

contains no reference to or amendment of present §412 of Art. 27. The principal thrust of §412 is to identify the method for ascertaining the degree of the crime of murder as to those persons indicted "pursuant to §616 (a) for a murder not punishable by death" upon return of a verdict of guilty by the jury. Both subsections (a) and (b) of §616, setting forth two distinct statutory forms of murder indictments, are repealed by Senate Bill 106. 5 In their place new §616 is enacted which provides a single form of acceptable indictment for all persons charged with murder or manslaughter or with being an accessory thereto, without making any distinction based upon the degree of punishment which may be imposed. 6 You have asked if the continued existence of §412 in its present form with its obsolete reference to §616 (a) would affect the validity of Senate Bill 106 and present any serious problems in its implementation.

We would first point out that §412 is a general guilt determining statutory provision which has historically been utilized to empower the jury to render a verdict of either murder in the first degree or murder in the second degree and implicitly to enable the court to impose sentence accordingly. As is most clearly pointed out in Blackwell v. State, supra, §413 does not create a new crime nor does it affect the method by which a determination of the degree of murder is made; rather, in both its present and proposed forms, it is simply a penalty statute applicable only upon a conviction of murder in the first degree which would authorize the imposition of one of two punishments for the offense of murder in the first degree— life imprisonment or death.

To a substantial extent, §412 may well constitute surplusage since the crimes of murder in the first degree and murder in the second degree are defined in §§407-411 of Art. 27. Although no mention is made of the crime of manslaughter in §412, the jury may obviously return such a verdict under the general form of murder indictment specified in §616. That is to say, even without any special statutory authority in §412, a jury may return a manslaughter verdict on an indictment which includes all three grades of homicide. The portion of §412 relating to the court determination of the degree of the crime on a guilty plea ("a conviction by confession") has been specifically superseded by present Md. Rule 724 and new Md. Rule 731e, effective July 1, 1977. Finally, our view that the concluding language of §412 relative to petit treason is surplusage was reflected in our decision to retain no such language in new §412 or elsewhere under the Administration Bill. In short, we believe that the provisions of §412 are largely, if not entirely, unnecessary to the procedural conduct of a murder trial in Maryland, be it for a capital or non-capital offense.