

that the provisions are not to be severable or unless a court, finding some provisions of the statute unconstitutional or void, further concludes that "the remaining valid provisions alone are incomplete and incapable of being executed in accordance with the legislative intent." As stated in Baltimore v. A.S. Abell Co., 218 Md. 273 290 (1958):

"The true test of separability is the effectiveness of an act to carry out, without its invalid portion, the original legislative intent in enacting it; and a saving clause will not be given effect where such invalid provisions affect the dominant aim of the whole statute." 4

The Court of Appeals gave effect to these general principles in Blackwell v. State, supra, when it found that the general penalty provisions mandating life imprisonment for all first degree murder then found in Art. 27, § 413(a) were severable from the mandatory death penalty provisions of §§ 413(b) and (d). Applying the above stated principles of severability, the Court of Appeals of Maryland found that the unconstitutionality of those provisions of §413 which mandated imposition of the death penalty in certain circumstances did not affect the legality of Blackwell's underlying first degree murder convictions and thereupon imposed the only lawful sentence under the statute, which was life imprisonment.

In essence, should a court conclude that any of the provisions of Senate Bill 106 are unconstitutional or otherwise invalid, those provisions could be severed and the remaining portions of the Bill given effect only so long as such remaining portions are effective to carry out the original intent and dominant aim of the Legislature. So long as the dominant aim of the whole statute is not significantly undercut or frustrated by the invalidation of a particular provision, then the remaining portions may survive and be validly implemented. Since we have expressed herein the opinion that Senate Bill 106 is facially constitutional and since we have not identified any particular feature of the Bill which we believe is facially unconstitutional, or invalid we do not undertake to apply these general principles of severability to any particular provisions of the Bill. However, since as is indicated in the discussion which follows, we find in the critical sentencing procedure portion of this legislation a significant number of troublesome features and interpretive loose ends which one would hope not to find in a bill of this importance, we should add that if any significant portion of the bifurcated sentencing proceeding provisions of the Bill should be invalidated, the survival of the entire statute might well be in jeopardy.

2. You have pointed out that Senate Bill 106