

BY: Senator Jacobs

AMENDMENTS TO SENATE BILL NO. 12, AS AMENDED

(First Reading File Bill)

AMENDMENT NO. 1

Strike the Judicial Proceedings Committee Amendments (SB0012/808677/1) in their entirety.

AMENDMENT NO. 2

On page 1 of the bill, in line 2, before “Death Penalty” insert “Murder in the First Degree - Requirement for State to Seek the”; and in the same line, strike “Moratorium” and substitute “Dawn’s Law”.

AMENDMENT NO. 3

On page 1 of the bill, strike beginning with “prohibiting” in line 3 down through “measure;” in line 14 and substitute “requiring the State to seek the death penalty in any prosecution for murder in the first degree that meets certain requirements unless the victim's family indicates to the State that the family does not want the State to seek the death penalty; providing that certain defendants found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole if the victim’s family indicates to the State that the family does not want the State to seek the death penalty; providing for the application of this Act;”.

On pages 1 and 2 of the bill, strike in their entirety the lines beginning with line 15 on page 1 through line 5 on page 2, inclusive, and substitute:

“BY repealing and reenacting, with amendments,

Article - Criminal Law

Section 2-201, 2-203, and 2-304(a)

Annotated Code of Maryland

(2002 Volume)

BY repealing and reenacting, without amendments,

Article - Criminal Law

(Over)

Section 2-202
Annotated Code of Maryland
(2002 Volume)

BY adding to

Article - Criminal Law
Section 2-202.1
Annotated Code of Maryland
(2002 Volume)”.

On page 2, strike in their entirety lines 8 through 38, inclusive, and substitute:

“Article - Criminal Law

2-201.

(a) A murder is in the first degree if it is:

(1) a deliberate, premeditated, and willful killing;

(2) committed by lying in wait;

(3) committed by poison; or

(4) committed in the perpetration of or an attempt to perpetrate:

(i) arson in the first degree;

(ii) burning a barn, stable, tobacco house, warehouse, or other outbuilding

that:

1. is not parcel to a dwelling; and

2. contains cattle, goods, wares, merchandise, horses, grain, hay,

or tobacco;

(iii) burglary in the first, second, or third degree;

- (iv) carjacking or armed carjacking;
- (v) escape in the first degree from a State correctional facility or a local correctional facility;
- (vi) kidnapping under § 3-502 or § 3-503(a)(2) of this article;
- (vii) mayhem;
- (viii) rape;
- (ix) robbery under § 3-402 or § 3-403 of this article;
- (x) sexual offense in the first or second degree;
- (xi) sodomy; or
- (xii) a violation of § 4-503 of this article concerning destructive devices.

(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) imprisonment for life.

(2) Unless a sentence of death is imposed in compliance with [§ 2-202] §§ 2-202 AND 2-202.1 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;

and

(3) 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.

2-202.1.

THE STATE SHALL SEEK A SENTENCE OF DEATH IN EACH PROSECUTION FOR MURDER IN THE FIRST DEGREE THAT MEETS THE REQUIREMENTS OF § 2-202(A) OF THIS SUBTITLE UNLESS THE VICTIM'S FAMILY INDICATES IN WRITING THAT THE FAMILY DOES NOT WANT THE STATE TO SEEK THE DEATH PENALTY.

2-203.

A defendant found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole only if:

(1) (I) IN THE CASE OF A DEFENDANT WHO IS NOT DISQUALIFIED FROM IMPOSITION OF A DEATH SENTENCE UNDER § 2-202(B) OF THIS SUBTITLE, THE VICTIM'S FAMILY INDICATES IN WRITING THAT THE FAMILY DOES NOT WANT THE STATE TO SEEK THE DEATH PENALTY; AND

(II) at least 30 days before trial, the State gave written notice to the defendant of the State's intention to seek a sentence of imprisonment for life without the possibility of parole; and

(Over)

(2) the sentence of imprisonment for life without the possibility of parole is imposed in accordance with § 2-304 of this title.

2-304.

(a) (1) If the State gave notice under [§ 2-203(1)] § 2-203(1)(II) 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)] 2-203(1)(II) 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.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply only prospectively and may not be applied or interpreted to have any effect on or application to any prosecution for murder in the first degree in which the State's written notice of its intention in the prosecution of the case is given to the defendant before the effective date of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2003.”.