

procedure which permits the sentencing judge or jury to focus on both the circumstances of the offense and the individual defendant, with the opportunity to consider the character and record of the defendant with particular reference to mitigating factors, and (3) meaningful appellate review which permits a comparison of the sentence with the penalties imposed in similar cases throughout the State. Based upon these factors we believe Senate Bill 106 meets these basic requirements and would pass constitutional scrutiny on its face.

We must recognize that all death penalty or other sentencing statutes could be found, in particular cases or classes of cases, to have been unconstitutionally applied. However, with respect to Senate Bill 106, we believe that the statutory directions to the sentencing authority to objectively consider the nature of the offense (the aggravating circumstances), and more importantly the mitigating factors applicable to the particular person and to the circumstances of the criminal action in question, provide the basic type of focus and guidance deemed to be of the utmost importance by the Supreme Court. Use of the bifurcated proceeding with imposition of the death penalty limited to those cases where specified aggravating circumstances were established, coupled with provisions for a trial court report and automatic, expedited appellate review, represents the general scheme regarded by the Supreme Court as preferable from the constitutional viewpoint. Accordingly, we conclude that Senate Bill 106 would, on its face meet the constitutional tests of Gregg v. Georgia, supra, and its companion Supreme Court cases. 3

We turn now to the specific questions that you have raised in your letter requesting our opinion on Senate Bill 106 and to some additional features of the Bill which we feel require comment at this time.

1. You first asked whether in the event any provision of the Bill is found to be unconstitutional or is otherwise defective, that portion can be severed from the remainder of the Bill and the balance validly implemented. Under the general rules of severability as discussed more fully below, and under the specific ruling of the Court of Appeals of Maryland in Elackwell v. State, supra, it is clear that unconstitutional and otherwise defective provisions of the Bill may be severed from the constitutional and valid portions of the Bill so long as the remaining portions of the statute are sufficient to carry out the original legislative intent. Shell Oil Co. v. Supervisor, 276 Md. 236, 248 (1975).

Under the provisions of Article 1, §23, Md. Code Ann., all statutes enacted after July 1, 1973 are deemed severable unless the statute itself specifically provides