

# SENATE BILL 211

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SB 349/06 – JPR

71r1093  
CF HB 225

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By: **Senators Gladden, Britt, Conway, Exum, Jones, Kelley, Lenett, Madaleno, Muse, Peters, Pinsky, Pugh, and Raskin**

Introduced and read first time: January 29, 2007

Assigned to: Judicial Proceedings

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Death Penalty - Repeal**

3 FOR the purpose of repealing the death penalty; repealing procedures and  
4 requirements related to the death penalty; providing that certain inmates who  
5 have been sentenced to death may not be executed and shall be considered as  
6 having received a sentence of life imprisonment without the possibility of parole  
7 under certain circumstances; providing that in certain cases in which the State  
8 has filed a notice to seek a sentence of death the notice shall be considered  
9 withdrawn and it shall be considered a notice to seek a sentence of life  
10 imprisonment without the possibility of parole under certain circumstances;  
11 providing that certain persons serving life sentences are not eligible persons for  
12 Patuxent Institution under certain circumstances; altering the circumstance  
13 concerning parole for persons serving life sentences when the State sought a  
14 certain penalty; making conforming and clarifying changes; and generally  
15 relating to the repeal of the death penalty.

16 BY repealing

17 Article – Correctional Services

18 Section 3–901 through 3–909 and the subtitle “Subtitle 9. Death Penalty  
19 Procedures”

20 Annotated Code of Maryland

21 (1999 Volume and 2006 Supplement)

22 BY repealing

23 Article – Criminal Procedure

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



- 1 Section 7–201 through 7–204 and the subtitle “Subtitle 2. Proceedings After  
2 Death Sentences”; 8–108 and 11–404  
3 Annotated Code of Maryland  
4 (2001 Volume and 2006 Supplement)
- 5 BY repealing and reenacting, with amendments,  
6 Article – Correctional Services  
7 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)  
8 Annotated Code of Maryland  
9 (1999 Volume and 2006 Supplement)
- 10 BY repealing and reenacting, with amendments,  
11 Article – Courts and Judicial Proceedings  
12 Section 8–404, 8–420, 9–204, and 12–307  
13 Annotated Code of Maryland  
14 (2006 Replacement Volume)
- 15 BY repealing and reenacting, with amendments,  
16 Article – Criminal Procedure  
17 Section 3–105(b), 3–106(a), 3–107(a), 5–101(c), 7–101, 7–103(b), and 7–107(b)  
18 Annotated Code of Maryland  
19 (2001 Volume and 2006 Supplement)
- 20 BY repealing and reenacting, with amendments,  
21 Article – Criminal Law  
22 Section 2–201(b), 2–304(a), 2–305, and 14–101  
23 Annotated Code of Maryland  
24 (2002 Volume and 2006 Supplement)
- 25 BY repealing  
26 Article – Criminal Law  
27 Section 2–202, 2–301, and 2–303; and 2–401 and the subtitle “Subtitle 4.  
28 Review by Court of Appeals”  
29 Annotated Code of Maryland  
30 (2002 Volume and 2006 Supplement)
- 31 BY repealing and reenacting, with amendments,  
32 Article – Health – General  
33 Section 8–505(b)  
34 Annotated Code of Maryland  
35 (2005 Replacement Volume and 2006 Supplement)

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

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

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

11 **Article – Correctional Services**

12 4–101.

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

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

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

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

23 4–305.

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

30 6–112.

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

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

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

9 7-301.

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

16 7-601.

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

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

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

22 [(3)] (2) remit any part of a sentence of imprisonment subject to any  
23 conditions the Governor requires, without the remission operating as a full pardon.

#### 24 **Article - Courts and Judicial Proceedings**

25 8-404.

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

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

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

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

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

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

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

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

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

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

20                   (i) Each reason for the strike; and

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

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

25           [(c) (1) A trial judge may strike an individual on the basis of the  
26 individual's belief for or against capital punishment only if the judge finds that the  
27 belief would prevent or substantially impair the individual from returning an  
28 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 issued an execution on a forfeited recognizance for a  
26 witness who failed to appear may discharge the witness from execution upon motion  
27 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.]

1 12-307.

2 The Court of Appeals has:

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

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

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

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

12 **Article - Criminal Procedure**

13 3-105.

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

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

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

20 3-106.

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

25 3-107.

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

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

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

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

12 5–101.

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

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

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

18 7–101.

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

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

21 (2) on parole or probation.

22 7–103.

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

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



1 7–107.

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

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

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

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

16 **Article – Criminal Law**

17 2–201.

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

20 (i) [death;

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

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

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

27 [2–202.

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

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

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

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

6 (2) (i) with respect to § 2-303(g) of this title, except for §  
7 2-303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

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

11 1. a principal in the first degree; or

12 2. a principal in the second degree who:

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

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

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

18 (3) 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:

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

4 [2-301.

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

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

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

13 [2-303.

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

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

17 (ii) "Correctional facility" includes:

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

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

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

25 (ii) "Law enforcement officer" includes:

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

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

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

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

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

11 sentenced to death.

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

13 conducted:

- 14                   (1)     before the jury that determined the defendant's guilt;
- 15                   (2)     before a jury impaneled for purposes of the proceeding if:
  - 16                           (i)     the defendant was convicted based on a guilty plea;
  - 17                           (ii)    the defendant was convicted after a trial by a court sitting
  - 18 without a jury;
  - 19                           (iii)  the court, for good cause, discharged the jury that convicted
  - 20 the defendant; or
  - 21                           (iv)  a court of competent jurisdiction remanded the case for
  - 22 resentencing following a review of the original sentence of death; or
- 23                   (3)     before the court, if the defendant waives a jury sentencing
- 24 proceeding.
- 25           (d)     (1)     A judge shall appoint at least two alternate jurors when
- 26 impaneling a jury for any proceeding:
  - 27                           (i)     in which the defendant is being tried for a crime for which
  - 28 the death penalty may be imposed; or
  - 29                           (ii)  that is held under this section.

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

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

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

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

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

14                   (ii) evidence relating to an aggravating circumstance:

15                           1. that is listed under subsection (g) of this section; and  
16                           2. of which the State provided notice under § 2–  
17 202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

4 (ii) instruct the jury as to:

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

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

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

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

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

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

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

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

23 2. a law enforcement officer;

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

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

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

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

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

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

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

10 1. arson in the first degree;

11 2. carjacking or armed carjacking;

12 3. rape in the first degree;

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

14 5. sexual offense in the first degree.

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

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

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

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

20 (i) abduction;

21 (ii) arson in the first degree;

22 (iii) carjacking or armed carjacking;

23 (iv) escape in the first degree;

24 (v) kidnapping;

- 1 (vi) mayhem;
- 2 (vii) murder;
- 3 (viii) rape in the first or second degree;
- 4 (ix) robbery under § 3–402 or § 3–403 of this article;
- 5 (x) sexual offense in the first or second degree;
- 6 (xi) manslaughter other than involuntary manslaughter;
- 7 (xii) an attempt to commit any crime listed in items (i) through  
8 (xi) of this paragraph; or
- 9 (xiii) the use of a handgun in the commission of a felony or other  
10 crime of violence.

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

- 15 (i) the defendant previously has not:
- 16 1. been found guilty of a crime of violence;
- 17 2. entered a guilty plea or a plea of nolo contendere to a  
18 charge of a crime of violence; or
- 19 3. received probation before judgment for a crime of  
20 violence;
- 21 (ii) the victim was a participant in the conduct of the defendant  
22 or consented to the act that caused the victim's death;
- 23 (iii) the defendant acted under substantial duress, domination,  
24 or provocation of another, but not so substantial as to constitute a complete defense to  
25 the prosecution;
- 26 (iv) the murder was committed while the capacity of the  
27 defendant to appreciate the criminality of the defendant's conduct or to conform that



1 conduct to the requirements of law was substantially impaired due to emotional  
2 disturbance, mental disorder, or mental incapacity;

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

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

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

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

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

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

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

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

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

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

24 (i) each aggravating circumstance found;

25 (ii) each mitigating circumstance found;

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

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

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

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

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

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

14 (4) If the court or jury determines that a death sentence may not be  
15 imposed and the State gave notice under § 2–203(1) of this title, a determination shall  
16 be made concerning imprisonment for life without the possibility of parole under §  
17 2–304 of this subtitle.

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

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

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

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

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

31 (l) If the defendant is sentenced to death, the court before which the  
32 defendant is tried and convicted shall sentence the defendant to death by intravenous

1 administration of a lethal quantity of an ultrashort-acting barbiturate or other similar  
2 drug in combination with a chemical paralytic agent.]

3 2-304.

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

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

14 2-305.

15 The Court of Appeals may adopt:

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

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

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

21 [2-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

22                           (i)   affirm the death sentence;

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

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

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

29 14–101.

- 1           (a)    In this section, “crime of violence” means:
- 2                   (1)    abduction;
- 3                   (2)    arson in the first degree;
- 4                   (3)    kidnapping;
- 5                   (4)    manslaughter, except involuntary manslaughter;
- 6                   (5)    mayhem;
- 7                   (6)    maiming, as previously proscribed under former Article 27, §§ 385  
8           and 386 of the Code;
- 9                   (7)    murder;
- 10                  (8)    rape;
- 11                  (9)    robbery under § 3–402 or § 3–403 of this article;
- 12                  (10)   carjacking;
- 13                  (11)   armed carjacking;
- 14                  (12)   sexual offense in the first degree;
- 15                  (13)   sexual offense in the second degree;
- 16                  (14)   use of a handgun in the commission of a felony or other crime of  
17           violence;
- 18                  (15)   child abuse in the first degree under § 3–601 of this article;
- 19                  (16)   an attempt to commit any of the crimes described in items (1)  
20           through (15) of this subsection;
- 21                  (17)   assault in the first degree;
- 22                  (18)   assault with intent to murder;
- 23                  (19)   assault with intent to rape;

1 (20) assault with intent to rob;

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

4 (22) assault with intent to commit a sexual offense in the second  
5 degree.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

### 23                                   **Article - Health - General**

24           8-505.

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

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

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

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

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

13           SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
14 October 1, 2007.