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(i)

(ii)

instruct the jury as to:

2002 Regular Session 2lr1648

By: Senators Frosh, Blount, Hollinger, Kelley, and McFadden Introduced and read first time: February 1, 2002 Assigned to: Judicial Proceedings A BILL ENTITLED 1 AN ACT concerning 2 Death Penalty - Sentencing - Standard of Proof 3 FOR the purpose of altering the standard of proof used in a certain phase of the sentencing proceeding in a capital case trial; providing for the application of this 4 5 Act; and generally relating to the death sentencing proceedings. 6 BY repealing and reenacting, without amendments, Article - Criminal Law 7 Section 2-303(f), (g), and (h) 8 9 Annotated Code of Maryland (As enacted by Chapter ___ (H.B. 11) of the Acts of the General Assembly of 10 11 2002) 12 BY repealing and reenacting, with amendments, Article - Criminal Law 13 14 Section 2-303(i) 15 Annotated Code of Maryland 16 (As enacted by Chapter (H.B. 11) of the Acts of the General Assembly of 17 2002) SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF 18 19 MARYLAND, That the Laws of Maryland read as follows: **Article - Criminal Law** 20 21 2-303. 22 After the evidence is presented to the jury in the sentencing (f) (1) 23 proceeding, the court shall: give any appropriate instructions allowed by law; and

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	whether the defendant shall be possibility of parole, or imprise	1. the findings that the jury must make to determine sentenced to death, imprisonment for life without the onment for life; and	
4 5	subsection (g)(2) or (i)(1) and	2. the burden of proof applicable to the findings under (2) of this section.	
6 7		rt may not instruct the jury that the jury is to assume that a is for the natural life of the defendant.	
		mining a sentence under subsection (b) of this section, the r whether any of the following aggravating reasonable doubt:	
11 12		one or more persons committed the murder of a law officer was performing the officer's duties;	
13 14	(ii) correctional facility;	the defendant committed the murder while confined in a	
	· /	the defendant committed the murder in furtherance of an ape from, or an attempt to evade lawful arrest, custody,	
18	3	1. a guard or officer of a correctional facility; or	
19)	2. a law enforcement officer;	
20 21	(iv) an abduction, kidnapping, or a	the victim was taken or attempted to be taken in the course on attempt to abduct or kidnap;	f
22 23	(v) s this article;	the victim was a child abducted in violation of § 3-503(a)(1)	of
24 25	` '	the defendant committed the murder under an agreement or romise of remuneration to commit the murder;	
	* /	the defendant employed or engaged another to commit the immitted under an agreement or contract for muneration;	
29 30	(viii) death or imprisonment for life	the defendant committed the murder while under a sentence of	of
31 32	(ix) degree arising out of the same	the defendant committed more than one murder in the first incident; or	
33 34	(x) attempting to commit:	the defendant committed the murder while committing, or	
35	;	1. arson in the first degree;	

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

manslaughter other than involuntary manslaughter;

If the court or jury finds beyond a reasonable doubt that one or more

an attempt to commit any crime listed in items (i) through (xi)

the use of a handgun in the commission of a felony or other

sexual offense in the first or second degree;

(viii)

(ix)

(x)

(xi)

(xii)

(xiii)

(i)

26 of the aggravating circumstances under subsection (g) of this section exist, it then shall consider whether any of the following mitigating circumstances exists based on

the defendant previously has not:

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22 of this paragraph; or

24 crime of violence.

28 a preponderance of the evidence:

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1			1.	been found guilty of a crime of violence;		
2 3	charge of a crime of v	iolence;	2. or	entered a guilty plea or a plea of nolo contendere to a		
4			3.	received probation before judgment for a crime of violence;		
5 6	consented to the act th	(ii) nat caused		m was a participant in the conduct of the defendant or im's death;		
	provocation of anothe the prosecution;	(iii) r, but not		ndant acted under substantial duress, domination, or antial as to constitute a complete defense to		
12		aw was si	f the defe abstantia	der was committed while the capacity of the defendant endant's conduct or to conform that conduct to lly impaired due to emotional disturbance,		
14		(v)	the defe	ndant was of a youthful age at the time of the murder;		
15 16	victim's death;	(vi)	the act o	of the defendant was not the sole proximate cause of the		
17 18	activity that would be	(vii) e a contin		kely that the defendant will engage in further criminal eat to society; or		
19 20	writing as a mitigatin	(viii) g circum		er fact that the court or jury specifically sets forth in the case.		
23 24	(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] BEYOND A REASONABLE DOUBT whether the aggravating circumstances under subsection (g) of this section outweigh the mitigating circumstances.					
26	(2)	If the co	urt or jur	ry finds that the aggravating circumstances:		
27 28	be imposed; or	(i)	outweig	h the mitigating circumstances, a death sentence shall		
29 30	may not be imposed.	(ii)	do not o	utweigh the mitigating circumstances, a death sentence		
31 32	(3) sentence must be una			on is by a jury, a decision to impose a death be signed by the jury foreperson.		
33 34	(4) specifically:	A court	or jury sł	nall put its determination in writing and shall state		
35		(i)	each agg	gravating circumstance found;		

15 October 1, 2002.

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1		(ii)	each mitigating circumstance found;			
	(g) of this section out of this section;	(iii) weigh the	whether any aggravating circumstances found under subsection emitigating circumstances found under subsection (h)			
	(g) of this section do subsection (h) of this	not outwe	whether the aggravating circumstances found under subsection eigh the mitigating circumstances found under and			
8 9	or paragraphs (1) and	(v) (2) of thi	the sentence determined under subsection (g)(2) of this section is subsection.			
12	SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be construed to apply retroactively and shall be applied to and interpreted to affect all cases in which a sentence of death has been imposed but not carried out as of the effective date of this Act.					
14	SECTION 3. AN	D BE IT	FURTHER ENACTED, That this Act shall take effect			