

**SENATE BILL 53**  
**EMERGENCY BILL**

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SB 629/02 - JPR

2003 Regular Session  
3r0319

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By: **Senators Frosh, Britt, Conway, Exum, Gladden, Green, Grosfeld,**  
**Hughes, Kelley, Lawlah, Pinsky, and Teitelbaum**

Introduced and read first time: January 17, 2003

Assigned to: Judicial Proceedings

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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  
4 sentencing proceeding in a capital case trial; providing for the application of this  
5 Act; making this Act an emergency measure; and generally relating to death  
6 sentencing proceedings.

7 BY repealing and reenacting, without amendments,  
8 Article - Criminal Law  
9 Section 2-303(f), (g), and (h)  
10 Annotated Code of Maryland  
11 (2002 Volume)

12 BY repealing and reenacting, with amendments,  
13 Article - Criminal Law  
14 Section 2-303(i)  
15 Annotated Code of Maryland  
16 (2002 Volume)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
18 MARYLAND, That the Laws of Maryland read as follows:

19 **Article - Criminal Law**

20 2-303.

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

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

24 (ii) instruct the jury as to:



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

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

- 7 (i) it shall state that conclusion in writing; and
  - 8 (ii) a death sentence may not be imposed.
- 9 (h) (1) In this subsection, "crime of violence" means:
- 10 (i) abduction;
  - 11 (ii) arson in the first degree;
  - 12 (iii) carjacking or armed carjacking;
  - 13 (iv) escape in the first degree;
  - 14 (v) kidnapping;
  - 15 (vi) mayhem;
  - 16 (vii) murder;
  - 17 (viii) rape in the first or second degree;
  - 18 (ix) robbery under § 3-402 or § 3-403 of this article;
  - 19 (x) sexual offense in the first or second degree;
  - 20 (xi) manslaughter other than involuntary manslaughter;
  - 21 (xii) an attempt to commit any crime listed in items (i) through (xi)  
22 of this paragraph; or
  - 23 (xiii) the use of a handgun in the commission of a felony or other  
24 crime of violence.

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

- 29 (i) the defendant previously has not:

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

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

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

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

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

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

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

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

21       (i)       (1)     If the court or jury finds that one or more of the mitigating  
22 circumstances under subsection (h) of this section exists, it shall determine [by a  
23 preponderance of the evidence] BEYOND A REASONABLE DOUBT whether the  
24 aggravating circumstances under subsection (g) of this section outweigh the  
25 mitigating circumstances.

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

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

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

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

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

35                                  (i)     each aggravating circumstance found;

- 1                   (ii)       each mitigating circumstance found;
- 2                   (iii)       whether any aggravating circumstances found under subsection  
3 (g) of this section outweigh the mitigating circumstances found under subsection (h)  
4 of this section;
- 5                   (iv)       whether the aggravating circumstances found under subsection  
6 (g) of this section do not outweigh the mitigating circumstances found under  
7 subsection (h) of this section; and
- 8                   (v)       the sentence determined under subsection (g)(2) of this section  
9 or paragraphs (1) and (2) of this subsection.

10       SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall be  
11 construed to apply only prospectively and may not be applied or interpreted to have  
12 any affect on or application to any case in which a sentence of death has been imposed  
13 before the effective date of this Act.

14       SECTION 3. AND BE IT FURTHER ENACTED, That this Act is an  
15 emergency measure, is necessary for the immediate preservation of the public health  
16 or safety, has been passed by a yea and nay vote supported by three-fifths of all the  
17 members elected to each of the two Houses of the General Assembly, and shall take  
18 effect from the date it is enacted.