

# HOUSE BILL 1043

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3lr1551

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By: **Delegates McDonough, Boteler, Glass, Impallaria, Love, McComas, and Parrott**

Introduced and read first time: February 8, 2013

Assigned to: Judiciary

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## A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Death Penalty – Multiple Murders**

3 FOR the purpose of repealing the requirement for the State to give notice to a  
4 defendant of the intention to seek a sentence of death if the defendant  
5 committed more than one murder in the first degree arising out of the same  
6 incident; requiring that a separate sentencing proceeding be held as soon as  
7 practicable after a defendant is found guilty of murder in the first degree to  
8 determine whether the defendant will be sentenced to death if the defendant  
9 committed more than one murder in the first degree arising out of the same  
10 incident; and generally relating to the death penalty and multiple murders.

11 BY repealing and reenacting, with amendments,  
12 Article – Criminal Law  
13 Section 2–202 and 2–303  
14 Annotated Code of Maryland  
15 (2012 Replacement Volume and 2012 Supplement)

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

18 **Article – Criminal Law**

19 2–202.

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

22 (1) **(I) THE DEFENDANT COMMITTED MORE THAN ONE MURDER**  
23 **IN THE FIRST DEGREE ARISING OUT OF THE SAME INCIDENT; OR**

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



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

3 [(i)] 1. the State's intention to seek a sentence of  
4 death; and

5 [(ii)] 2. each aggravating circumstance on which the  
6 State intends to rely;

7 (2) (i) with respect to § 2-303(g) of this title, except for §  
8 2-303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

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

12 1. a principal in the first degree; or

13 2. a principal in the second degree who:

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

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

17 C. was actually present at the time and place of the  
18 murder;

19 (3) the State presents the court or jury with:

20 (i) biological evidence or DNA evidence that links the defendant  
21 to the act of murder;

22 (ii) a video taped, voluntary interrogation and confession of the  
23 defendant to the murder; or

24 (iii) a video recording that conclusively links the defendant to  
25 the murder; and

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

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

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

4 (ii) the mental retardation was manifested before the age of 22  
5 years.

6 (2) A defendant may not be sentenced to death, but shall be sentenced  
7 to imprisonment for life without the possibility of parole subject to the requirements of  
8 § 2–203(1) of this subtitle or imprisonment for life, if the defendant:

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

10 (ii) proves by a preponderance of the evidence that at the time of  
11 the murder the defendant was mentally retarded.

12 (c) A defendant may not be sentenced to death, but shall be sentenced to  
13 imprisonment for life without the possibility of parole subject to the requirements of §  
14 2–203(1) of this subtitle or imprisonment for life, if the State relies solely on evidence  
15 provided by eyewitnesses.

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:

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

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

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

28 (ii) “Law enforcement officer” includes:

29 1. a law enforcement officer of a jurisdiction outside of  
30 the State;

31 2. an officer serving in a probationary status;



1 (ii) that is held under this section.

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

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

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

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

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

15 (ii) evidence relating to an aggravating circumstance:

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

17 2. of which the State provided notice under §  
18 2–202(a)(1)(ii) of this title;

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

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

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

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

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

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

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

2 (ii) instruct the jury as to:

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

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

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

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

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

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

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

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

21 2. a law enforcement officer;

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

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

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

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

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

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

3 (x) the defendant committed the murder while committing, or  
4 attempting to commit:

5 1. arson in the first degree;

6 2. carjacking or armed carjacking;

7 3. rape in the first degree;

8 4. robbery under § 3–402 or § 3–403 of this article; or

9 5. sexual offense in the first degree.

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

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

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

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

15 (i) abduction;

16 (ii) arson in the first degree;

17 (iii) carjacking or armed carjacking;

18 (iv) escape in the first degree;

19 (v) kidnapping;

20 (vi) mayhem;

21 (vii) murder;

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

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

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

25 (xi) manslaughter other than involuntary manslaughter;

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

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

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

9 (i) the defendant previously has not:

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

11 2. entered a guilty plea or a plea of nolo contendere to a  
12 charge of a crime of violence; or

13 3. received probation before judgment for a crime of  
14 violence;

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

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

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

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

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

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

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



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

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

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

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

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

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

14                   (i)   each aggravating circumstance found;

15                   (ii)   each mitigating circumstance found;

16                   (iii)   whether any aggravating circumstances found under  
17 subsection (g) of this section outweigh the mitigating circumstances found under  
18 subsection (h) of this section;

19                   (iv)   whether the aggravating circumstances found under  
20 subsection (g) of this section do not outweigh the mitigating circumstances found  
21 under subsection (h) of this section; and

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

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

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

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

32           (4)   If the court or jury determines that a death sentence may not be  
33 imposed and the State gave notice under § 2-203(1) of this title, a determination shall

1 be made concerning imprisonment for life without the possibility of parole under §  
2 2–304 of this subtitle.

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

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

7 (i) the clerk of the court in which sentence is imposed, if  
8 different from the court where the indictment or information was filed, shall certify  
9 the proceedings to the clerk of the court where the indictment or information was filed;  
10 and

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

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

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

20 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect  
21 October 1, 2013.