

HOUSE BILL 1411

E2

8lr3585
CF SB 346

By: **Delegates McComas, Afzali, Arentz, Beitzel, Ciliberti, Clark, Cluster, Corderman, Folden, Hornberger, Krebs, Malone, McConkey, McKay, W. Miller, Morgan, Parrott, Reilly, Rose, Szeliga, and Wivell**

Introduced and read first time: February 9, 2018

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Death Penalty – Reinstatement**

3 FOR the purpose of providing that a person who is convicted of first-degree murder may
4 be sentenced to death under certain circumstances; establishing certain procedures
5 relating to notice, trial, and sentencing in relation to the imposition of the death
6 penalty; applying a certain provision of law relating to peremptory challenges to a
7 criminal trial in which a defendant is subject, on any single count, to a death
8 sentence because the State has given a certain notice of intention to seek a death
9 sentence or a sentence of imprisonment for life, including a case in which the State
10 has not given a certain notice of intention to seek a death sentence; authorizing the
11 Court of Appeals to adopt certain rules of procedure to govern the conduct of death
12 penalty sentencing proceedings; requiring the Court of Appeals to review a death
13 sentence in a certain manner after the death sentence is imposed and the judgment
14 becomes final; establishing certain procedures for the review of a sentence of death
15 by the Court of Appeals; providing that a victim's representative has the same right
16 to address the jury in a death penalty sentencing as a victim's representative has to
17 address a court in a certain other sentencing or disposition hearing; creating certain
18 procedures relating to the determination of whether a victim's representative may
19 present an oral address to the jury in a death penalty sentencing; defining certain
20 terms; making conforming, stylistic, and clarifying changes; and generally relating
21 to the death penalty.

22 BY repealing and reenacting, with amendments,
23 Article – Correctional Services
24 Section 7–301(d)(2)
25 Annotated Code of Maryland
26 (2017 Replacement Volume)

27 BY repealing and reenacting, with amendments,

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Article – Courts and Judicial Proceedings
 2 Section 8–420
 3 Annotated Code of Maryland
 4 (2013 Replacement Volume and 2017 Supplement)

5 BY repealing and reenacting, with amendments,
 6 Article – Criminal Law
 7 Section 2–201(b), 2–304, and 2–305
 8 Annotated Code of Maryland
 9 (2012 Replacement Volume and 2017 Supplement)

10 BY adding to
 11 Article – Criminal Law
 12 Section 2–202 and 2–303; and 2–401 to be under the new subtitle “Subtitle 4. Review
 13 by Court of Appeals”
 14 Annotated Code of Maryland
 15 (2012 Replacement Volume and 2017 Supplement)

16 BY adding to
 17 Article – Criminal Procedure
 18 Section 11–404
 19 Annotated Code of Maryland
 20 (2008 Replacement Volume and 2017 Supplement)

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

23 **Article – Correctional Services**

24 7–301.

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

30 **Article – Courts and Judicial Proceedings**

31 8–420.

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

34 (I) A DEATH SENTENCE BECAUSE THE STATE HAS GIVEN
 35 NOTICE OF INTENTION TO SEEK A DEATH SENTENCE IN ACCORDANCE WITH § 2–202

1 **OF THE CRIMINAL LAW ARTICLE; OR**

2 **(II) A sentence of life imprisonment, INCLUDING A CASE IN WHICH**
 3 **THE STATE HAS NOT GIVEN NOTICE OF INTENTION TO SEEK A DEATH SENTENCE IN**
 4 **ACCORDANCE WITH § 2-202 OF THE CRIMINAL LAW ARTICLE BUT** excluding a
 5 common law offense for which no specific statutory penalty is provided.

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

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

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

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

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

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

16 **Article – Criminal Law**

17 2-201.

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

20 (i) **DEATH;**

21 **(II) imprisonment for life without the possibility of parole; or**

22 **[(ii)] (III) imprisonment for life.**

23 (2) Unless a **SENTENCE OF DEATH IS IMPOSED IN COMPLIANCE WITH**
 24 **§ 2-202 OF THIS SUBTITLE AND SUBTITLE 3 OF THIS TITLE, OR A** sentence of
 25 imprisonment for life without the possibility of parole is imposed in compliance with §
 26 2-203 of this subtitle and § 2-304 of this title, the sentence shall be imprisonment for life.

27 **2-202.**

28 **(A) A DEFENDANT FOUND GUILTY OF MURDER IN THE FIRST DEGREE MAY**
 29 **BE SENTENCED TO DEATH ONLY IF:**

1 **(1) AT LEAST 30 DAYS BEFORE TRIAL, THE STATE GAVE WRITTEN**
2 **NOTICE TO THE DEFENDANT OF:**

3 **(I) THE STATE’S INTENTION TO SEEK A SENTENCE OF DEATH;**
4 **AND**

5 **(II) EACH AGGRAVATING CIRCUMSTANCE ON WHICH THE STATE**
6 **INTENDS TO RELY;**

7 **(2) (I) WITH RESPECT TO § 2-303(G) OF THIS TITLE, THE**
8 **DEFENDANT WAS A PRINCIPAL IN THE FIRST DEGREE; OR**

9 **(II) THE DEFENDANT SOLICITED, CONSPIRED WITH, OR ACTED**
10 **IN CONCERT WITH A PRINCIPAL IN THE FIRST DEGREE; AND**

11 **(3) THE SENTENCE OF DEATH IS IMPOSED IN ACCORDANCE WITH §**
12 **2-303 OF THIS TITLE.**

13 **(B) (1) IN THIS SUBSECTION, A DEFENDANT IS “INTELLECTUALLY**
14 **DISABLED” IF:**

15 **(I) THE DEFENDANT HAD SIGNIFICANTLY BELOW AVERAGE**
16 **INTELLECTUAL FUNCTIONING, AS SHOWN BY AN INTELLIGENCE QUOTIENT OF 70 OR**
17 **BELOW ON AN INDIVIDUALLY ADMINISTERED INTELLIGENCE QUOTIENT TEST AND**
18 **AN IMPAIRMENT IN ADAPTIVE BEHAVIOR; AND**

19 **(II) THE INTELLECTUAL DISABILITY WAS MANIFESTED BEFORE**
20 **THE AGE OF 22.**

21 **(2) A DEFENDANT MAY NOT BE SENTENCED TO DEATH, BUT SHALL BE**
22 **SENTENCED TO IMPRISONMENT FOR LIFE WITHOUT THE POSSIBILITY OF PAROLE**
23 **SUBJECT TO THE REQUIREMENTS OF § 2-203 OF THIS SUBTITLE OR IMPRISONMENT**
24 **FOR LIFE, IF THE DEFENDANT:**

25 **(I) WAS UNDER THE AGE OF 18 YEARS AT THE TIME OF THE**
26 **MURDER; OR**

27 **(II) PROVES BY A PREPONDERANCE OF THE EVIDENCE THAT AT**
28 **THE TIME OF THE MURDER THE DEFENDANT WAS INTELLECTUALLY DISABLED.**

29 **2-303.**

30 **(A) (1) IN THIS SECTION THE FOLLOWING WORDS HAVE THE MEANINGS**

1 INDICATED.

2 (2) (I) "CORRECTIONAL FACILITY" HAS THE MEANING STATED IN §
3 1-101 OF THE CORRECTIONAL SERVICES ARTICLE.

4 (II) "CORRECTIONAL FACILITY" INCLUDES A FACILITY OF THE
5 MARYLAND DEPARTMENT OF HEALTH OR ANY OTHER FACILITY IN WHICH A PERSON
6 IS CONFINED UNDER COLOR OF LAW.

7 (3) (I) "LAW ENFORCEMENT OFFICER" MEANS A LAW
8 ENFORCEMENT OFFICER AS DEFINED IN § 3-101 OF THE PUBLIC SAFETY ARTICLE.

9 (II) "LAW ENFORCEMENT OFFICER" INCLUDES:

10 1. A LAW ENFORCEMENT OFFICER OF A JURISDICTION
11 OUTSIDE THE STATE;

12 2. AN OFFICER SERVING IN A PROBATIONARY STATUS;

13 3. A PAROLE AND PROBATION OFFICER; AND

14 4. A LAW ENFORCEMENT OFFICER WHILE PRIVATELY
15 EMPLOYED AS A SECURITY OFFICER OR SPECIAL POLICE OFFICER UNDER TITLE 3,
16 SUBTITLE 3 OF THE PUBLIC SAFETY ARTICLE IF THE LAW ENFORCEMENT OFFICER
17 IS WEARING A UNIFORM WHILE ACTING IN AN OFFICIAL CAPACITY OR IS DISPLAYING
18 PROMINENTLY THE OFFICER'S OFFICIAL BADGE OR OTHER INSIGNIA OF OFFICE.

19 (4) "MASS ATTACK" MEANS A COORDINATED ASSAULT BY AT LEAST
20 TWO PERSONS, AT ONE OR MORE LOCATIONS, THAT RESULTS IN OR IS INTENDED TO
21 RESULT IN AT LEAST TWO ACTS OF MURDER.

22 (B) IF THE STATE GAVE NOTICE UNDER § 2-202(A)(1) OF THIS TITLE, A
23 SEPARATE SENTENCING PROCEEDING SHALL BE HELD AS SOON AS PRACTICABLE
24 AFTER A DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST DEGREE TO
25 DETERMINE WHETHER THE DEFENDANT SHALL BE SENTENCED TO DEATH.

26 (C) THE SENTENCING PROCEEDING UNDER SUBSECTION (B) OF THIS
27 SECTION SHALL BE CONDUCTED:

28 (1) BEFORE THE JURY THAT DETERMINED THE DEFENDANT'S GUILT;

29 (2) BEFORE THE JURY IMPANELED FOR PURPOSES OF THE
30 PROCEEDING IF:

1 **(I) THE DEFENDANT WAS CONVICTED BASED ON A GUILTY**
2 **PLEA;**

3 **(II) THE DEFENDANT WAS CONVICTED AFTER A TRIAL BY A**
4 **COURT SITTING WITHOUT A JURY;**

5 **(III) THE COURT, FOR GOOD CAUSE, DISCHARGED THE JURY**
6 **THAT CONVICTED THE DEFENDANT; OR**

7 **(IV) A COURT OF COMPETENT JURISDICTION REMANDED THE**
8 **CASE FOR RESENTENCING FOLLOWING A REVIEW OF THE ORIGINAL SENTENCE OF**
9 **DEATH; OR**

10 **(3) BEFORE THE COURT, IF THE DEFENDANT WAIVES A JURY**
11 **SENTENCING PROCEEDING.**

12 **(D) (1) A JUDGE SHALL APPOINT AT LEAST TWO ALTERNATE JURORS**
13 **WHEN IMPANELING A JURY FOR ANY PROCEEDING:**

14 **(I) IN WHICH THE DEFENDANT IS BEING TRIED FOR A CRIME**
15 **FOR WHICH THE DEATH PENALTY MAY BE IMPOSED; OR**

16 **(II) THAT IS HELD UNDER THIS SECTION.**

17 **(2) THE ALTERNATE JURORS SHALL BE RETAINED THROUGHOUT THE**
18 **PROCEEDINGS UNDER ANY RESTRICTIONS THAT THE JUDGE IMPOSES.**

19 **(3) SUBJECT TO PARAGRAPH (4) OF THIS SUBSECTION, IF A JUROR**
20 **DIES, IS DISQUALIFIED, BECOMES INCAPACITATED, OR IS DISCHARGED FOR ANY**
21 **OTHER REASON BEFORE THE JURY BEGINS ITS DELIBERATIONS ON SENTENCING, AN**
22 **ALTERNATE JUROR BECOMES A JUROR IN THE ORDER SELECTED, AND SERVES IN**
23 **ALL RESPECTS AS A JUROR SELECTED ON THE REGULAR TRIAL PANEL.**

24 **(4) AN ALTERNATE JUROR MAY NOT REPLACE A JUROR WHO IS**
25 **DISCHARGED DURING THE ACTUAL DELIBERATIONS OF THE JURY ON THE GUILT OR**
26 **INNOCENCE OF THE DEFENDANT OR ON SENTENCING.**

27 **(E) (1) THE FOLLOWING TYPE OF EVIDENCE IS ADMISSIBLE IN A**
28 **SENTENCING PROCEEDING:**

29 **(I) EVIDENCE RELATING TO A MITIGATING CIRCUMSTANCE**
30 **THAT IS LISTED UNDER SUBSECTION (H) OF THIS SECTION;**

1 (II) EVIDENCE RELATING TO AN AGGRAVATING CIRCUMSTANCE:

2 1. THAT IS LISTED UNDER SUBSECTION (G) OF THIS
3 SECTION; AND

4 2. OF WHICH THE STATE PROVIDED NOTICE UNDER §
5 2-202(A)(1)(II) OF THIS TITLE;

6 (III) EVIDENCE OF A PRIOR CRIMINAL CONVICTION, A GUILTY
7 PLEA, A PLEA OF NOLO CONTENDERE, OR THE ABSENCE OF ANY PRIOR CONVICTIONS
8 OR PLEAS, TO THE SAME EXTENT THAT THE EVIDENCE WOULD BE ADMISSIBLE IN
9 OTHER SENTENCING PROCEDURES;

10 (IV) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION, ANY
11 PRESENTENCE INVESTIGATION REPORT; AND

12 (V) ANY OTHER EVIDENCE THE COURT FINDS TO HAVE
13 PROBATIVE VALUE AND RELEVANCE TO SENTENCING, IF THE DEFENDANT HAS A
14 FAIR OPPORTUNITY TO REBUT ANY STATEMENT.

15 (2) A RECOMMENDATION IN A PRESENTENCE INVESTIGATION
16 REPORT AS TO A SENTENCE IS NOT ADMISSIBLE IN A SENTENCING PROCEEDING.

17 (3) THE STATE AND THE DEFENDANT OR COUNSEL FOR THE
18 DEFENDANT MAY PRESENT ARGUMENT FOR OR AGAINST THE SENTENCE OF DEATH.

19 (F) AFTER THE EVIDENCE IS PRESENTED TO THE JURY IN THE SENTENCING
20 PROCEEDING, THE COURT SHALL:

21 (1) GIVE ANY APPROPRIATE INSTRUCTIONS ALLOWED BY LAW; AND

22 (2) INSTRUCT THE JURY AS TO:

23 (I) THE FINDINGS THAT THE JURY MUST MAKE TO DETERMINE
24 WHETHER THE DEFENDANT SHALL BE SENTENCED TO DEATH, IMPRISONMENT FOR
25 LIFE WITHOUT THE POSSIBILITY OF PAROLE, OR IMPRISONMENT FOR LIFE; AND

26 (II) THE BURDEN OF PROOF APPLICABLE TO THE FINDINGS
27 UNDER SUBSECTION (G)(2) OR (I)(1) AND (2) OF THIS SECTION.

28 (G) (1) IN DETERMINING THE SENTENCE UNDER SUBSECTION (B) OF THIS
29 SECTION, THE COURT OR JURY FIRST SHALL CONSIDER WHETHER ANY OF THE

1 FOLLOWING AGGRAVATING CIRCUMSTANCES EXISTS BEYOND A REASONABLE
2 DOUBT:

3 (I) ONE OR MORE PERSONS COMMITTED AT LEAST TWO ACTS OF
4 MURDER IN THE FIRST DEGREE DURING A SINGLE INCIDENT OR MASS ATTACK;

5 (II) ONE OR MORE PERSONS COMMITTED AT LEAST TWO ACTS OF
6 MURDER IN THE FIRST DEGREE IN A SERIES OF MURDERS;

7 (III) THE DEFENDANT COMMITTED THE MURDER:

8 1. WHILE CHARGED WITH A CRIME PUNISHABLE BY
9 DEATH OR IMPRISONMENT FOR LIFE;

10 2. AFTER BEING CONVICTED OF, BUT BEFORE BEING
11 SENTENCED FOR, A CRIME PUNISHABLE BY DEATH OR IMPRISONMENT FOR LIFE; OR

12 3. WHILE UNDER A SENTENCE OF DEATH OR
13 IMPRISONMENT FOR LIFE;

14 (IV) THE VICTIM OF THE MURDER WAS A WITNESS TO A CRIME
15 PUNISHABLE BY DEATH OR IMPRISONMENT FOR LIFE;

16 (V) THE VICTIM WAS A LAW ENFORCEMENT OFFICER OR A
17 GUARD OR AN OFFICER OF A CORRECTIONAL FACILITY AND WAS PERFORMING
18 OFFICIAL DUTIES WHEN THE MURDER OCCURRED; OR

19 (VI) THE DEFENDANT COMMITTED THE MURDER WHILE
20 COMMITTING A VIOLATION OF TITLE 10, SUBTITLE 3 OF THIS ARTICLE.

21 (2) IF THE COURT OR JURY DOES NOT FIND THAT ONE OR MORE OF
22 THE AGGRAVATING CIRCUMSTANCES EXISTS BEYOND A REASONABLE DOUBT:

23 (I) IT SHALL STATE THAT CONCLUSION IN WRITING; AND

24 (II) A DEATH SENTENCE MAY NOT BE IMPOSED.

25 (H) (1) IN THIS SUBSECTION, "CRIME OF VIOLENCE" MEANS:

26 (I) ABDUCTION;

27 (II) ARSON IN THE FIRST DEGREE;

- 1 **(III) CARJACKING OR ARMED CARJACKING;**
- 2 **(IV) KIDNAPPING;**
- 3 **(V) MAYHEM;**
- 4 **(VI) MURDER;**
- 5 **(VII) RAPE IN THE FIRST OR SECOND DEGREE;**
- 6 **(VIII) ROBBERY UNDER § 3-402 OR § 3-403 OF THIS ARTICLE;**
- 7 **(IX) SEXUAL OFFENSE IN THE FIRST OR SECOND DEGREE;**
- 8 **(X) MANSLAUGHTER OTHER THAN INVOLUNTARY**
9 **MANSLAUGHTER;**
- 10 **(XI) AN ATTEMPT TO COMMIT ANY CRIME LISTED IN ITEMS (I)**
11 **THROUGH (X) OF THIS PARAGRAPH; OR**
- 12 **(XII) THE USE OF A HANDGUN IN THE COMMISSION OF A FELONY**
13 **OR ANY OTHER CRIME OF VIOLENCE.**

14 **(2) IF THE COURT OR JURY FINDS BEYOND A REASONABLE DOUBT**
15 **THAT ONE OR MORE OF THE AGGRAVATING CIRCUMSTANCES UNDER SUBSECTION**
16 **(G) OF THIS SECTION EXISTS, IT THEN SHALL CONSIDER WHETHER ANY OF THE**
17 **FOLLOWING MITIGATING CIRCUMSTANCES EXISTS BASED ON A PREPONDERANCE OF**
18 **THE EVIDENCE:**

- 19 **(I) THE DEFENDANT PREVIOUSLY HAS NOT:**
 - 20 1. **BEEN FOUND GUILTY OF A CRIME OF VIOLENCE;**
 - 21 2. **ENTERED A GUILTY PLEA OR A PLEA OF NOLO**
22 **CONTENDERE TO A CHARGE OF A CRIME OF VIOLENCE; OR**
 - 23 3. **RECEIVED PROBATION BEFORE JUDGMENT FOR A**
24 **CRIME OF VIOLENCE;**
- 25 **(II) THE VICTIM WAS A PARTICIPANT IN THE CONDUCT OF THE**
26 **DEFENDANT OR CONSENTED TO THE ACT THAT CAUSED THE VICTIM'S DEATH;**
- 27 **(III) THE DEFENDANT ACTED UNDER SUBSTANTIAL DURESS,**

1 DOMINATION, OR PROVOCATION OF ANOTHER, BUT NOT SO SUBSTANTIAL AS TO
2 CONSTITUTE A COMPLETE DEFENSE TO THE PROSECUTION;

3 (IV) THE MURDER WAS COMMITTED WHILE THE CAPACITY OF
4 THE DEFENDANT TO APPRECIATE THE CRIMINALITY OF THE DEFENDANT'S
5 CONDUCT OR TO CONFORM THAT CONDUCT TO THE REQUIREMENTS OF LAW WAS
6 SUBSTANTIALLY IMPAIRED DUE TO EMOTIONAL DISTURBANCE, MENTAL DISORDER,
7 OR MENTAL INCAPACITY;

8 (V) THE DEFENDANT WAS OF A YOUTHFUL AGE AT THE TIME OF
9 THE MURDER;

10 (VI) THE ACT OF THE DEFENDANT WAS NOT THE SOLE
11 PROXIMATE CAUSE OF THE VICTIM'S DEATH;

12 (VII) IT IS UNLIKELY THAT THE DEFENDANT WILL ENGAGE IN
13 FURTHER CRIMINAL ACTIVITY THAT WOULD BE A CONTINUING THREAT TO SOCIETY;
14 OR

15 (VIII) ANY OTHER FACT THAT THE COURT OR JURY SPECIFICALLY
16 SETS FORTH IN WRITING AS A MITIGATING CIRCUMSTANCE IN THE CASE.

17 (I) (1) IF THE COURT OR JURY FINDS THAT ONE OR MORE OF THE
18 MITIGATING CIRCUMSTANCES UNDER SUBSECTION (H) OF THIS SECTION EXISTS, IT
19 SHALL DETERMINE BY A PREPONDERANCE OF THE EVIDENCE WHETHER THE
20 AGGRAVATING CIRCUMSTANCES UNDER SUBSECTION (G) OF THIS SECTION
21 OUTWEIGH THE MITIGATING CIRCUMSTANCES.

22 (2) IF THE COURT OR JURY FINDS THAT THE AGGRAVATING
23 CIRCUMSTANCES:

24 (I) OUTWEIGH THE MITIGATING CIRCUMSTANCES, A DEATH
25 SENTENCE SHALL BE IMPOSED; OR

26 (II) DO NOT OUTWEIGH THE MITIGATING CIRCUMSTANCES, A
27 DEATH SENTENCE MAY NOT BE IMPOSED.

28 (3) IF THE DETERMINATION IS BY A JURY, A DECISION TO IMPOSE A
29 DEATH SENTENCE MUST BE UNANIMOUS AND SHALL BE SIGNED BY THE JURY
30 FOREPERSON.

31 (4) A COURT OR JURY SHALL PUT ITS DETERMINATION IN WRITING
32 AND SHALL STATE SPECIFICALLY:

1 (I) EACH AGGRAVATING CIRCUMSTANCE FOUND;

2 (II) EACH MITIGATING CIRCUMSTANCE FOUND;

3 (III) WHETHER ANY AGGRAVATING CIRCUMSTANCES FOUND
4 UNDER SUBSECTION (G) OF THIS SECTION OUTWEIGH THE MITIGATING
5 CIRCUMSTANCES FOUND UNDER SUBSECTION (H) OF THIS SECTION;

6 (IV) WHETHER THE AGGRAVATING CIRCUMSTANCES FOUND
7 UNDER SUBSECTION (G) OF THIS SECTION DO NOT OUTWEIGH THE MITIGATING
8 CIRCUMSTANCES FOUND UNDER SUBSECTION (H) OF THIS SECTION; AND

9 (V) THE SENTENCE DETERMINED UNDER SUBSECTION (G)(2) OF
10 THIS SECTION OR PARAGRAPHS (1) AND (2) OF THIS SUBSECTION.

11 (J) (1) IF A JURY DETERMINES THAT A DEATH SENTENCE SHALL BE
12 IMPOSED UNDER THE PROVISIONS OF THIS SECTION, THE COURT SHALL IMPOSE A
13 DEATH SENTENCE.

14 (2) IF, WITHIN A REASONABLE TIME, THE JURY IS UNABLE TO AGREE
15 AS TO WHETHER A DEATH SENTENCE SHALL BE IMPOSED, THE COURT MAY NOT
16 IMPOSE A DEATH SENTENCE.

17 (3) IF THE SENTENCING PROCEEDING IS CONDUCTED BEFORE A
18 COURT WITHOUT A JURY, THE COURT SHALL DETERMINE WHETHER A DEATH
19 SENTENCE SHALL BE IMPOSED UNDER THE PROVISIONS OF THIS SECTION.

20 (4) IF THE COURT OR A JURY DETERMINES THAT A DEATH SENTENCE
21 MAY NOT BE IMPOSED AND THE STATE GAVE NOTICE UNDER § 2-203(1) OF THIS
22 TITLE, A DETERMINATION SHALL BE MADE CONCERNING IMPRISONMENT FOR LIFE
23 WITHOUT THE POSSIBILITY OF PAROLE UNDER § 2-304 OF THIS SUBTITLE.

24 (5) IF THE COURT OR JURY DETERMINES THAT A DEATH SENTENCE
25 MAY NOT BE IMPOSED AND THE STATE DID NOT GIVE NOTICE UNDER § 2-203(1) OF
26 THIS TITLE, THE COURT SHALL IMPOSE A SENTENCE OF IMPRISONMENT FOR LIFE.

27 (K) (1) IMMEDIATELY AFTER THE IMPOSITION OF A DEATH SENTENCE:

28 (I) THE CLERK OF THE COURT IN WHICH SENTENCE IS
29 IMPOSED, IF DIFFERENT FROM THE COURT WHERE THE INDICTMENT OR
30 INFORMATION WAS FILED, SHALL CERTIFY THE PROCEEDINGS TO THE CLERK OF
31 THE COURT WHERE THE INDICTMENT OR INFORMATION WAS FILED; AND

1 **(II) THE CLERK OF THE COURT WHERE THE INDICTMENT OR**
2 **INFORMATION WAS FILED SHALL COPY THE DOCKET ENTRIES IN THE INMATE'S**
3 **CASE, SIGN THE COPIES, AND DELIVER THEM TO THE GOVERNOR.**

4 **(2) THE DOCKET ENTRIES SHALL SHOW FULLY THE SENTENCE OF**
5 **THE COURT AND THE DATE THAT THE SENTENCE WAS ENTERED.**

6 **(L) IF THE DEFENDANT IS SENTENCED TO DEATH, THE COURT BEFORE**
7 **WHICH THE DEFENDANT IS TRIED AND CONVICTED SHALL SENTENCE THE**
8 **DEFENDANT TO DEATH BY INTRAVENOUS ADMINISTRATION OF A LETHAL QUANTITY**
9 **OF A COMBINATION OF HEROIN AND FENTANYL OR OTHER SIMILAR DRUG.**

10 2-304.

11 (a) **(1)** If the State gave notice under § 2-203(1) of this title, **BUT DID NOT**
12 **GIVE NOTICE OF INTENT TO SEEK THE DEATH PENALTY UNDER § 2-202(A)(1) OF**
13 **THIS TITLE**, the court shall conduct a separate sentencing proceeding as soon as
14 practicable after the defendant is found guilty of murder in the first degree to determine
15 whether the defendant shall be sentenced to imprisonment for life without the possibility
16 of parole or to imprisonment for life.

17 **(2) IF THE STATE GAVE NOTICE UNDER BOTH §§ 2-202(A)(1) AND**
18 **2-203(1) OF THIS TITLE, BUT THE COURT OR JURY DETERMINES THAT THE DEATH**
19 **SENTENCE MAY NOT BE IMPOSED, THAT COURT OR JURY SHALL DETERMINE**
20 **WHETHER THE DEFENDANT SHALL BE SENTENCED TO IMPRISONMENT FOR LIFE**
21 **WITHOUT THE POSSIBILITY OF PAROLE OR TO IMPRISONMENT FOR LIFE.**

22 (b) (1) A determination by a jury **UNDER (A)(2) OF THIS SECTION** to impose
23 a sentence of imprisonment for life without the possibility of parole must be unanimous.

24 (2) If the jury finds that a sentence of imprisonment for life without the
25 possibility of parole shall be imposed, the court shall impose a sentence of imprisonment
26 for life without the possibility of parole.

27 (3) If, within a reasonable time, the jury is unable to agree to imposition of
28 a sentence of imprisonment for life without the possibility of parole, the court shall impose
29 a sentence of imprisonment for life.

30 2-305.

31 The Court of Appeals may adopt:

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

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

3 **SUBTITLE 4. REVIEW BY COURT OF APPEALS.**

4 **2-401.**

5 **(A) (1) AFTER A DEATH SENTENCE IS IMPOSED AND THE JUDGMENT**
6 **BECOMES FINAL, THE COURT OF APPEALS SHALL REVIEW THE SENTENCE ON THE**
7 **RECORD.**

8 **(2) THE COURT OF APPEALS SHALL CONSOLIDATE AN APPEAL FROM**
9 **THE VERDICT WITH THE SENTENCE REVIEW.**

10 **(B) THE CLERK OF THE TRIAL COURT SHALL SEND THE CLERK OF THE**
11 **COURT OF APPEALS:**

12 **(1) THE ENTIRE RECORD AND THE TRANSCRIPT OF THE SENTENCING**
13 **PROCEEDING WITHIN 10 DAYS AFTER RECEIVING THE TRANSCRIPT;**

14 **(2) THE DETERMINATION AND WRITTEN FINDINGS OF THE COURT OR**
15 **JURY; AND**

16 **(3) A REPORT OF THE TRIAL COURT THAT:**

17 **(I) IS IN THE FORM OF A STANDARD QUESTIONNAIRE SUPPLIED**
18 **BY THE COURT OF APPEALS; AND**

19 **(II) INCLUDES A RECOMMENDATION BY THE TRIAL COURT AS TO**
20 **WHETHER THE DEATH SENTENCE IS JUSTIFIED.**

21 **(C) THE DEFENDANT AND THE STATE MAY SUBMIT BRIEFS AND PRESENT**
22 **ORAL ARGUMENTS TO THE COURT OF APPEALS WITHIN THE TIME ALLOWED BY THE**
23 **COURT.**

24 **(D) (1) IN ADDITION TO ANY ERROR PROPERLY BEFORE THE COURT ON**
25 **APPEAL, THE COURT OF APPEALS SHALL CONSIDER THE IMPOSITION OF THE DEATH**
26 **SENTENCE.**

27 **(2) WITH REGARD TO THE DEATH SENTENCE, THE COURT OF**
28 **APPEALS SHALL DETERMINE WHETHER:**

29 **(I) THE IMPOSITION OF THE DEATH SENTENCE WAS**

1 INFLUENCED BY PASSION, PREJUDICE, OR ANY OTHER ARBITRARY FACTOR;

2 (II) THE EVIDENCE SUPPORTS THE FINDING BY THE COURT OR
3 JURY OF A STATUTORY AGGRAVATING CIRCUMSTANCE UNDER § 2-303(G) OF THIS
4 TITLE; AND

5 (III) THE EVIDENCE SUPPORTS A FINDING BY THE COURT OR
6 JURY THAT THE AGGRAVATING CIRCUMSTANCES OUTWEIGH THE MITIGATING
7 CIRCUMSTANCES UNDER § 2-303(H) AND (I)(1) OF THIS TITLE.

8 (3) IN ADDITION TO ITS REVIEW UNDER ANY DIRECT APPEAL, WITH
9 REGARD TO 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
12 FOR A NEW SENTENCING PROCEEDING UNDER § 2-303 OF THIS TITLE; OR

13 (III) SET THE DEATH SENTENCE ASIDE AND REMAND THE CASE
14 FOR MODIFICATION OF THE SENTENCE TO IMPRISONMENT FOR LIFE.

15 (E) THE COURT OF APPEALS MAY ADOPT RULES OF PROCEDURE FOR THE
16 EXPEDITED REVIEW OF DEATH SENTENCES UNDER THIS SECTION.

17 Article – Criminal Procedure

18 11-404.

19 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A VICTIM'S
20 REPRESENTATIVE HAS THE SAME RIGHT TO ADDRESS THE JURY IN A DEATH
21 PENALTY SENTENCING PROCEEDING AS A VICTIM'S REPRESENTATIVE HAS TO
22 ADDRESS A COURT UNDER § 11-403 OF THIS SUBTITLE.

23 (B) (1) ON MOTION OF A DEFENDANT OR THE STATE OR ON THE COURT'S
24 OWN INITIATIVE, THE COURT IN A DEATH PENALTY SENTENCING PROCEEDING MAY
25 HOLD A HEARING OUTSIDE THE PRESENCE OF THE JURY TO DETERMINE WHETHER
26 A VICTIM'S REPRESENTATIVE MAY PRESENT AN ORAL ADDRESS TO THE JURY.

27 (2) IF THE COURT DETERMINES THAT PART OF A VICTIM'S
28 REPRESENTATIVE'S ORAL ADDRESS WILL BE SO UNDULY PREJUDICIAL THAT IT
29 RENDERS THE JURY SENTENCING PROCEEDING FUNDAMENTALLY UNFAIR, THE
30 COURT MAY LIMIT THE PREJUDICIAL PORTION OF THE ORAL ADDRESS.

31 (C) A VICTIM'S REPRESENTATIVE WHO HAS BEEN DENIED A RIGHT

1 **PROVIDED UNDER THIS SECTION MAY FILE AN APPLICATION FOR LEAVE TO APPEAL**
2 **IN THE MANNER PROVIDED UNDER § 11-103 OF THIS TITLE.**

3 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
4 October 1, 2018.