

HOUSE BILL 306

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By: **Delegates Smigiel, Aumann, Bates, Beitzel, Boteler, Bromwell, Costa, Dwyer, Eckardt, Elmore, Frank, George, Haddaway, Jennings, Kach, Krebs, McComas, McConkey, McDonough, Miller, Norman, O'Donnell, Schuh, Serafini, Shank, Shewell, Sossi, Stifler, Stocksdale, Stull, and Weir**

Introduced and read first time: January 27, 2010

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Crimes – Death Penalty – Murder of a Child During a Sexual Offense**

3 FOR the purpose of requiring the court or a jury, in determining whether to impose
4 the death penalty in a case in which the defendant is convicted of murder in the
5 first degree, to first consider that the victim was a child who was murdered
6 while the defendant was committing or attempting to commit a sexual offense
7 against the child; and generally relating to the death penalty.

8 BY repealing and reenacting, with amendments,
9 Article – Criminal Law
10 Section 2–303
11 Annotated Code of Maryland
12 (2002 Volume and 2009 Supplement)

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

15 **Article – Criminal Law**

16 2–303.

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

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

20 (ii) “Correctional facility” includes:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

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

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

8 (ii) “Law enforcement officer” includes:

9 1. a law enforcement officer of a jurisdiction outside of
10 the State;

11 2. an officer serving in a probationary status;

12 3. a parole and probation officer; and

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

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

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

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

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

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

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

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

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

1 (3) before the court, if the defendant waives a jury sentencing
2 proceeding.

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

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

7 (ii) that is held under this section.

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

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

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

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

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

21 (ii) evidence relating to an aggravating circumstance:

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

23 2. of which the State provided notice under
24 § 2-202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

8 (ii) instruct the jury as to:

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

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

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

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

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

21 (ii) the defendant committed the murder while confined in a
22 correctional facility;

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

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

27 2. a law enforcement officer;

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

30 (v) the victim was a child:

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

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

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

1 conduct to the requirements of law was substantially impaired due to emotional
2 disturbance, mental disorder, or mental incapacity;

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

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

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

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

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

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

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

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

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

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

24 (i) each aggravating circumstance found;

25 (ii) each mitigating circumstance found;

26 (iii) whether any aggravating circumstances found under
27 subsection (g) of this section outweigh the mitigating circumstances found under
28 subsection (h) of this section;

29 (iv) whether the aggravating circumstances found under
30 subsection (g) of this section do not outweigh the mitigating circumstances found
31 under subsection (h) of this section; and

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

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

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

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

9 (4) If the court or jury determines that a death sentence may not be
10 imposed and the State gave notice under § 2–203(1) of this title, a determination shall
11 be made concerning imprisonment for life without the possibility of parole under §
12 2–304 of this subtitle.

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

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

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

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

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

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

30 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
31 October 1, 2010.