

TO: Howard County Bar Members practicing criminal law in Circuit Court
FROM: Lynn Murray, Judge Howard Circuit Court
DATE: September 28, 2004



RE: Changes with regard to criminal sentencing procedure

In view of the U.S. Supreme Court opinion Blakely v. Washington, 124 S.Ct. 2531 (2004), the Howard Circuit Court is immediately implementing certain procedural changes with regard to felony criminal cases.

In those cases in which the State seeks to have a defendant charged with a felony sentenced to a penalty greater than the presumptive sentence, the State must file a document separate from the rest of the charging information, alleging the existence of one (1) or more aggravating circumstances, called a Notice of Potential Aggravators. The Notice should be filed the earliest of thirty (30) days before trial or if the trial is scheduled within thirty (30) days, by the pretrial hearing date.

In those felony cases which proceed to jury trial and result in conviction, and in which the State has filed a Notice of Potential Aggravators, the jury trial will have a second sentencing phase. The jury will be instructed and hear evidence to determine if the State has proven the existence of each noticed aggravating factor beyond a reasonable doubt. If the defendant is convicted of the felony by trial to the court without a jury, the court alone shall hear evidence on the aggravating circumstances.

Note that Blakely exempts prior convictions, facts admitted by the defendant, and facts necessarily proven by the verdict, as aggravators that must be proven to a jury beyond a reasonable doubt.

The court shall not accept a plea of guilty without first determining that the defendant has been informed that by pleading guilty, the defendant waives the right to have a jury determine the aggravating circumstances.