

and the character and record of the defendant, particularly with reference to mitigating circumstances; and

3. meaningful appellate review.

However, in so important a matter as the statutory procedure for imposition of the death penalty, we believe that it is appropriate for all concerned, including this office in performing its bill review function, to impose a somewhat higher standard than mere facial constitutionality. It is unfortunate, to say the least, that a bill of this importance leaves so many loose ends and possesses so many interpretive problems, thus subjecting the administration of the capital punishment scheme to a trial and error period prior to the resolution of these questions by the appellate courts. The Florida statute, upon which the sentencing proceeding features of Senate Bill 106 so strongly rely, had a fairly lengthy period of judicial interpretation by the appellate courts of Florida before being presented to the Supreme Court in Proffitt v. Florida, supra. Indeed, it can fairly be said that the existence of those prior constructions of the statute by the Florida courts enhanced its constitutionality and facilitated the favorable decision by the Supreme Court. While it is possible, and indeed likely, that the Court of Appeals of Maryland will apply and follow the Florida decisions in construing Senate Bill 106, particularly if it believes that doing so will enhance the constitutionality of Maryland's law, that is not certain to occur. In the meantime, we, the State's Attorneys and the trial courts presented with capital cases must do the best we can do to resolve these questions.

We have attempted to answer your interpretive questions to the best of our ability and to deal with certain additional matters which we perceive to be of significance. No doubt, other questions will occur as actual trial situations present themselves. Our principal concern is not with the facial constitutionality of Senate Bill 106 or with its ability to survive a broad attack but rather with the problems which are created and which will inevitably be litigated because of the ambiguities in the bill and the interpretive questions which it fails to resolve. While we recognize that the Florida appellate decisions construing and applying that State's similar statute may be of considerable guidance, it is not certain that the Maryland courts will reach the same results.

The single question which concerns us the most is the failure to identify the applicable burdens of proof. We are also troubled by the potential uncertainties surrounding the hung jury possibility, the lack of a