

and Probation and considered by the court, unless the court specifically orders to the contrary in a particular case. As noted in footnote 16, supra, new Maryland Rule 771 requires that any such report be made available to the defendant reasonably in advance of his sentencing. This effectively requires that the report be made available to him reasonably in advance of the sentencing proceeding. 18 Section 413(b) requires that the sentencing proceeding be conducted "before the trial jury as soon as practicable". The preparation of a presentence report can require as much as thirty days in a typical case, and even greater care would presumably be taken in such a report in a capital case. In light of the statutory and practical necessity for a prompt sentencing proceeding, it may well prove desirable or necessary to begin the preparation of presentence reports in such cases in advance of the trial. 19 Senate Bill 106 makes no reference to presentence reports, and in particular does not resolve the question of whether such a report prepared pursuant to Art. 41, §124(c) must be presented in whole or in part to the jury if it is to be considered by the sentencing judge. Section 413(d) and (e) strongly suggest that the sentencing judge may not consider matters which were not before the recommending jury. This is consistent with the apparent thrust of Gardner v. Florida, supra.

During the recent session of the General Assembly a question was raised in the debate on Senate Bill 106 as to the failure to amend §645JC of Art. 27, as was proposed in the Administration's Bill. Like the Administration Bill, Senate Bill 106 amends Section 645JA of Article 27 so as to remove death sentences from the law authorizing sentence review by three-judge panels. Section 645JC simply provides for the action which may be taken by such a panel and, since it is unamended by Senate Bill 106, would continue to refer to the possible action of reducing a death sentence to sentence for life or a term of years. We do not perceive this failure to amend Section 645JC as posing any significant problem since we believe that the bill's amendment of Section 645JA deprives these sentence review panels of any jurisdiction to consider a case in which the death penalty was imposed. The amendment of Section 645JA would prevail as the later enactment to the extent of the inconsistency attributable to the failure to amend Section 645JC.

A particularly significant problem is presented by the failure of Senate Bill 106 to identify the standards or burden of proof by which the jury or judge should determine the presence of either aggravating or mitigating circumstances, or the relative balancing of the two, in order to reach a sentencing decision. The statute is silent as to whether the State must prove the