
By: **Senators Green, Giannetti, and Hughes**
Introduced and read first time: January 31, 2003
Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law - Death Penalty - Proportionality Review**

3 FOR the purpose of requiring the Court of Appeals of Maryland as part of its review
4 of a sentence of death, to determine whether a sentence of death is excessive or
5 disproportionate to the penalty imposed in similar cases, considering both the
6 crime and the defendant; requiring the Court to include in its decision a
7 reference to certain similar cases that are considered by the Court; and
8 generally relating to the review of sentences of death by the Court of Appeals.

9 BY repealing and reenacting, with amendments,
10 Article - Criminal Law
11 Section 2-401
12 Annotated Code of Maryland
13 (2002 Volume)

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

16 **Article - Criminal Law**

17 2-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

15 (iii) the evidence supports a finding by the court or jury that the
16 aggravating circumstances outweigh the mitigating circumstances under § 2-303(h)
17 and (i)(1) of this title; AND

18 (IV) THE IMPOSITION OF THE DEATH SENTENCE IS EXCESSIVE OR
19 DISPROPORTIONATE TO THE PENALTY IMPOSED IN SIMILAR CASES, CONSIDERING
20 BOTH THE CRIME AND THE DEFENDANT.

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

23 (i) affirm the death sentence;

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

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

28 (4) THE COURT SHALL INCLUDE IN ITS DECISION A REFERENCE TO THE
29 SIMILAR CASES WHICH IT CONSIDERED UNDER SUBSECTION (D)(2)(IV) OF THIS
30 SECTION.

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

33 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
34 October 1, 2003.