

Florida, supra; §921.141, Fla. Stat. Ann. This language, albeit in a slightly different form but employing the key phrases "irrelevancy" and "probative force," appears in §201.6 of Tentative Draft No. 9 of the Model Penal Code adopted by the American Law Institute. In approving the constitutionality of the Florida statute the Supreme Court did not comment on this particular language. The Court did refer favorably to the Model Penal Code draft of death penalty legislation in various instances in its 1976 opinions, but made no reference to this particular provision.

To the extent that the terms "relevant to sentence" and "probative value" are given different meanings, it is our opinion that the statute simply calls upon the court to first determine whether a particular item of evidence is relevant to the sentencing issue and then to admit such evidence if it is determined to have probative value as to some matter pertinent to the sentencing issue. To the extent that the probative value standard is a stricter one (and we believe it is), it will ultimately control the admissibility of evidence. 8

You have also directed our attention to the fact that, while §413(b) prohibits "the introduction of any evidence secured in violation of the Constitutions of the United States or the State of Maryland", a confession obtained without giving the "Miranda" warnings is admissible on cross-examination of the defendant for certain purposes during the trial on the question of guilt. See Harris v. New York, 401 U. S. 222 (1971). You ask whether or not such evidence, or other similarly obtained evidence, may be admitted at the sentencing proceeding notwithstanding the exclusionary language quoted above.

When originally announced, the principles of Miranda v. Arizona, 384 U. S. 436 (1966), were considered to be of constitutional dimension, rooted in the Fifth Amendment right against self-incrimination. Harris v. New York, supra, is but one of a line of Supreme Court cases which have eroded the Miranda doctrine, treating its principles as "only the prophylactic rules developed to protect" the Fifth Amendment rights or as "recommended procedural safeguards". See Kidd v. State, 33 Md. App. 445 (1976), cert. pending Court of Appeals of Maryland, No. 154 September Term 1976. Although this area of the law must be regarded as unsettled at this time, it is safe to conclude on the authority of Harris v. New York, supra, that a statement obtained from the defendant without first giving the Miranda warnings (as opposed to a statement or confession involuntarily obtained) would not have been obtained in strict "violation of the Constitutions of the United States or of the State of Maryland" and hence could be introduced at the death