

which the death penalty may be sought, if §412 is inapplicable there is no basis for the jury to determine in its verdict whether the defendant is guilty of murder in the first or second degree. We do not find that argument persuasive.

8. Section 413(b) also pointedly provides that evidence which is both relevant to sentence and which possesses probative value may be received even if it would be inadmissible under the exclusionary rules of evidence (as distinct from exclusionary rules of a prophylactic nature firmly grounded in constitutional principles). This provision that the ordinary exclusionary rules of evidence need not be strictly adhered to in the sentencing proceeding reflects an intent to give relatively wide latitude to both parties, and in particular to the defendant, to introduce evidence bearing on proof of the presence or absence of aggravating or mitigating circumstances. This liberal attitude on the admissibility of evidence, which was also reflected in the Florida statute, does not in our view raise any significant constitutional questions so long as the basic standards of relevance and probative value are adhered to.

9. Such a provision was included in the Administration Bill, but is clearly not present in Senate Bill 106.

10. It is possible but doubtful, in our opinion, that the language beginning at line 138 could be construed so as to allow the defendant to waive his right to a sentencing recommendation from the trial jury if and when confronted with a hung jury and request the empaneling of a separate jury.

11. As our answer to your next question indicates, the Florida Supreme Court has stressed the important role played by the jury and its recommendations and has admonished trial judges to not lightly disregard those recommendations, especially where they do so by imposing the death penalty. This stress placed on the role of the jury raises some doubt as to the ability of the judge to proceed without a recommendation.

12. This issue was of course not presented by the Administration Bill, which provided for final, not advisory, sentencing by the jury.

13. Pattern jury instructions published by authority of the Florida Supreme Court in January, 1976 provide for a simple recommendation of sentence form without any subsidiary or underlying findings.

14. The language employed in these two particular aggravating circumstances is identical to that employed