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

Introduced and read first time: February 4, 2005

Assigned to: Judicial Proceedings

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9 withdrawn and it shall be considered a notice to seek a sentence of life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 2004 Supplement)

22 BY repealing

23 Article - Criminal Procedure
24 Section 7-201 through 7-204 and the subtitle "Subtitle 2. Proceedings After
25 Death Sentences"; 8-108, and 11-404
26 Annotated Code of Maryland
27 (2001 Volume and 2004 Supplement)

28 BY repealing and reenacting, with amendments,

29 Article - Correctional Services
30 Section 4-101(e)(2), 4-305(b)(2), 6-112(c), 7-301(d)(2), and 7-601(a)

1 Annotated Code of Maryland
2 (1999 Volume and 2004 Supplement)

3 BY repealing and reenacting, with amendments,
4 Article - Courts and Judicial Proceedings
5 Section 8-210, 8-301, 9-204, and 12-307
6 Annotated Code of Maryland
7 (2002 Replacement Volume and 2004 Supplement)

8 BY repealing and reenacting, with amendments,
9 Article - Criminal Procedure
10 Section 7-101, 7-103(b), and 7-107(b)
11 Annotated Code of Maryland
12 (2001 Volume and 2004 Supplement)

13 BY repealing and reenacting, with amendments,
14 Article - Criminal Law
15 Section 2-201(b), 2-304(a), 2-305, and 14-101
16 Annotated Code of Maryland
17 (2002 Volume and 2004 Supplement)

18 BY repealing
19 Article - Criminal Law
20 Section 2-202, 2-301, 2-303, and 2-401
21 Annotated Code of Maryland
22 (2002 Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Health - General
25 Section 8-505(b)
26 Annotated Code of Maryland
27 (2000 Replacement Volume and 2004 Supplement)

28 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
29 MARYLAND, That Section(s) 3-901 through 3-909 and the subtitle "Subtitle 9.
30 Death Penalty Procedures" of Article - Correctional Services of the Annotated Code of
31 Maryland be repealed.

32 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7-201 through
33 7-204 and the subtitle "Subtitle 2. Proceedings After Death Sentences"; 8-108, and
34 11-404 of Article - Criminal Procedure of the Annotated Code of Maryland be
35 repealed.

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

Article - Correctional Services

1

2 4-101.

3 (e) (2) "Eligible person" does not include an individual who:

4 (i) is serving two or more sentences of imprisonment for life under
5 § 2-201, FORMER § 2-303, or § 2-304 of the Criminal Law Article;6 (ii) is serving one or more sentences of imprisonment for life when a
7 court or jury has found under FORMER § 2-303 of the Criminal Law Article, beyond a
8 reasonable doubt, that one or more aggravating circumstances existed; or9 (iii) has been convicted of murder in the first degree, rape in the
10 first degree, or a sexual offense in the first degree, unless the sentencing judge, at the
11 time of sentencing or in the exercise of the judge's revisory power under the Maryland
12 Rules, recommends that the individual be referred to the Institution for evaluation.

13 4-305.

14 (b) (2) An inmate sentenced to life imprisonment as a result of a proceeding
15 under FORMER § 2-303 or § 2-304 of the Criminal Law Article is not eligible for
16 parole consideration until the inmate has served 25 years or the equivalent of 25
17 years when considering allowances for diminution of the inmate's period of
18 confinement as provided under Title 3, Subtitle 7 of this article and § 6-218 of the
19 Criminal Procedure Article.

20 6-112.

21 (c) (1) The Division shall complete a presentence investigation report in
22 each case in which [the death penalty or] imprisonment for life without the
23 possibility of parole is requested under [§ 2-202 or] § 2-203 of the Criminal Law
24 Article.25 (2) The report shall include a victim impact statement as provided under
26 § 11-402 of the Criminal Procedure Article.27 (3) The court or jury before which the separate sentencing proceeding is
28 conducted under [§ 2-303 or] § 2-304 of the Criminal Law Article shall consider the
29 report.

30 7-301.

31 (d) (2) An inmate who has been sentenced to life imprisonment as a result of
32 a proceeding under FORMER § 2-303 or § 2-304 of the Criminal Law Article is not
33 eligible for parole consideration until the inmate has served 25 years or the
34 equivalent of 25 years considering the allowances for diminution of the inmate's term
35 of confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle
36 7 of this article.

1 7-601.

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

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

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

7 [(3)] (2) remit any part of a sentence of imprisonment subject to any
8 conditions the Governor requires, without the remission operating as a full pardon.

9 **Article - Courts and Judicial Proceedings**

10 8-210.

11 (a) Any person summoned for jury service may be excused by the jury judge if
12 the person shows that undue hardship, extreme inconvenience, or public necessity
13 require his excuse, but only for the period the jury judge deems necessary. At the
14 conclusion of this period the person shall be summoned again for jury service under
15 the provisions of § 8-208 of this title.

16 (b) Any person summoned for jury service may be excused from a particular
17 jury:

18 (1) In accordance with rule or law if more jurors are summoned than are
19 required to be impaneled in a particular case;

20 (2) By the court after a determination that the person may be unable to
21 render impartial jury service or that his service would be likely to disrupt the
22 proceedings;

23 (3) By the court after a determination that the juror's service may
24 threaten the secrecy of the proceedings or otherwise adversely affect the integrity of
25 the jury deliberations; but a person may not be excused on this ground unless the
26 court states on the record its reasons for the excuse and its determination that the
27 excuse is warranted and will not be inconsistent with §§ 8-102 and 8-103 of this title;

28 (4) By a party upon peremptory challenge as provided by rule or law; or

29 (5) By the court upon a challenge by a party for good cause shown.

30 (c) [A person may not be disqualified, excused, or excluded from service in a
31 particular case as a juror of the State by reason of his beliefs against capital
32 punishment unless such belief would prevent his returning an impartial verdict
33 according to law.

34 (d)] No person or class of person may be disqualified, excused, or exempted
35 from service as a juror except under this section or § 8-209 of this title.

1 [(e)] (D) Any person excused from jury service or from a particular jury
2 under [subsection (a), (b), or (c)] SUBSECTION (A) OR (B) of this section is eligible to sit
3 on another jury if the basis for his excuse is not relevant to his ability to serve on the
4 other jury.

5 [(f)] (E) When a person is disqualified or excused from jury service, the jury
6 commissioner or clerk shall note the specific reason in the space provided on his juror
7 qualification form or on the juror's card drawn from the qualified jury wheel.

8 8-301.

9 (a) [In a trial in which the defendant is subject, on any single count, to a
10 sentence of death because notice of intention to seek a sentence of death has been
11 given under § 2-202 of the Criminal Law Article, each defendant is permitted 20
12 peremptory challenges and the State is permitted 10 peremptory challenges for each
13 defendant.

14 (b) In a criminal trial in which the defendant is subject, on any single count, to
15 a sentence of life imprisonment, [including a case in which notice of intention to seek
16 a sentence of death has not been given under § 2-202 of the Criminal Law Article,]
17 except for common law offenses for which no specific penalty is provided by statute,
18 each defendant is permitted 20 peremptory challenges and the State is permitted 10
19 peremptory challenges for each defendant.

20 [(c)] (B) Except as provided in [subsections (a) and (b)] SUBSECTION (A) of
21 this section, in a criminal trial in which the defendant is subject, on any single count,
22 to a sentence of 20 years or more, except for common law offenses for which no specific
23 penalty is provided by statute, each defendant is permitted 10 peremptory challenges
24 and the State is permitted 5 peremptory challenges for each defendant.

25 [(d)] (C) In all other criminal cases, each party is permitted 4 peremptory
26 challenges.

27 [(e)] (D) The clerk of the court shall provide a sufficient number of
28 prospective jurors to allow the parties to exercise the peremptory challenges
29 permitted by this section or the Maryland Rules.

30 9-204.

31 [(a)] The court which issued an execution on a forfeited recognizance for a
32 witness who failed to appear may discharge the witness from execution upon motion
33 showing good and sufficient cause for the failure.

34 [(b)] This section does not apply in a case if capital punishment may be
35 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 court,
6 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 7-101.

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

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

16 (2) on parole or probation.

17 7-103.

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

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

23 7-107.

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

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

30 (i) in a habeas corpus proceeding begun under § 9-110 of this
31 article; or

32 (ii) in any other proceeding in which a writ of habeas corpus is
33 sought for a purpose other than to challenge the legality of a conviction of a crime or

1 sentence of [death or] imprisonment for the conviction of the crime, including
2 confinement as a result of a proceeding under Title 4 of the Correctional Services
3 Article.

4

Article - Criminal Law

5 2-201.

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

8 (i) [death;

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

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

11 (2) Unless a [sentence of death is imposed in compliance with § 2-202 of
12 this subtitle and Subtitle 3 of this title, or a] sentence of imprisonment for life
13 without the possibility of parole is imposed in compliance with § 2-203 of this subtitle
14 and § 2-304 of this title, the sentence shall be imprisonment for life.

15 [2-202.

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

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

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

21 (ii) each aggravating circumstance on which the State intends to
22 rely;

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

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

27 1. a principal in the first degree; or

28 2. a principal in the second degree who:

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

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

1 C. was actually present at the time and place of the murder;
2 and

3 (3) the sentence of death is imposed in accordance with § 2-303 of this
4 title.

5 (b) (1) In this subsection, a defendant is "mentally retarded" if:

6 (i) the defendant had significantly below average intellectual
7 functioning, as shown by an intelligence quotient of 70 or below on an individually
8 administered intelligence quotient test and an impairment in adaptive behavior; and

9 (ii) the mental retardation was manifested before the age of 22
10 years.

11 (2) A defendant may not be sentenced to death, but shall be sentenced to
12 imprisonment for life without the possibility of parole subject to the requirements of §
13 2-203(1) of this subtitle or imprisonment for life, if the defendant:

14 (i) was under the age of 18 years at the time of the murder; or

15 (ii) proves by a preponderance of the evidence that at the time of
16 the murder the defendant was mentally retarded.]

17 [2-301.

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

20 (1) notice of intent to seek a sentence of death; and

21 (2) withdrawal of notice of intent to seek a sentence of death.

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

26 [2-303.

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

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

30 (ii) "Correctional facility" includes:

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

1 (i) in which the defendant is being tried for a crime for which the
2 death penalty may be imposed; or

3 (ii) that is held under this section.

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

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

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

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

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

17 (ii) evidence relating to an aggravating circumstance:

18 1. that is listed under subsection (g) of this section; and

19 2. of which the State provided notice under § 2-202(a)(1)(ii)
20 of this title;

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

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

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

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

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

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

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

1 (ii) instruct the jury as to:

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

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

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

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

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

14 (ii) the defendant committed the murder while confined in a
15 correctional facility;

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

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

20 2. a law enforcement officer;

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

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

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

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

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

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

34 (x) the defendant committed the murder while committing, or
35 attempting to commit:

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

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

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

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

10 (h) (1) In this subsection, "crime of violence" means:

11 (i) abduction;

12 (ii) arson in the first degree;

13 (iii) carjacking or armed carjacking;

14 (iv) escape in the first degree;

15 (v) kidnapping;

16 (vi) mayhem;

17 (vii) murder;

18 (viii) rape in the first or second degree;

19 (ix) robbery under § 3-402 or § 3-403 of this article;

20 (x) sexual offense in the first or second degree;

21 (xi) manslaughter other than involuntary manslaughter;

22 (xii) an attempt to commit any crime listed in items (i) through (xi)
23 of this paragraph; or

24 (xiii) the use of a handgun in the commission of a felony or other
25 crime of violence.

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

1 (i) the defendant previously has not:
2 1. been found guilty of a crime of violence;
3 2. entered a guilty plea or a plea of nolo contendere to a
4 charge of a crime of violence; or
5 3. received probation before judgment for a crime of violence;

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

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

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

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

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

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

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

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

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

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

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

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

18 (4) If the court or jury determines that a death sentence may not be
19 imposed and the State gave notice under § 2-203(1) of this title, a determination shall
20 be made concerning imprisonment for life without the possibility of parole under §
21 2-304 of this subtitle.

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

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

26 (i) the clerk of the court in which sentence is imposed, if different
27 from the court where the indictment or information was filed, shall certify the
28 proceedings to the clerk of the court where the indictment or information was filed;
29 and

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

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

35 (l) If the defendant is sentenced to death, the court before which the
36 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
2 similar 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 this
11 title, but the court or jury determines that the death sentence may not be imposed,
12 that court or jury shall determine whether the defendant shall be sentenced to
13 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 [2-401.

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (iii) the evidence supports a finding by the court or jury that the
12 aggravating circumstances outweigh the mitigating circumstances under § 2-303(h)
13 and (i)(1) of this title.

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

16 (i) affirm the death sentence;

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

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

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

23 14-101.

24 (a) In this section, "crime of violence" means:

25 (1) abduction;

26 (2) arson in the first degree;

27 (3) kidnapping;

28 (4) manslaughter, except involuntary manslaughter;

29 (5) mayhem;

30 (6) maiming, as previously proscribed under former Article 27, §§ 385
31 and 386 of the Code;

32 (7) murder;

- 1 (8) rape;
- 2 (9) robbery under § 3-402 or § 3-403 of this article;
- 3 (10) carjacking;
- 4 (11) armed carjacking;
- 5 (12) sexual offense in the first degree;
- 6 (13) sexual offense in the second degree;
- 7 (14) use of a handgun in the commission of a felony or other crime of
8 violence;
- 9 (15) an attempt to commit any of the crimes described in items (1)
10 through (14) of this subsection;
- 11 (16) assault in the first degree;
- 12 (17) assault with intent to murder;
- 13 (18) assault with intent to rape;
- 14 (19) assault with intent to rob;
- 15 (20) assault with intent to commit a sexual offense in the first degree; and
- 16 (21) assault with intent to commit a sexual offense in the second degree.

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

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

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

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

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

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

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

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

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

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

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

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

15 (ii) served a term of confinement in a correctional facility for that
16 conviction.

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

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

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

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

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

27 (2) The Maryland Parole Commission shall adopt regulations to
28 implement this subsection.

29 **Article - Health - General**

30 8-505.

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

33 (1) May require or permit an examination to be conducted on an
34 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, 2005.