Veto No. 1994-2

HB 2198 June 3, 1994

To the Honorable, The House of Representatives
of the Commonwealth of Pennsylvania:

I am returning herewith, without my approval, House Bill 2198, Printer's No.3375, entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for judgment by confession filed against incorrectly identified debtors; further providing for sentencing procedure and aggravating circumstances in sentencing for murder; and making a repeal."

This bill amends Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to increase the due process rights of debtors, to authorize imposition of the death penalty for homicides involving pregnant women and to require the Governor to issue death warrants within specific time limits.

I strongly object to the provisions of the bill forcing the hand of the Governor to sign death warrants within arbitrary deadlines. I have no objections to the other provisions of the bill.

Current law requires the Supreme Court to send to the Governor a complete record of the legal proceedings in every death penalty case which it affirms upon automatic direct appeal. After reviewing the record, the Governor is responsible for issuing the warrant authorizing the Secretary of Corrections to carry out the sentence during a week specified by the Governor.

This bill radically changes the procedure for carrying out a death sentence. Within 60 days of receipt of the record, the Governor is automatically required to issue a death warrant commanding the Secretary of Corrections to execute the named inmate during a specific week within 30 days following the date of the warrant, unless the Governor issues a pardon or commutation, which can only be done after a recommendation to pardon or commute made by the Board of Pardons. In cases where the Governor has already received the record prior to the effective date of this bill, a warrant must be issued within 120 days of the effective date setting an execution date within 30 days after the warrant is signed.

If the execution is stayed by judicial order, the Governor is mandated to reissue the warrant within 30 days of the termination of the stay order. If the Governor fails to meet these time requirements, and notwithstanding the absence of a death warrant, the bill would require the Secretary of Corrections to execute the inmate within 60 days of the date on which the Governor was required to sign a death warrant.

In effect, this bill replaces reason and deliberation with a mechanical and arbitrary process. The current law gives the Governor the right to give careful

and deliberate review to every record before a sentence of death is carried out. This prerogative is the foundation for a final and ultimate check against miscarriages of justice. It is an ancient prerogative deeply rooted in our Anglo-American legal system having the purpose of preventing arbitrary, capricious or erroneous administration of the law. This is the ultimate safeguard to prevent innocent persons from being put to death for crimes which they may not have committed.

The General Assembly, as the embodiment of the will of the people in a just, fair and civilized society, should not deprive the Governor of the time necessary to guarantee that the fundamental principle of equal justice under law prevails, even in the most heinous murder cases. Miscarriages of justice or plain errors are irreversible once a capital sentence is carried out. One last reasoned and unhurried inquiry as to whether justice is being served is the least our government and society can do before exercising the grave power of putting a human being to death. This bill would unwisely divest the Governor of his current authority to make such an inquiry in every capital case.

Moreover, an infringement upon this ancient executive prerogative is even more offensive because the prerogative is inherently related to the Governor's constitutional power of clemency. Since the earliest days of this Commonwealth, the people have given the Governor, through the Constitution, the power "to remit fines and forfeitures, to grant reprieves, commutation of sentences and pardons." Art. IV, § 9(a). Gubernatorial discretion to issue execution warrants insures that the exercise of gubernatorial clemency does not miss its mark for lack of due deliberation.

This paramount importance of executive clemency so pervades our criminal justice system in this country that the United States Supreme Court, in rejecting a habeas corpus appeal, expressly referred to it as the appropriate alternative relief. The court said: "This is not to say, however, that petitioner is left without a forum to raise his actual innocence claim. For under Texas law, petitioner may file a request for executive clemency. (citations omitted) Clemency is deeply rooted in our Anglo-American tradition of law and is the historic remedy for preventing miscarriages of justice where judicial process has been exhausted." *Herrera v. Collins*, ___ U.S. ___, 113 S.Ct. 853, 122 L.Ed.2d 203 (1993). In this case, executive clemency was in fact the only available legal alternative for hearing newly discovered exculpatory evidence since the unbending rules of law governing the courts would not let it be considered.

Given the overwhelming case load of the Board of Pardons and the stringent deadlines that would be imposed by this bill, the pardon and commutation process could be unduly accelerated to the point where it would become a meaningless constitutional safeguard. The exercise of the clemency power could effectively be limited to the same 120- or 150-day period allowed the Governor for warrant review. Such haste would impair the making of a rational and informed decision about enforcement of the death

penalty. It is inconceivable that the people of this Commonwealth intend to give nothing more than lip service to an invaluable check against injustice in capital cases embodied in their Constitution.

This specter of unfairness and injustice becomes even more apparent when the bill is applied to the nearly 100 cases in which the Supreme Court has already transmitted a record to the Governor and for which no execution warrants are outstanding. In all of these cases the bill would require the Governor to sign a warrant within 120 days of its effective date and schedule executions for a date within 30 days after signing the warrant. This bill becomes effective immediately upon approval.

It is not humanly possible for any Governor to give thoughtful and deliberate review to almost 100 sets of voluminous court records within 120 days and still attend to the many other duties of his office. Therefore, it is apparent that the effect, if not the purpose of this bill is to deprive the Governor of his prerogative of review and compel him to rubber stamp every death penalty case already affirmed by the Supreme Court on direct appeal. At the very least, this is bad policy. At its worst, it would violate fundamental principles of justice and fair play embodied in constitutional provisions affording due process and equal protection of the law.

The bill also infringes on executive powers reserved to the Governor under the constitutional doctrine of separation of powers. The General Assembly crosses the line and removes the protections afforded by a system of checks and balances whenever it imposes time limits and conditions on a Governor's exercise of statutory powers that are so severe and constraining as to hinder the Governor from exercising executive discretion or carrying out statutory or constitutional functions. Requiring the Governor to review immediately nearly 100 capital cases and schedule nearly 100 executions simultaneously would preclude him from exercising true discretion with respect to the issuance of warrants. It would also monopolize the Governor's agenda and schedule for months. I do not believe that the people of Pennsylvania are aware of or would accept this consequence of the bill.

The record shows that I have signed 16 death warrants in slightly less than six years, more than the combined total signed by all of the four governors who immediately preceded me in office. The point is that I have enforced the law and justice has been served within the parameters of a deliberative process under the current system.

I have never taken my duties under the death penalty statute and under the clemency provisions of the Constitution lightly, and I never will. Issuing warrants to put a human being to death should never become a rubber stamp process. The bill would force the Governor to become a rubber stamp. Furthermore, this bill would create an assembly line on which people will be lined up and sent to the death chamber without being given a fair and equitable last chance to show that their criminal convictions have been unjust. That is not what this country or this Commonwealth represents. It is an affront to the causes of justice and fairness.

For all of these reasons, I hereby disapprove this bill and return it to the General Assembly without my signature.

ROBERT P. CASEY