt:

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

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

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

33 [2-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (i) affirm the death sentence;

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

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

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

5 14–101.

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

7 (1) abduction;

8 (2) arson in the first degree;

9 (3) kidnapping;

10 (4) manslaughter, except involuntary manslaughter;

11 (5) mayhem;

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

14 (7) murder;

15 (8) rape;

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

17 (10) carjacking;

18 (11) armed carjacking;

19 (12) sexual offense in the first degree;

20 (13) sexual offense in the second degree;

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

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

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

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

- 1 (ii) the offense involved:
- 2 1. vaginal intercourse, as defined in § 3–301 of this
3 article;
- 4 2. a sexual act, as defined in § 3–301 of this article;
- 5 3. an act in which a part of the offender’s body
6 penetrates, however slightly, into the victim’s genital opening or anus; or
- 7 4. the intentional touching, not through the clothing, of
8 the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal,
9 gratification, or abuse;
- 10 (17) an attempt to commit any of the crimes described in items (1)
11 through (16) of this subsection;
- 12 (18) continuing course of conduct with a child under §
13 3–315 of this article;
- 14 (19) assault in the first degree;
- 15 (20) assault with intent to murder;
- 16 (21) assault with intent to rape;
- 17 (22) assault with intent to rob;
- 18 (23) assault with intent to commit a sexual offense in the first degree;
19 and
- 20 (24) assault with intent to commit a sexual offense in the second
21 degree.
- 22 (b) [This section does not apply if a person is sentenced to death.
- 23 (c)] (1) Except as provided in subsection [(g)] (F) of this section, on
24 conviction for a fourth time of a crime of violence, a person who has served three
25 separate terms of confinement in a correctional facility as a result of three separate
26 convictions of any crime of violence shall be sentenced to life imprisonment without
27 the possibility of parole.
- 28 (2) Notwithstanding any other law, the provisions of this subsection
29 are mandatory.

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

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

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

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

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

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

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

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

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

22 (ii) served a term of confinement in a correctional facility for
23 that conviction.

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

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

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

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

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

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

3 **Article – Health – General**

4 8–505.

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

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

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

11 **Article – Transportation**

12 16–812.

13 (a) The Administration shall disqualify any individual from driving a
14 commercial motor vehicle for a period of 1 year if:

15 (1) The individual is convicted of committing any of the following
16 offenses while driving a commercial motor vehicle:

17 (i) A violation of § 21–902 of this article;

18 (ii) A violation of a federal law or any other state’s law which is
19 substantially similar in nature to the provisions in § 21–902 of this article;

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

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

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

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

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

- 1 (i) A violation of § 21-902(a), (c), or (d) of this article;
- 2 (ii) A violation of a federal law or any other state's law which is
3 substantially similar in nature to the provisions in § 21-902(a), (c), or (d) of this
4 article;
- 5 (iii) Leaving the scene of an accident which requires
6 disqualification as provided by the United States Secretary of Transportation; or
- 7 (iv) A crime, other than a crime described in subsection (e) of
8 this section, that is punishable by [death or] imprisonment for a term exceeding 1
9 year;
- 10 (3) The individual, while driving a commercial motor vehicle or while
11 holding a commercial driver's license, refuses to undergo testing as provided in
12 § 16-205.1 of this title or as is required by any other state's law or by federal law in
13 the enforcement of 49 C.F.R. § 383.51 Table 1, or 49 C.F.R. § 392.5(a)(2);
- 14 (4) The individual drives or attempts to drive a commercial motor
15 vehicle while the alcohol concentration of the person's blood or breath is 0.04 or
16 greater; or
- 17 (5) The individual drives a commercial motor vehicle when, as a result
18 of prior violations committed while driving a commercial motor vehicle, the driver's
19 commercial driver's license is revoked, suspended, or canceled or the driver is
20 disqualified from driving a commercial motor vehicle.

21 SECTION 4. AND BE IT FURTHER ENACTED, That in any case in which the
22 State has properly filed notice that it intended to seek a sentence of death under
23 § 2-202 of the Criminal Law Article in which a sentence has not been imposed, the
24 notice of intention to seek a sentence of death shall be considered to have been
25 withdrawn and it shall be deemed that the State properly filed notice under § 2-203 of
26 the Criminal Law Article to seek a sentence of life imprisonment without the
27 possibility of parole.

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