

Chief, Criminal Division

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1. Most of the specific questions discussed herein were considered by us at the time we prepared the Administration's capital punishment bill some six months ago in conjunction with your legislative office. That bill was later introduced as Senate Bill 374 and House Bill 785 and is hereinafter referred to as the "Administration Bill."

2. The statute makes no provision for the impaneling of a new jury if the trial jury has been discharged or if the case has been remanded for resentencing by an appellate court.

3. The caveat must always be added that future decisions of the Supreme Court may alter what now appears to be a settled approach to the constitutional questions concerning imposition of the death sentence. Responsible analysis following Furman v. Georgia, *supra*, concluded that a mandatory death sentence for specified offenses would stand as the most promising alternative to meet the Furman decision. Bartholomey v. State, 267 Md. 175 (1972). See 58 Opinions Attorney Gen. 214, 222 (1973). It must be remembered that the basic constitutional philosophy contained in Gregg and its companion cases was enunciated in a plurality opinion, with two justices finding the death penalty unconstitutional under all circumstances but with three justices who would appear ready to accept a mandatory death penalty statute as well as one providing for the bifurcated trial and sentencing proceeding.

4. Since the advent of the general severability provisions of Art. 1, §23, Md. Code Ann., in 1973, specific savings clauses in each individual statute have been dispensed with.

5. Subsection (a) provides for manslaughter and non-capital murder; and subsection (b) provides for murder "in which the State seeks the imposition of the death penalty."

6. The Administration Bill dealt with §616 in a similar manner but, unlike Senate Bill 106, repealed §412 (and the anachronistic reference to §616(a)) and replaced it with an altogether new statutory provision dealing with the return of verdicts against and sentencing of persons convicted of first or second degree murder.

7. The argument can be made that in a homicide indictment including a charge of first degree murder for