

in the present law.

15. See new Maryland Rules 771 and 772, fn. 16 infra.

16. Arguably, new Md. Rule 734, effective July 1, 1977, requiring prior notice to subsequent offenders that the State will seek increased punishment as authorized by law would have some application in capital cases where the aggravating circumstance in question is based upon a prior conviction of the defendant (see aggravating circumstances (1) and (6)). It should also be noted that new Maryland Rules 771 and 772, effective July 1, 1977, require that any presentence report be furnished to the defendant or his counsel prior to sentencing to afford a reasonable opportunity for the parties to investigate the information in the report and that the State's Attorney disclose to the defendant or his counsel any information which the State expects to present to the court for consideration in sentencing prior to the imposition of sentence. These two rules will go a long way toward putting the defendant on notice prior to the sentencing proceeding that the State may be seeking a death penalty and, because of the practical considerations which dictate that any capital sentencing take place promptly after trial, may effectively afford the defendant such notice prior to the trial.

17. There is some uncertainty as to the extent to which aiders, abettors, or counselors could be sentenced to death under Senate Bill 106. While mitigating circumstance (4) clearly contemplates such a possibility, some of the aggravating circumstances imply that perhaps only the person who actually committed the murder in question may be sentenced to death based upon the finding of an aggravating circumstance.

18. This comports with the due process requirement set forth in Gardner v. Florida, 45 U.S.L.W. 4275 (March 22, 1977). Gardner would appear to require that presentence reports be made available to the defendant and counsel before submitting the issue of sentencing to the jury. If this is the case, any delay in preparing such reports will mandate a hiatus between the guilt and sentencing stages of death penalty trials unless preparation of the report is begun prior to trial.

19. The practical consideration involved is the possibility that the trial jury may complete its jury term and be released from regular jury service following the completion of the guilt phase of the trial and prior to any delayed sentencing proceedings. While this possibility can be dealt with simply by advising the jury that it will be required to return at such time as the sentencing proceeding is ready to begin, a more serious problem would be presented by the possibility that one or