Chapter 156

(Senate Bill 276)

AN ACT concerning

Death Penalty Repeal ~~and Appropriation from Savings to Aid Survivors of Homicide Victims~~ – Substitution of Life Without the Possibility of Parole

FOR the purpose of repealing the death penalty; repealing procedures and requirements related to the death penalty; providing that in certain cases in which the State has filed a notice to seek a sentence of death, the notice shall be considered withdrawn and it shall be considered a notice to seek a sentence of life imprisonment without the possibility of parole under certain circumstances; providing that certain persons serving life sentences are not eligible for Patuxent Institution under certain circumstances; altering the circumstance concerning parole for persons serving life sentences when the State sought a certain penalty; ~~requiring the Governor to include in the annual budget submission for certain fiscal years a certain amount for the State Victims of Crime Fund;~~ altering the authorization for the Governor to commute or change a sentence of death into a certain period of confinement; making conforming and clarifying changes; and generally relating to the repeal of the death penalty.

BY repealing
Article – Correctional Services
Section 3–901 through 3–909 and the subtitle "Subtitle 9. Death Penalty Procedures"
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing
Article – Criminal Procedure
Section 7–201 through 7–204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8–108 and 11–404
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Correctional Services
Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Courts and Judicial Proceedings

Section 3–8A–03(d)(1), 3–8A–06(a), 8–404, 8–420, 9–204, and 12–307
Annotated Code of Maryland
(2006 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Procedure
Section 3–105(b), 3–106(a), 3–107(a), 4–204(b), 5–101(c), 7–101, 7–103(b), ~~7–107(b), and 11–916~~ and 7–107(b)
Annotated Code of Maryland
(2008 Replacement Volume and 2012 Supplement)

BY repealing
Article – Criminal Law
Section 2–103(h), 2–202, 2–301, 2–303; and 2–401 and the subtitle "Subtitle 4. Review by Court of Appeals"
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Criminal Law
Section 2–201(b), 2–304(a), 2–305, and 14–101
Annotated Code of Maryland
(2012 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Health – General
Section 8–505(b)
Annotated Code of Maryland
(2009 Replacement Volume and 2012 Supplement)

BY repealing and reenacting, with amendments,
Article – Transportation
Section 16–812(a)
Annotated Code of Maryland
(2012 Replacement Volume)

Preamble

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

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

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

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

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

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

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

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

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

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

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

Article – Correctional Services

4–101.

(e) (2) "Eligible person" does not include an individual who:

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

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

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

4–305.

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

6–112.

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

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

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

7–301.

(d) (2) An inmate who has been sentenced to life imprisonment as a result of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not eligible for parole consideration until the inmate has served 25 years or the equivalent of 25 years considering the allowances for diminution of the inmate's term of

confinement under § 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of this article.

7–601.

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

(1) ~~[commute or change a sentence of death into a period of confinement that the Governor considers expedient~~ **CHANGE A SENTENCE OF DEATH INTO A SENTENCE OF LIFE WITHOUT THE POSSIBILITY OF PAROLE**;

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

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

Article – Courts and Judicial Proceedings

3–8A–03.

(d) The court does not have jurisdiction over:

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

3–8A–06.

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

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

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

8–404.

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

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

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

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

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

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

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

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

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

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

(i) Each reason for the strike; and

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

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

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

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

8–420.

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

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

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

(2) Each defendant is allowed 20 peremptory challenges.

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

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

(2) Each defendant is allowed 10 peremptory challenges.

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

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

9–204.

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

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

12–307.

The Court of Appeals has:

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

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

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

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

Article – Criminal Procedure

3–105.

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

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

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

3–106.

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

3–107.

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

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

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

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

4–204.

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

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

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

5–101.

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

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

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

7–101.

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

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

(2) on parole or probation.

7–103.

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

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

7–107.

(b) (1) In a case in which a person challenges the validity of confinement under a sentence of **[**death or**]** imprisonment by seeking the writ of habeas corpus or

the writ of coram nobis or by invoking a common law or statutory remedy other than this title, a person may not appeal to the Court of Appeals or the Court of Special Appeals.

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

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

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

~~11–916.~~

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

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

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

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

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

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

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

~~(c) The Board shall administer the Fund.~~

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

~~(E)~~ FOR FISCAL YEAR 2015 AND EACH FISCAL YEAR THEREAFTER, THE GOVERNOR SHALL INCLUDE IN THE ANNUAL BUDGET SUBMISSION $500,000 FOR THE FUND, REDIRECTED FROM GENERAL FUND SAVINGS RESULTING FROM THE REPEAL OF THE DEATH PENALTY.

Article – Criminal Law

2–103.

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

2–201.

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

(i) **[**death;

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

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

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

[2–202.

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

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

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

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

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

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

1. a principal in the first degree; or

2. a principal in the second degree who:

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

B. was a major participant in the murder; and

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

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

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

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

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

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

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

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

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

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

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

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

(c) A defendant may not be sentenced to death, but shall be sentenced to imprisonment for life without the possibility of parole subject to the requirements of §

2–203(1) of this subtitle or imprisonment for life, if the State relies solely on evidence provided by eyewitnesses.**]**

[2–301.

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

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

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

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

[2–303.

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

(2) (i) "Correctional facility" has the meaning stated in § 1–101 of this article.

(ii) "Correctional facility" includes:

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

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

(3) (i) "Law enforcement officer" means a law enforcement officer as defined under the Law Enforcement Officers' Bill of Rights, § 3–101 of the Public Safety Article.

(ii) "Law enforcement officer" includes:

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

2. an officer serving in a probationary status;

3. a parole and probation officer; and

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

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

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

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

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

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

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

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

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

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

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

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

(ii) that is held under this section.

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

(3) Subject to paragraph (4) of this subsection, if a juror dies, is disqualified, becomes incapacitated, or is discharged for any other reason before the

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

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

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

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

(ii) evidence relating to an aggravating circumstance:

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

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

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

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

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

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

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

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

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

(ii) instruct the jury as to:

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

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

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

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

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

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

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

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

2. a law enforcement officer;

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

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

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

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

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

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

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

1. arson in the first degree;

2. carjacking or armed carjacking;

3. rape in the first degree;

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

5. sexual offense in the first degree.

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

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

(ii) a death sentence may not be imposed.

(h) (1) In this subsection, "crime of violence" means:

(i) abduction;

(ii) arson in the first degree;

(iii) carjacking or armed carjacking;

(iv) escape in the first degree;

(v) kidnapping;

(vi) mayhem;

(vii) murder;

(viii) rape in the first or second degree;

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

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

(xi) manslaughter other than involuntary manslaughter;

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

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

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

(i) the defendant previously has not:

1. been found guilty of a crime of violence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) each aggravating circumstance found;

(ii) each mitigating circumstance found;

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

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

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

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

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

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

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

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

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

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

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

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

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

2–304.

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

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

2–305.

The Court of Appeals may adopt:

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

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

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

[2–401.

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

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

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

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

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

(3) a report of the trial court that:

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

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

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

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

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

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

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

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

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

(i) affirm the death sentence;

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

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

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

14–101.

(a) In this section, "crime of violence" means:

(1) abduction;

(2) arson in the first degree;

(3) kidnapping;

(4) manslaughter, except involuntary manslaughter;

(5) mayhem;

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

(7) murder;

(8) rape;

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

(10) carjacking;

(11) armed carjacking;

(12) sexual offense in the first degree;

(13) sexual offense in the second degree;

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

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

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

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

(ii) the offense involved:

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

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

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

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

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

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

(19) assault in the first degree;

(20) assault with intent to murder;

(21) assault with intent to rape;

(22) assault with intent to rob;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) is at least 65 years old; and

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

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

Article – Health – General

8–505.

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

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

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

Article – Transportation

16–812.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4. AND BE IT FURTHER ENACTED, That in any case in which the State has properly filed notice that it intended to seek a sentence of death under § 2–202 of the Criminal Law Article in which a sentence has not been imposed, the

notice of intention to seek a sentence of death shall be considered to have been withdrawn and it shall be deemed that the State properly filed notice under § 2–203 of the Criminal Law Article to seek a sentence of life imprisonment without the possibility of parole.

SECTION 5. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2013.

Approved by the Governor, May 2, 2013.