

SENATE BILL 404

E2

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By: **Senators Stone, Miller, Astle, Brinkley, Colburn, Dyson, Glassman, Jacobs, Kasemeyer, Kittleman, Klausmeier, Kramer, Munson, Robey, and Stoltzfus**

Introduced and read first time: January 29, 2010

Assigned to: Judicial Proceedings

A BILL ENTITLED

1 AN ACT concerning

2 **Criminal Law – Death Penalty – Evidence**

3 FOR the purpose of providing that a defendant found guilty of murder in the first
4 degree may be sentenced to death under certain circumstances in a case in
5 which the State presents to the court or the jury fingerprint or photographic
6 evidence; altering certain provisions of law to require that certain evidence
7 presented by the State in a death penalty case conclusively link the defendant
8 to the murder; and generally relating to evidence in a death penalty case.

9 BY repealing and reenacting, with amendments,
10 Article – Criminal Law
11 Section 2–202
12 Annotated Code of Maryland
13 (2002 Volume and 2009 Supplement)

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

16 **Article – Criminal Law**

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

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 (ii) each aggravating circumstance on which the State intends
2 to rely;

3 (2) (i) with respect to § 2–303(g) of this title, except for §
4 2–303(g)(1)(i) and (vii) of this title, the defendant was a principal in the first degree; or

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

8 1. a principal in the first degree; or

9 2. a principal in the second degree who:

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

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

13 C. was actually present at the time and place of the
14 murder;

15 (3) the State presents the court or jury with **EVIDENCE THAT**
16 **CONCLUSIVELY LINKS THE DEFENDANT TO THE MURDER FROM THE**
17 **FOLLOWING:**

18 (i) biological evidence or DNA evidence [that links the
19 defendant to the act of murder];

20 **(II) FINGERPRINT EVIDENCE;**

21 **[(ii)] (III)** a video taped, voluntary interrogation and confession
22 of the defendant to the murder; [or]

23 **[(iii)] (IV)** a video recording [that conclusively links the
24 defendant to the murder; and]; **OR**

25 **(V) PHOTOGRAPHIC EVIDENCE; 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 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2010.