

# SENATE BILL 645

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SB 211/07 – JPR

8lr2413  
CF 8lr2399

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By: **Senators Gladden, Conway, Currie, Exum, Frosh, Jones, Kelley, King, Lenett, Madaleno, McFadden, Muse, Peters, Pinsky, Pugh, and Raskin**  
Introduced and read first time: February 1, 2008  
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9 withdrawn and it shall be considered a notice to seek a sentence of life  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 2007 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 2007 Supplement)

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.  
[Brackets] indicate matter deleted from existing law.



- 1 BY repealing and reenacting, with amendments,  
2 Article – Correctional Services  
3 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)  
4 Annotated Code of Maryland  
5 (1999 Volume and 2007 Supplement)
- 6 BY repealing and reenacting, with amendments,  
7 Article – Courts and Judicial Proceedings  
8 Section 8–404, 8–420, 9–204, and 12–307  
9 Annotated Code of Maryland  
10 (2006 Replacement Volume and 2007 Supplement)
- 11 BY repealing and reenacting, with amendments,  
12 Article – Criminal Procedure  
13 Section 3–105(b), 3–106(a), 3–107(a), 5–101(c), 7–101, 7–103(b), and 7–107(b)  
14 Annotated Code of Maryland  
15 (2001 Volume and 2007 Supplement)
- 16 BY repealing and reenacting, with amendments,  
17 Article – Criminal Law  
18 Section 2–201(b), 2–304(a), 2–305, and 14–101  
19 Annotated Code of Maryland  
20 (2002 Volume and 2007 Supplement)
- 21 BY repealing  
22 Article – Criminal Law  
23 Section 2–202, 2–301, and 2–303; and 2–401 and the subtitle “Subtitle 4.  
24 Review by Court of Appeals”  
25 Annotated Code of Maryland  
26 (2002 Volume and 2007 Supplement)
- 27 BY repealing and reenacting, with amendments,  
28 Article – Health – General  
29 Section 8–505(b)  
30 Annotated Code of Maryland  
31 (2005 Replacement Volume and 2007 Supplement)
- 32 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
33 MARYLAND, That Section(s) 3–901 through 3–909 and the subtitle “Subtitle 9. Death  
34 Penalty Procedures” of Article – Correctional Services of the Annotated Code of  
35 Maryland be repealed.
- 36 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through  
37 7–204 and the subtitle “Subtitle 2. Proceedings After Death Sentences”; 8–108 and  
38 11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be  
39 repealed.

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

3 **Article – Correctional Services**

4 4–101.

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

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

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

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

15 4–305.

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

22 6–112.

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

26 (2) The report shall include a victim impact statement as provided  
27 under § 11–402 of the Criminal Procedure Article.

28 (3) The court or jury before which the separate sentencing proceeding  
29 is conducted under [§ 2–303 or] § 2–304 of the Criminal Law Article shall consider the  
30 report.

31 7–301.

32 (d) (2) An inmate who has been sentenced to life imprisonment as a result  
33 of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not

1 eligible for parole consideration until the inmate has served 25 years or the equivalent  
2 of 25 years considering the allowances for diminution of the inmate's term of  
3 confinement under § 6-218 of the Criminal Procedure Article and Title 3, Subtitle 7 of  
4 this article.

5 7-601.

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

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

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

11 [(3)] (2) remit any part of a sentence of imprisonment subject to any  
12 conditions the Governor requires, without the remission operating as a full pardon.

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

14 8-404.

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

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

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

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

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

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

29 1. The individual may be unable to render impartial jury  
30 service;

31 2. The individual's service likely would disrupt the  
32 proceeding; or

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

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

5                   (i)     Each reason for the strike; and

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

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

10            [(c) (1)    A trial judge may strike an individual on the basis of the  
11 individual's belief for or against capital punishment only if the judge finds that the  
12 belief would prevent or substantially impair the individual from returning an  
13 impartial verdict according to law.

14                   (2)     An individual struck under this subsection may serve on another  
15 jury for which the basis for the strike is irrelevant.]

16    8–420.

17                   (a)     (1)    This subsection applies only in a criminal trial in which a  
18 defendant is subject, on any single count, to[:

19                           (i)     A death sentence because the State has given notice of  
20 intention to seek a death sentence in accordance with § 2–202 of the Criminal Law  
21 Article; or

22                           (ii)    A] A sentence of life imprisonment, [including a case in  
23 which the State has not given notice of intention to seek a death sentence in  
24 accordance with § 2–202 of the Criminal Law Article but] excluding a common law  
25 offense for which no specific statutory penalty is provided.

26                   (2)     Each defendant is allowed 20 peremptory challenges.

27                   (3)     The State is allowed 10 peremptory challenges for each defendant.

28                   (b)     (1)    This subsection applies only in a criminal trial in which a  
29 defendant is subject, on any single count, to a sentence of at least 20 years, excluding a  
30 case subject to subsection (a) of this section or a common law offense for which no  
31 specific statutory penalty is provided.

32                   (2)     Each defendant is allowed 10 peremptory challenges.



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

5 3–107.

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

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

11 (2)] when charged with a felony or a crime of violence as defined under  
12 § 14–101 of the Criminal Law Article, after the lesser of the expiration of 5 years or  
13 the maximum sentence for the most serious offense charged; or

14 [(3)] (2) when charged with an offense not covered under paragraph  
15 (1) [or (2)] of this subsection, after the lesser of the expiration of 3 years or the  
16 maximum sentence for the most serious offense charged.

17 5–101.

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

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

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

23 7–101.

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

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

26 (2) on parole or probation.

27 7–103.

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

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

3 7–107.

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

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

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

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

## 18 Article – Criminal Law

19 2–201.

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

22 (i) [death;

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

24 [(iii)] **(II)** imprisonment for life.

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

29 [2–202.

30 (a) A defendant found guilty of murder in the first degree may be sentenced  
31 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:

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

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

1 [2-301.

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

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

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

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

10 [2-303.

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

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

14 (ii) "Correctional facility" includes:

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

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

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

22 (ii) "Law enforcement officer" includes:

23 1. a law enforcement officer of a jurisdiction outside of  
24 the State;

25 2. an officer serving in a probationary status;

26 3. a parole and probation officer; and

27 4. a law enforcement officer while privately employed as  
28 a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety  
29 Article if the law enforcement officer is wearing the uniform worn while acting in an  
30 official capacity or is displaying prominently the officer's official badge or other  
31 insignia of office.

1 (b) If the State gave notice under § 2-202(a)(1) of this title, a separate  
2 sentencing proceeding shall be held as soon as practicable after a defendant is found  
3 guilty of murder in the first degree to determine whether the defendant shall be  
4 sentenced to death.

5 (c) The sentencing proceeding under subsection (b) of this section shall be  
6 conducted:

7 (1) before the jury that determined the defendant's guilt;

8 (2) before a jury impaneled for purposes of the proceeding if:

9 (i) the defendant was convicted based on a guilty plea;

10 (ii) the defendant was convicted after a trial by a court sitting  
11 without a jury;

12 (iii) the court, for good cause, discharged the jury that convicted  
13 the defendant; or

14 (iv) a court of competent jurisdiction remanded the case for  
15 resentencing following a review of the original sentence of death; or

16 (3) before the court, if the defendant waives a jury sentencing  
17 proceeding.

18 (d) (1) A judge shall appoint at least two alternate jurors when  
19 impaneling a jury for any proceeding:

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

22 (ii) that is held under this section.

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

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

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

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

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

3 (ii) evidence relating to an aggravating circumstance:

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

5 2. of which the State provided notice under §  
6 2–202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

22 (ii) instruct the jury as to:

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

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

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

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

- 1 (i) one or more persons committed the murder of a law  
2 enforcement officer while the officer was performing the officer's duties;
- 3 (ii) the defendant committed the murder while confined in a  
4 correctional facility;
- 5 (iii) the defendant committed the murder in furtherance of an  
6 escape from, an attempt to escape from, or an attempt to evade lawful arrest, custody,  
7 or detention by:
- 8 1. a guard or officer of a correctional facility; or  
9 2. a law enforcement officer;
- 10 (iv) the victim was taken or attempted to be taken in the course  
11 of an abduction, kidnapping, or an attempt to abduct or kidnap;
- 12 (v) the victim was a child abducted in violation of § 3-503(a)(1)  
13 of this article;
- 14 (vi) the defendant committed the murder under an agreement or  
15 contract for remuneration or promise of remuneration to commit the murder;
- 16 (vii) the defendant employed or engaged another to commit the  
17 murder and the murder was committed under an agreement or contract for  
18 remuneration or promise of remuneration;
- 19 (viii) the defendant committed the murder while under a sentence  
20 of death or imprisonment for life;
- 21 (ix) the defendant committed more than one murder in the first  
22 degree arising out of the same incident; or
- 23 (x) the defendant committed the murder while committing, or  
24 attempting to commit:
- 25 1. arson in the first degree;  
26 2. carjacking or armed carjacking;  
27 3. rape in the first degree;  
28 4. robbery under § 3-402 or § 3-403 of this article; or  
29 5. sexual offense in the first degree.

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

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

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

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

6 (i) abduction;

7 (ii) arson in the first degree;

8 (iii) carjacking or armed carjacking;

9 (iv) escape in the first degree;

10 (v) kidnapping;

11 (vi) mayhem;

12 (vii) murder;

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

14 (ix) robbery under § 3–402 or § 3–403 of this article;

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

16 (xi) manslaughter other than involuntary manslaughter;

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

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

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

25 (i) the defendant previously has not:

26 1. been found guilty of a crime of violence;

27 2. entered a guilty plea or a plea of nolo contendere to a  
28 charge of a crime of violence; or

1                                   3.     received probation before judgment for a crime of  
2 violence;

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

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

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

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

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

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

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

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

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

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

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

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

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

33                                   (i)    each aggravating circumstance found;

1 (ii) each mitigating circumstance found;

2 (iii) whether any aggravating circumstances found under  
3 subsection (g) of this section outweigh the mitigating circumstances found under  
4 subsection (h) of this section;

5 (iv) whether the aggravating circumstances found under  
6 subsection (g) of this section do not outweigh the mitigating circumstances found  
7 under subsection (h) of this section; and

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

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

12 (2) If, within a reasonable time, the jury is unable to agree as to  
13 whether a death sentence shall be imposed, the court may not impose a death  
14 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  
27 different from the court where the indictment or information was filed, shall certify  
28 the 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  
31 was 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  
34 the date that the sentence was entered.



1 (1) If the defendant is sentenced to death, the court before which the  
2 defendant is tried and convicted shall sentence the defendant to death by intravenous  
3 administration of a lethal quantity of an ultrashort-acting barbiturate or other similar  
4 drug in combination with a chemical paralytic agent.]

5 2-304.

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

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

16 2-305.

17 The Court of Appeals may adopt:

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

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

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

23 [2-401.

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

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

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

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

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

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

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

3 (ii) includes a recommendation by the trial court as to whether  
4 the 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  
12 passion, 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.

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

20 (i) affirm the death sentence;

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

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

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

14–101.

27 (a) In this section, “crime of violence” means:

28 (1) abduction;

29 (2) arson in the first degree;

- 1 (3) kidnapping;
- 2 (4) manslaughter, except involuntary manslaughter;
- 3 (5) mayhem;
- 4 (6) maiming, as previously proscribed under former Article 27, §§ 385  
5 and 386 of the Code;
- 6 (7) murder;
- 7 (8) rape;
- 8 (9) robbery under § 3-402 or § 3-403 of this article;
- 9 (10) carjacking;
- 10 (11) armed carjacking;
- 11 (12) sexual offense in the first degree;
- 12 (13) sexual offense in the second degree;
- 13 (14) use of a handgun in the commission of a felony or other crime of  
14 violence;
- 15 (15) child abuse in the first degree under § 3-601 of this article;
- 16 (16) sexual abuse of a minor under § 3-602 of this article if:
  - 17 (i) the victim is under the age of 13 years and the offender is an  
18 adult at the time of the offense; and
  - 19 (ii) the offense involved:
    - 20 1. vaginal intercourse, as defined in § 3-301 of this  
21 article;
    - 22 2. a sexual act, as defined in § 3-301 of this article;
    - 23 3. an act in which a part of the offender's body  
24 penetrates, however slightly, into the victim's genital opening or anus; or
    - 25 4. the intentional touching, not through the clothing, of  
26 the victim's or the offender's genital, anal, or other intimate area for sexual arousal,  
27 gratification, or abuse;

1 (17) an attempt to commit any of the crimes described in items (1)  
2 through (16) of this subsection;

3 (18) continuing course of conduct with a child under §  
4 3-315 of this article;

5 (19) assault in the first degree;

6 (20) assault with intent to murder;

7 (21) assault with intent to rape;

8 (22) assault with intent to rob;

9 (23) assault with intent to commit a sexual offense in the first degree;  
10 and

11 (24) assault with intent to commit a sexual offense in the second  
12 degree.

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

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

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

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

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

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

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

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

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

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

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

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

11                   (ii) served a term of confinement in a correctional facility for  
12 that conviction.

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

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

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

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

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

23           (2) The Maryland Parole Commission shall adopt regulations to  
24 implement this subsection.

## 25                                   **Article - Health - General**

26 8-505.

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

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

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

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

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

11           SECTION 6. AND BE IT FURTHER ENACTED, That this Act shall take effect  
12 October 1, 2008.