

HOUSE BILL 316

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CF SB 279

By: **Delegate Rosenberg and the Speaker (By Request – Administration) and Delegates Ali, Anderson, Barnes, Benson, Bobo, Branch, Burns, Cane, Carter, V. Clagett, Conaway, Dumais, Feldman, Frick, Frush, Gaines, Gilchrist, Glenn, Gutierrez, Guzzone, Harrison, Haynes, Healey, Heller, Hixson, Holmes, Howard, Hubbard, Hucker, Jones, Kaiser, Kirk, Krysiak, Lafferty, Lee, Love, Manno, McIntosh, Mizeur, Montgomery, Murphy, Nathan–Pulliam, Niemann, Oaks, Pena–Melnik, Proctor, Ramirez, Reznik, Robinson, Stukes, Tarrant, Taylor, V. Turner, Valderrama, and Vaughn**

Introduced and read first time: January 29, 2009

Assigned to: Judiciary

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 in certain cases in
5 which the State has filed a notice to seek a sentence of death, the notice shall be
6 considered withdrawn and it shall be considered a notice to seek a sentence of
7 life imprisonment without the possibility of parole under certain circumstances;
8 providing that certain persons serving life sentences are not eligible persons for
9 Patuxent Institution under certain circumstances; altering the circumstance
10 concerning parole for persons serving life sentences when the State sought a
11 certain penalty; providing that it is the intent of the General Assembly that
12 certain services shall be funded by savings resulting from the repeal of the
13 death penalty; requiring the Governor’s Office of Crime Control and Prevention
14 to submit a certain report to certain committees; requiring that certain funds be
15 administered by the Governor’s Office of Crime Control and Prevention; making
16 conforming and clarifying changes; and generally relating to the repeal of the
17 death penalty.

18 BY repealing

19 Article – Correctional Services

20 Section 3–901 through 3–909 and the subtitle “Subtitle 9. Death Penalty
21 Procedures”

22 Annotated Code of Maryland

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (2008 Replacement Volume and 2008 Supplement)

2 BY repealing

3 Article – Criminal Procedure

4 Section 7–201 through 7–204 and the subtitle “Subtitle 2. Proceedings After
5 Death Sentences”; 8–108 and 11–404

6 Annotated Code of Maryland

7 (2008 Replacement Volume)

8 BY repealing and reenacting, with amendments,

9 Article – Correctional Services

10 Section 4–101(e)(2), 4–305(b)(2), 6–112(c), 7–301(d)(2), and 7–601(a)

11 Annotated Code of Maryland

12 (2008 Replacement Volume and 2008 Supplement)

13 BY repealing and reenacting, with amendments,

14 Article – Courts and Judicial Proceedings

15 Section 3–8A–03(d)(1), 3–8A–06(a), 8–404, 8–420, 9–204, and 12–307

16 Annotated Code of Maryland

17 (2006 Replacement Volume and 2008 Supplement)

18 BY repealing and reenacting, with amendments,

19 Article – Criminal Procedure

20 Section 3–105(b), 3–106(a), 3–107(a), 4–204(b), 5–101(c), 7–101, 7–103(b), and
21 7–107(b)

22 Annotated Code of Maryland

23 (2008 Replacement Volume)

24 BY repealing

25 Article – Criminal Law

26 Section 2–103(h), 2–202, 2–301, and 2–303; and 2–401 and the subtitle
27 “Subtitle 4. Review by Court of Appeals”

28 Annotated Code of Maryland

29 (2002 Volume and 2008 Supplement)

30 BY repealing and reenacting, with amendments,

31 Article – Criminal Law

32 Section 2–201(b), 2–304(a), 2–305, and 14–101

33 Annotated Code of Maryland

34 (2002 Volume and 2008 Supplement)

35 BY repealing and reenacting, with amendments,

36 Article – Health – General

37 Section 8–505(b)

38 Annotated Code of Maryland

39 (2005 Replacement Volume and 2008 Supplement)

40 BY repealing and reenacting, with amendments,

1 Article – Transportation
2 Section 16–812(a)
3 Annotated Code of Maryland
4 (2006 Replacement Volume and 2008 Supplement)

5 Preamble

6 WHEREAS, The Maryland Commission on Capital Punishment was created by
7 Chapter 431 of the Acts of 2008 for the purpose of studying all aspects of capital
8 punishment as currently and historically administered in the State; and

9 WHEREAS, The Commission comprised 23 appointees representing a broad
10 diversity of views on capital punishment, as well as the racial, ethnic, gender, and
11 geographic diversity of the State; and

12 WHEREAS, The Commission held five public hearings at which testimony from
13 experts and members of the public was presented and discussed, as well as five
14 additional meetings to discuss the evidence presented at the hearings and written
15 submissions; and

16 WHEREAS, The Commission issued its final report to the General Assembly on
17 December 12, 2008, which included the Commission’s strong recommendation that, to
18 eliminate racial and jurisdictional bias, reduce unnecessary costs, lessen the misery
19 that capital cases force victims of family members to endure, and eliminate the risk
20 that an innocent person can be convicted, capital punishment be abolished in
21 Maryland; now, therefore,

22 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
23 MARYLAND, That Section(s) 3–901 through 3–909 and the subtitle “Subtitle 9. Death
24 Penalty Procedures” of Article – Correctional Services of the Annotated Code of
25 Maryland be repealed.

26 SECTION 2. AND BE IT FURTHER ENACTED, That Section(s) 7–201 through
27 7–204 and the subtitle “Subtitle 2. Proceedings After Death Sentences”; 8–108 and
28 11–404 of Article – Criminal Procedure of the Annotated Code of Maryland be
29 repealed.

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

32 **Article – Correctional Services**

33 4–101.

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

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

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

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

8 4–305.

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

15 6–112.

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

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

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

24 7–301.

25 (d) (2) An inmate who has been sentenced to life imprisonment as a result
26 of a proceeding under **FORMER** § 2–303 or § 2–304 of the Criminal Law Article is not
27 eligible for parole consideration until the inmate has served 25 years or the equivalent
28 of 25 years considering the allowances for diminution of the inmate’s term of
29 confinement under § 6–218 of the Criminal Procedure Article and Title 3, Subtitle 7 of
30 this article.

31 7–601.

32 (a) On giving the notice required by the Maryland Constitution, the
33 Governor may:

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

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

5 [(3)] (2) remit any part of a sentence of imprisonment subject to any
6 conditions the Governor requires, without the remission operating as a full pardon.

7 **Article – Courts and Judicial Proceedings**

8 3–8A–03.

9 (d) The court does not have jurisdiction over:

10 (1) A child at least 14 years old alleged to have done an act which, if
11 committed by an adult, would be a crime punishable by [death or] life imprisonment,
12 as well as all other charges against the child arising out of the same incident, unless
13 an order removing the proceeding to the court has been filed under § 4–202 of the
14 Criminal Procedure Article;

15 3–8A–06.

16 (a) The court may waive the exclusive jurisdiction conferred by § 3–8A–03 of
17 this subtitle with respect to a petition alleging delinquency by:

18 (1) A child who is 15 years old or older; or

19 (2) A child who has not reached his 15th birthday, but who is charged
20 with committing an act which if committed by an adult, would be punishable by [death
21 or] life imprisonment.

22 8–404.

23 (a) Notwithstanding § 8–103(a) of this title, a trial judge may strike an
24 individual who is party in a civil case while the individual is entitled to a jury trial in
25 the county.

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

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

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

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

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

5 1. The individual may be unable to render impartial jury
6 service;

7 2. The individual's service likely would disrupt the
8 proceeding; or

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

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

13 (i) Each reason for the strike; and

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

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

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

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

24 8–420.

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

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

30 (ii) A] A sentence of life imprisonment, [including a case in
31 which the State has not given notice of intention to seek a death sentence in

1 accordance with § 2–202 of the Criminal Law Article but] excluding a common law
2 offense for which no specific statutory penalty is provided.

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

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

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

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

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

12 (c) In every other criminal trial, each party is allowed four peremptory
13 challenges.

14 9–204.

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

18 [(b) This section does not apply in a case if capital punishment may be
19 involved.]

20 12–307.

21 The Court of Appeals has:

22 (1) Jurisdiction to review a case or proceeding pending in or decided by
23 the Court of Special Appeals in accordance with Subtitle 2 of this title;

24 (2) Jurisdiction to review a case or proceeding decided by a circuit
25 court, in accordance with § 12–305 of this subtitle; **AND**

26 (3) Exclusive appellate jurisdiction with respect to a question of law
27 certified to it under the Uniform Certification of Questions of Law Act[]; and

28 (4) Exclusive appellate jurisdiction over a criminal case in which the
29 death penalty is imposed and any appellate proceeding under § 3–904 of the
30 Correctional Services Article].

31 **Article – Criminal Procedure**

1 3-105.

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

4 (1) may require or allow the examination to be done on an outpatient
5 basis; and

6 (2) if an outpatient examination is authorized, shall set bail for the
7 defendant or authorize release of the defendant on recognizance.

8 3-106.

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

13 3-107.

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

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

19 (2)] when charged with a felony or a crime of violence as defined under
20 § 14-101 of the Criminal Law Article, after the lesser of the expiration of 5 years or
21 the maximum sentence for the most serious offense charged; or

22 [(3)] **(2)** when charged with an offense not covered under paragraph
23 (1) [or (2)] of this subsection, after the lesser of the expiration of 3 years or the
24 maximum sentence for the most serious offense charged.

25 4-204.

26 (b) Except for a sentencing proceeding under [§ 2-303 or] § 2-304 of the
27 Criminal Law Article:

28 (1) the distinction between an accessory before the fact and a principal
29 is abrogated; and

30 (2) an accessory before the fact may be charged, tried, convicted, and
31 sentenced as a principal.

1 5-101.

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

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

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

7 7-101.

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

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

10 (2) on parole or probation.

11 7-103.

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

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

17 7-107.

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

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

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

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

1 **Article – Criminal Law**

2 2–103.

3 [(h) The commission of first degree murder of a viable fetus under this
4 section, in conjunction with the commission of another first degree murder arising out
5 of the same incident, does not constitute an aggravating circumstance subjecting a
6 defendant to the death penalty under § 2–303(g)(ix) of this title.]

7 2–201.

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

10 (i) [death;

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

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

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

17 [2–202.

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

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

22 (i) the State’s intention to seek a sentence of death; and

23 (ii) each aggravating circumstance on which the State intends
24 to rely;

25 (2) (i) with respect to § 2–303(g) of this title, except for §
26 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

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

30 1. a principal in the first degree; or

- 1 2. a principal in the second degree who:
- 2 A. willfully, deliberately, and with premeditation
3 intended the death of the law enforcement officer;
- 4 B. was a major participant in the murder; and
- 5 C. was actually present at the time and place of the
6 murder; and

7 (3) the sentence of death is imposed in accordance with § 2–303 of this
8 title.

9 (b) (1) In this subsection, a defendant is “mentally retarded” if:

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

13 (ii) the mental retardation was manifested before the age of 22
14 years.

15 (2) A defendant may not be sentenced to death, but shall be sentenced
16 to imprisonment for life without the possibility of parole subject to the requirements of
17 § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

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

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

21 [2–301.

22 (a) The State’s Attorney shall file with the Clerk of the Court of Appeals a
23 copy of each:

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

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

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

30 [2–303.

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

2 (2) (i) “Correctional facility” has the meaning stated in § 1–101 of
3 this article.

4 (ii) “Correctional facility” includes:

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

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

9 (3) (i) “Law enforcement officer” means a law enforcement officer
10 as defined under the Law Enforcement Officers’ Bill of Rights, § 3–101 of the Public
11 Safety Article.

12 (ii) “Law enforcement officer” includes:

13 1. a law enforcement officer of a jurisdiction outside of
14 the State;

15 2. an officer serving in a probationary status;

16 3. a parole and probation officer; and

17 4. a law enforcement officer while privately employed as
18 a security officer or special police officer under Title 3, Subtitle 3 of the Public Safety
19 Article if the law enforcement officer is wearing the uniform worn while acting in an
20 official capacity or is displaying prominently the officer’s official badge or other
21 insignia of office.

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

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

28 (1) before the jury that determined the defendant’s guilt;

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

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

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

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

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

5 (3) before the court, if the defendant waives a jury sentencing
6 proceeding.

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

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

11 (ii) that is held under this section.

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

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

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

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

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

25 (ii) evidence relating to an aggravating circumstance:

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

27 2. of which the State provided notice under §
28 2-202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

11 (ii) instruct the jury as to:

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

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

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

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

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

24 (ii) the defendant committed the murder while confined in a
25 correctional facility;

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

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

30 2. a law enforcement officer;

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

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

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

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

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

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

12 (x) the defendant committed the murder while committing, or
13 attempting to commit:

14 1. arson in the first degree;

15 2. carjacking or armed carjacking;

16 3. rape in the first degree;

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

18 5. sexual offense in the first degree.

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

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

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

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

24 (i) abduction;

25 (ii) arson in the first degree;

26 (iii) carjacking or armed carjacking;

27 (iv) escape in the first degree;

28 (v) kidnapping;

- 1 (vi) mayhem;
- 2 (vii) murder;
- 3 (viii) rape in the first or second degree;
- 4 (ix) robbery under § 3–402 or § 3–403 of this article;
- 5 (x) sexual offense in the first or second degree;
- 6 (xi) manslaughter other than involuntary manslaughter;
- 7 (xii) an attempt to commit any crime listed in items (i) through
8 (xi) of this paragraph; or
- 9 (xiii) the use of a handgun in the commission of a felony or other
10 crime of violence.

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

- 15 (i) the defendant previously has not:
- 16 1. been found guilty of a crime of violence;
- 17 2. entered a guilty plea or a plea of nolo contendere to a
18 charge of a crime of violence; or
- 19 3. received probation before judgment for a crime of
20 violence;
- 21 (ii) the victim was a participant in the conduct of the defendant
22 or consented to the act that caused the victim's death;
- 23 (iii) the defendant acted under substantial duress, domination,
24 or provocation of another, but not so substantial as to constitute a complete defense to
25 the prosecution;
- 26 (iv) the murder was committed while the capacity of the
27 defendant to appreciate the criminality of the defendant's conduct or to conform that
28 conduct to the requirements of law was substantially impaired due to emotional
29 disturbance, mental disorder, or mental incapacity;
- 30 (v) the defendant was of a youthful age at the time of the
31 murder;

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

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

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

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

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

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

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

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

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

20 (i) each aggravating circumstance found;

21 (ii) each mitigating circumstance found;

22 (iii) whether any aggravating circumstances found under
23 subsection (g) of this section outweigh the mitigating circumstances found under
24 subsection (h) of this section;

25 (iv) whether the aggravating circumstances found under
26 subsection (g) of this section do not outweigh the mitigating circumstances found
27 under subsection (h) of this section; and

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

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

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

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

7 (4) If the court or jury determines that a death sentence may not be
8 imposed and the State gave notice under § 2–203(1) of this title, a determination shall
9 be made concerning imprisonment for life without the possibility of parole under §
10 2–304 of this subtitle.

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

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

15 (i) the clerk of the court in which sentence is imposed, if
16 different from the court where the indictment or information was filed, shall certify
17 the proceedings to the clerk of the court where the indictment or information was filed;
18 and

19 (ii) the clerk of the court where the indictment or information
20 was filed shall copy the docket entries in the inmate’s case, sign the copies, and deliver
21 them to the Governor.

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

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

28 2–304.

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

35 [(2) If the State gave notice under both §§ 2–202(a)(1) and 2–203(1) of
36 this title, but the court or jury determines that the death sentence may not be

1 imposed, that court or jury shall determine whether the defendant shall be sentenced
2 to imprisonment for life without the possibility of parole or to imprisonment for life.]

3 2–305.

4 The Court of Appeals may adopt:

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

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

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

10 [2–401.

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (iii) the evidence supports a finding by the court or jury that the
6 aggravating circumstances outweigh the mitigating circumstances under § 2–303(h)
7 and (i)(1) of this title.

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

10 (i) affirm the death sentence;

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

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

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

17 14–101.

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

19 (1) abduction;

20 (2) arson in the first degree;

21 (3) kidnapping;

22 (4) manslaughter, except involuntary manslaughter;

23 (5) mayhem;

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

26 (7) murder;

27 (8) rape;

28 (9) robbery under § 3–402 or § 3–403 of this article;

29 (10) carjacking;

- 1 (11) armed carjacking;
- 2 (12) sexual offense in the first degree;
- 3 (13) sexual offense in the second degree;
- 4 (14) use of a handgun in the commission of a felony or other crime of
5 violence;
- 6 (15) child abuse in the first degree under § 3–601 of this article;
- 7 (16) sexual abuse of a minor under § 3–602 of this article if:
- 8 (i) the victim is under the age of 13 years and the offender is an
9 adult at the time of the offense; and
- 10 (ii) the offense involved:
- 11 1. vaginal intercourse, as defined in § 3–301 of this
12 article;
- 13 2. a sexual act, as defined in § 3–301 of this article;
- 14 3. an act in which a part of the offender’s body
15 penetrates, however slightly, into the victim’s genital opening or anus; or
- 16 4. the intentional touching, not through the clothing, of
17 the victim’s or the offender’s genital, anal, or other intimate area for sexual arousal,
18 gratification, or abuse;
- 19 (17) an attempt to commit any of the crimes described in items (1)
20 through (16) of this subsection;
- 21 (18) continuing course of conduct with a child under §
22 3–315 of this article;
- 23 (19) assault in the first degree;
- 24 (20) assault with intent to murder;
- 25 (21) assault with intent to rape;
- 26 (22) assault with intent to rob;
- 27 (23) assault with intent to commit a sexual offense in the first degree;
28 and

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

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

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

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

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

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

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

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

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

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

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

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

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

32 (ii) served a term of confinement in a correctional facility for
33 that conviction.

1 (iii) Leaving the scene of an accident which requires
2 disqualification as provided by the United States Secretary of Transportation;

3 (iv) A crime, other than a crime described in subsection (e) of
4 this section, that is punishable by [death or] imprisonment for a term exceeding 1
5 year;

6 (v) A violation of § 25–112 of this article; or

7 (vi) A violation of § 2–209, § 2–503, § 2–504, § 2–505, or § 2–506
8 of the Criminal Law Article[.];

9 (2) The individual holds a commercial driver’s license and is convicted
10 of committing any of the following offenses while driving a noncommercial motor
11 vehicle:

12 (i) A violation of § 21–902(a), (c), or (d) of this article;

13 (ii) A violation of a federal law or any other state’s law which is
14 substantially similar in nature to the provisions in § 21–902(a), (c), or (d) of this
15 article;

16 (iii) Leaving the scene of an accident which requires
17 disqualification as provided by the United States Secretary of Transportation; **OR**

18 (iv) A crime, other than a crime described in subsection (e) of
19 this section, that is punishable by [death or] imprisonment for a term exceeding 1
20 year;

21 (3) The individual, while driving a commercial motor vehicle or while
22 holding a commercial driver’s license, refuses to undergo testing as provided in
23 § 16–205.1 of this title or as is required by any other state’s law or by federal law in
24 the enforcement of 49 C.F.R. § 383.51 Table 1, or 49 C.F.R. § 392.5(a)(2);

25 (4) The individual drives or attempts to drive a commercial motor
26 vehicle while the alcohol concentration of the person’s blood or breath is 0.04 or
27 greater; or

28 (5) The individual drives a commercial motor vehicle when, as a result
29 of prior violations committed while driving a commercial motor vehicle, the driver’s
30 commercial driver’s license is revoked, suspended, or canceled or the driver is
31 disqualified from driving a commercial motor vehicle.

32 SECTION 4. AND BE IT FURTHER ENACTED, That in any case in which the
33 State has properly filed notice that it intended to seek a sentence of death under
34 § 2–202 of the Criminal Law Article in which a sentence has not been imposed, the
35 notice of intention to seek a sentence of death shall be considered to have been

1 withdrawn and it shall be deemed that the State properly filed notice under § 2-203 of
2 the Criminal Law Article to seek a sentence of life imprisonment without the
3 possibility of parole.

4 SECTION 5. AND BE IT FURTHER ENACTED, That it is the intent of the
5 General Assembly that expanded victim services for survivors of homicide victims
6 shall be funded by savings resulting from the repeal of the death penalty.

7 SECTION 6. AND BE IT FURTHER ENACTED, That, on or before November
8 1, 2009, the Governor's Office of Crime Control and Prevention shall submit a report to
9 the House Judiciary Committee and Senate Judicial Proceedings Committee on how
10 victim services for survivors of homicide victims should be expanded.

11 SECTION 7. AND BE IT FURTHER ENACTED, That funds received by the
12 federal government under the Victims of Crime Act (42 U.S.C. § 10602) shall be
13 administered by the Governor's Office of Crime Control and Prevention.

14 SECTION 8. AND BE IT FURTHER ENACTED, That this Act shall take effect
15 October 1, 2009.