

**IN THE SUPREME COURT OF PENNSYLVANIA**

<b>COMMONWEALTH OF</b>	:	
<b>PENNSYLVANIA,</b>	:	
	:	
<b>Petitioner</b>	:	
	:	
<b>v.</b>	:	<b>No. 14 EM 2015</b>
	:	
<b>TERRANCE WILLIAMS,</b>	:	
	:	
<b>Respondent</b>	:	

**RESPONSE OF THE GOVERNOR  
TO EMERGENCY PETITION FOR EXTRAORDINARY RELIEF**

**INTRODUCTION**

The Honorable Tom Wolf, the Governor of the Commonwealth of Pennsylvania, on February 13, 2015, exercised his exclusive authority under Article IV, § 9(a), of the Constitution of Pennsylvania to issue for Respondent Terrance Williams (“Williams”) a temporary reprieve from execution by lethal injection.<sup>1</sup> Before the Governor issued his reprieve, the Department of Corrections

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<sup>1</sup> A true and correct copy of the reprieve issued by the Governor pursuant to Article IV, § 9(a), of the Constitution is attached as Exhibit A.

("Department") was scheduled to carry out the execution on March 4, 2015,<sup>2</sup> pursuant to a writ issued by then-Governor Tom Corbett on January 13, 2015.

As the Governor stated expressly in his reprieve, he has determined that the execution of Williams will be stayed until the Governor has "received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment" ("Task Force"), which is studying the Commonwealth's system of capital punishment as commanded by a resolution of the Senate of Pennsylvania, *see* Senate Resolution 6 of 2011,<sup>3</sup> "and any recommendations contained therein are satisfactorily addressed." The Task Force is co-chaired by Senators Stewart Greenleaf and Daylin Leach.<sup>4</sup>

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<sup>2</sup> In reality, it was going to be impossible for the Department to carry out the execution on March 4. That is so because the Department does not have in its possession the drugs that are needed to perform an execution in accordance with the Prisons and Parole Code. *See* 61 Pa.C.S. § 4304(a)(1) ("The death penalty shall be inflicted by injecting the convict with a continuous intravenous administration of a lethal quantity of an ultrashort-acting barbiturate in combination with chemical paralytic agents approved by the [D]epartment until death is pronounced by the coroner....").

<sup>3</sup> A true and correct copy of Senate Resolution 6 of 2011 is attached hereto as Exhibit B. It should be noted that one of the 17 distinct subjects that the Senate directed the Task Force to study is lethal injection, *to wit*: "Whether there are adequate procedures and protocols in place to assure that the death sentence is administered in accordance with requirements of the United States Constitution and the Constitution of the Commonwealth of Pennsylvania."

The Court also should be aware of a case pending in Commonwealth Court challenging the legality of the procedures that the Department follows to prepare for and carry out an execution. *See Terrance Williams, et al. v. Pa. Dep't of Corrections*, No. 353 M.D. 2014. An *en banc* panel of Commonwealth Court is scheduled to hear oral argument in that case on March 11, 2015.

<sup>4</sup> A February 19, 2015, letter from Senators Greenleaf and Leach describing the status of the work of the Task Force is attached as Exhibit C.

Five days after the Governor exercised his constitutional power of reprieve, the District Attorney of Philadelphia County (“District Attorney”) filed with this Honorable Court an “Emergency Petition for Extraordinary Relief.” In his “emergency” petition, filed using the same caption as used in the criminal case (which does *not* include the Governor as a party), the District Attorney urgently asks this Court (1) to assume extraordinary jurisdiction under the Pennsylvania Constitution and 42 Pa.C.S. § 726; (2) immediately to declare the Governor’s constitutionally-authorized reprieve to be a legal nullity; and (3) summarily to issue an order that ostensibly would require that the execution of Williams be carried out as scheduled on March 4, 2015.<sup>5</sup> The Court acted promptly on the same day to require the Governor to respond to the Emergency Petition by noon on February 20, 2015.

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<sup>5</sup> It is highly unorthodox, likely unprecedented, and almost certainly procedurally improper, for a litigant to ask this Court to assume extraordinary jurisdiction of a matter in order to examine the legality of an action taken by a public officer – in this case, the Governor – who is neither a named party nor a participant in the underlying proceeding.

This Court has traditionally exercised its authority to assume “extraordinary” or “plenary” jurisdiction in matters initially commenced in another court. In this case, there is no matter pending against the Governor in any forum. Rather, the District Attorney has asked the Court to assume extraordinary jurisdiction over a *criminal* case – where the District Attorney is the prosecutor for the Commonwealth and the defendant is an individual convicted of capital murder and other crimes – to consider whether the actions of the Governor (a stranger to the underlying criminal case) should be declared constitutionally invalid, and whether another non-party (the Department of Corrections) should be required to carry out an execution at a particular time. The procedural irregularity that pervades the District Attorney’s Emergency Petition alone warrants its summary denial by this Court.

In accordance with the Court's direction, the Governor, through his attorneys, submits this response to the District Attorney's Emergency Petition. The Governor respectfully requests that the Court deny the petition for the reasons stated herein. In the alternative, the Governor would request that the Court order full briefs and schedule oral argument to consider the issue presented fully and deliberatively before acting on the District Attorney's petition.

### **ARGUMENT**

**A. The Governor has exercised a power granted to him expressly and exclusively by the Constitution.**

The Pennsylvania Constitution provides, in relevant part, as follows: "In all criminal cases except impeachment[,] the Governor shall have power ... to grant reprieves, commutation of sentences and pardons...." Pa. Const. art. IV, § 9(a). Unlike the Governor's authority to issue commutations and pardons, which may be employed only upon a recommendation of the Board of Pardons, the Governor's power to issue reprieves is not subject to action by the Board of Pardons or any other public officer or arm of government. *See* Official Opinion of Attorney General LeRoy Zimmerman, 1983 Pa. AG LEXIS 13, at \*5 (The Governor has "exclusive authority" and "unfettered discretion to grant a reprieve after imposition

of sentence and on a case by case basis.”<sup>6</sup>; *see also* W. Smithers, *Treatise on Executive Clemency in Pennsylvania*, at 75 (Internat’l Printing Co. 1909) (In granting reprieves, the Governor “is supreme and no man, governmental department or tribunal can review his action or require his reasons to be given.”)<sup>7</sup>.

The plain text of Article IV, § 9(a), of the Constitution includes no limitation on the duration of reprieves or the purposes for which they may be granted. Thus, given the unrestricted grant of authority in section 9(a) of Article IV, the Governor may define the reason for and duration of a reprieve as he sees fit. *See, e.g., Haugen v. Kitzhaber*, 306 P.2d 592, 598 (Or. 2013) (“[A] reprieve is ‘temporary’ and operates ‘for an interval of time,’ but need not identify the end date of that

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<sup>6</sup> Official opinions of the Attorney General do not bind Pennsylvania courts, but they are “customarily afford[ed] great weight.” *Commonwealth ex rel. Pappert v. Coy*, 860 A.2d 1201, 1208 (Pa. Cmwlth. 2004). A true and correct copy of the 1983 Opinion is attached as Exhibit D.

<sup>7</sup> William West Smithers’ 1909 *Treatise on Executive Clemency in Pennsylvania* is available at <https://books.google.com/books?id=FSHrAAAAMAAJ&printsec=frontcover&dq=Treatise+on+Executive+Clemency+in+Pennsylvania&hl=en&sa=X&ei=Vy7nVN2JB8SmgwS4zIHYBQ&ved=0CB4Q6AEwAA#v=onepage&q=Treatise%20on%20Executive%20Clemency%20in%20Pennsylvania&f=false>. In his treatise, Smithers (a Philadelphia attorney and prolific legal scholar of his day) also included these observations about the Governor’s clemency power:

The conclusion is irresistible that the people intended that every form of clemency should be within [the Governor’s] power except so far as *expressly* limited and that his duty concerning it should be interpreted *only by himself*.

...

As to the freedom of the pardoning power from judicial interference[,] it need only be said that neither mandamus, injunction, *certiorari* nor writ of prohibition will be granted to review an executive discretionary power.

Smithers, at 85-86 (emphasis added).

interval, as long as there is a definite end”; nor must a reprieve be granted only for a particular purpose.).<sup>8</sup>

Acting ostensibly on behalf of the Commonwealth of Pennsylvania, the District Attorney asks this Court to review and invalidate a reprieve that the Governor issued just one week ago to delay temporarily the execution by lethal injection of Terrance Williams. In issuing the reprieve, the Governor exercised his express constitutional power under Article IV, § 9(a), of the Constitution of Pennsylvania “to grant reprieves,” and he did so for a reason stated specifically in the reprieve itself – to await receipt and review of the anticipated report of the Task Force established by the Pennsylvania Senate.

Despite the unconditional power of reprieve granted to the Governor expressly by the Constitution, the District Attorney claims that the Governor’s reprieve violates separation of powers because it has the effect of interfering with the final judgment of the courts of this Commonwealth that Williams is to be executed as provided by law. To be consistent with separation of powers principles, the District Attorney insists (without citation to any text in the Constitution or relevant historical support), the Governor’s reprieve power must be

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<sup>8</sup> The unanimous opinion of the Supreme Court of Oregon in *Haugen* is not only the most recent case on the subject of an executive’s constitutional power to grant reprieves, but should be a particularly rich resource for this Court should it choose to delve into the constitutional issue presented by the petition here in that the Oregon court explored deeply the history of the clemency power in the United States and under English Common Law. *See* 306 P.2d at 602-06.

limited to those occasions when the defendant is pursuing an available legal remedy. *See* Emergency Petition at 21.<sup>9</sup>

The District Attorney's argument simply defies the clear text of the Constitution and the obvious purpose of this power given to the Governor as a check on the authority of the other branches of government, and it should be rejected. The Governor's power of reprieve under Pa. Const. art. IV, § 9(b), is unconditional and plainly was exercised by the Governor in this case. The Court has no cause to interfere and thus should deny the District Attorney's petition.

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<sup>9</sup> In support of his contention that the Governor's power of reprieve is implicitly limited to temporary stays of execution to permit a defendant to pursue judicial remedies that are available under the law, the District Attorney cites Commonwealth Court's opinions in *Morganelli v. Casey*, 641 A.2d 674 (Pa. Cmwlth. 1994) (*Morganelli I*), and *Morganelli v. Casey*, 646 A.2d 744 (Pa. Cmwlth. 1994) (*Morganelli II*). But those cases are not relevant here. That is so because unlike in this case, the issue before the court in *Morganelli* was whether then-Governor Casey was properly exercising his power of reprieve when he had delayed for years the issuance of *any* execution warrant. Commonwealth Court concluded that the reprieve power could not be exercised through *inaction*. *Morganelli II*, 646 A.2d at 747. Rather, the court held, "[t]o exercise the constitutional power of reprieve...[,] the Governor ... must *grant* the reprieve ...[,] rather than adopt the wholly ambiguous posture of doing nothing." *Id.* (emphasis in original). *See also Morganelli I*, 641 A.2d at 678 (Because the Governor's reprieve power "resides within the executive's phase of responsibility in dealing with death sentences," there "can be no reprieve with respect to *execution* of a death sentence until the *executive* branch has commenced that function" by issuing a death warrant. (emphasis in original).). Obviously, Governor Wolf in this case granted a reprieve from an execution warrant that had been issued by former Governor Corbett.

In *Morganelli II*, Commonwealth Court did state in passing *dicta* that reprieves should be granted "*presumably* for an expressed reason and for a defined time period." *Morganelli II*, 646 A.2d at 747 (emphasis added). However, the court cited no authority for this statement, and the question of whether the Governor constitutionally must state a defined purpose for a reprieve and a specific period of duration was not presented to the court in that case. Thus, the court's off-hand comment was pure *dicta* – and is unsupported by any law or precedent.

The District Attorney's challenge to the Governor's constitutional authority of reprieve is not only novel, it strays far beyond any reasonable interpretation of the clear, unambiguous, and unconditional power conferred upon the Governor by the text of Article IV, § 9(a), "to grant reprieves." Separation of powers principles are based on checks and balances among the three branches of government, and Article IV, § 9(a), is an important component of that structure. The reprieve power granted unconditionally by Article IV, § 9(a), explicitly accords to the Governor alone a check on the other branches of government, including both the legislature and the judiciary. *See Commonwealth v. Michael*, 618 Pa. 353, 360, 56 A.3d 899, 903 (2012) (*per curiam*) ("The Pennsylvania Constitution entrusts clemency decisions to the sole discretion of the executive branch."); *see also Haugen*, 306 P.2d at 608 ("[T]he executive power to grant clemency flows from the constitution and is one of the Governor's only checks on another branch of government. As part of the system of checks and balances, the Governor's clemency power is far from private: It is an important part of the constitutional scheme envisioned by the framers."). Given this unequivocal gubernatorial check on legislative and judicial authority granted emphatically and exclusively to the Governor by the people, this Court should be particularly reluctant to rush to diminish the scope and effect of this executive power.



The extraordinary assault that the District Attorney has launched on the Governor's explicit constitutional power is made even more astonishing by his insistence that this Court must, *on an emergency basis*, take the unprecedented step of *summarily* declaring the reprieve granted by the Governor in this case to be constitutionally invalid and thereby order the Department of Corrections to carry out Williams' execution on March 4, 2015, as previously scheduled. This the Court cannot do consistent with respect for our system of shared powers of governance.

Because the District Attorney has no legal foundation for his claim – much less established an emergency basis for judicial relief – the Emergency Petition should be denied. However, in the event that the Court should determine that the District Attorney's petition is deserving of this Court's extraordinary attention as a court of original jurisdiction, the Governor would urge the Court not to take precipitous action on an "emergency" basis that might cause Williams' execution in 12 days. Rather, the Governor would request that the constitutional question presented by the District Attorney be considered by the Court only after full briefing and oral argument, thereby according the Court the time reasonably necessary and appropriate to examine deeply, comprehensively and deliberatively the power of reprieve granted to the Governor by the Commonwealth's charter of governance.

**B. This case is not about Terrance Williams' crime.**

The facts underlying Williams' convictions for homicide and other crimes have been reviewed by the Court on several occasions over the past decades.<sup>10</sup> The Governor does not minimize the seriousness of Williams' convictions or the heinous facts of his crimes as found by a jury and reviewed approvingly by this Court. However, for purposes of the Court's consideration of the legal question raised in this case – the nature and extent of the Governor's constitutional power to grant reprieves – the facts that support Williams' conviction for murder and his sentence are immaterial. Consequently, the 17 pages of the District Attorney's Emergency Petition devoted to a dramatic recitation of the facts of Williams' crimes are not pertinent to the matter before the Court and thus are not addressed in this response.

The only substantive issue that is presented for this Court's consideration is the meaning of Article IV, § 9(a), of the Constitution of Pennsylvania – and, of course, whether this Court should choose in its discretion to exercise its power to assume extraordinary jurisdiction to consider the question.

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<sup>10</sup> See *Commonwealth v. Williams*, 524 Pa. 218, 570 A.2d 75 (1990) (direct appeal); *Commonwealth v. Williams*, 581 Pa. 57, 863 A.2d 505 (2004) (PCRA petition); *Commonwealth v. Williams*, 589 Pa. 355, 909 A.2d 297 (2006) (PCRA petition); *Commonwealth v. Williams*, 599 Pa. 495, 962 A.2d 609 (2009) (PCRA petition); *Commonwealth v. Williams*, Nos. No. 668 CAP, 669 CAP, 2014 Pa. LEXIS 3329 (filed Dec. 15, 2014) (application for reargument denied Feb. 18, 2015).

**CONCLUSION**

For the foregoing reasons, this Court should deny the Emergency Petition for Extraordinary Relief. In the alternative, the petition should be referred for full briefing and argument before the Court in due course.

Respectfully submitted,

DENISE J. SMYLER  
General Counsel

By: /s/Gregory E. Dunlap  
GREGORY E. DUNLAP  
Deputy General Counsel

OFFICE OF GENERAL COUNSEL  
333 Market Street, 17<sup>th</sup> Floor  
Harrisburg, PA 17101  
(717) 783-6563

DATE: February 20, 2015

# **Exhibit A**

# Commonwealth of Pennsylvania



## Governor's Office

### EXECUTIVE ORDER

#### REPRIEVE

To John E. Wetzel, Secretary of Corrections, or your successor in office,

WHEREAS, at a Court of Common Pleas held at Philadelphia, in and for the County of Philadelphia as to information number 2367 of the August Term of the Criminal Division in the year A.D. one thousand nine hundred and eighty-four, a certain Terrance Williams was tried upon a certain information charging him with the crime of Murder, and was on the third day of February, A.D. one thousand nine hundred and eighty-six, found guilty of Murder in the First Degree on said information, and on the fourth day of February, A.D. one thousand nine hundred and eighty-six, the jury fixed the penalty at death, and was thereupon, to wit, on the first day of July, A.D. one thousand nine hundred and eighty-seven, sentenced by the Court to suffer death; and

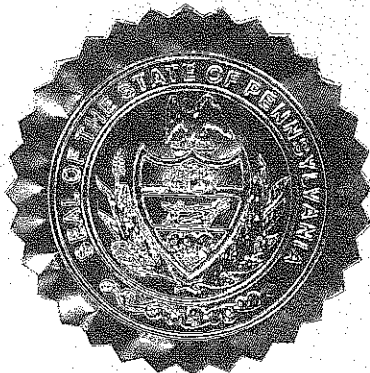
WHEREAS, the Supreme Court of this Commonwealth of Pennsylvania has reviewed the matter and upheld the constitutionality of the death penalty as well as affirmed its imposition upon said Terrance Williams, and has thus transmitted to the Governor a full and complete record of the trial, sentencing hearing, imposition of sentence and review by the Supreme Court pursuant to an Act of the General Assembly of this Commonwealth entitled the "JARA Continuation Act of 1980," approved the fifth day of October, A.D. one thousand nine hundred and eighty.

WHEREAS, on the thirteenth day of January, A.D. two thousand and fifteen, a warrant was issued to cause the sentence imposed by the Philadelphia County Court of Common Pleas to be executed upon Terrance Williams, on the fourth day of March, A.D. two thousand and fifteen; and

WHEREAS, Article IV, Section 9 of the Pennsylvania Constitution provides that "[i]n all criminal cases except impeachment, the Governor shall have the power to ... grant reprieves ...."

NOW THEREFORE, I, Tom Wolf, as Governor of the Commonwealth of Pennsylvania, by virtue of the authority vested in me under the Constitution and the Laws of this Commonwealth, do hereby grant a temporary reprieve of the execution unto Terrance Williams until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment, and any recommendations contained therein are satisfactorily addressed.

GIVEN under my hand and the Great Seal of the State, at the City of Harrisburg, this thirteenth day of February, in the year of our Lord two thousand and fifteen, and of the Commonwealth the two hundred and thirty-ninth.



BY THE GOVERNOR:

*Tom Wolf*

ATTEST:

*Recha C. Carter*

Acting Secretary of the Commonwealth

# **Exhibit B**

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE RESOLUTION****No. 6****Session of  
2011**

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INTRODUCED BY GREENLEAF, ERICKSON, PIPPY, D. WHITE, LEACH,  
FERLO, WASHINGTON, WILLIAMS AND WOZNIAK, JANUARY 12, 2011

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SENATOR GREENLEAF, JUDICIARY, AS AMENDED, DECEMBER 6, 2011

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## A RESOLUTION

1 Directing the Joint State Government Commission to establish a  
2 bipartisan task force and an advisory committee to conduct a  
3 study of capital punishment in this Commonwealth and to  
4 report their findings and recommendations.

5 WHEREAS, In 1972, the Pennsylvania Supreme Court declared  
6 Pennsylvania's capital sentencing procedure unconstitutional  
7 based on the United States Supreme Court's *Furman v. Georgia*  
8 decision; and

9 WHEREAS, In 1978, the Pennsylvania General Assembly responded  
10 by reinstating capital punishment in compliance with United  
11 States and Pennsylvania Supreme Court rulings; and

12 WHEREAS, Since 1978, 352 people have been sentenced to death  
13 in Pennsylvania but only three people have been executed; and

14 WHEREAS, Each of the three people executed waived the right  
15 to appeal; and

16 WHEREAS, There are more than 220 existing capital sentences;  
17 and

18 WHEREAS, Questions are frequently raised regarding the costs,  
19 deterrent effect and appropriateness of capital punishment; and

1 WHEREAS, The American Bar Association has identified several  
2 areas in which Pennsylvania's death penalty system falters in  
3 guaranteeing each capital defendant fairness and accuracy in all  
4 proceedings; and

5 WHEREAS, The Pennsylvania Supreme Court Committee on Racial  
6 and Gender Bias in the Justice System has determined that  
7 racial, ethnic and gender biases exist and that those biases  
8 significantly affect the way parties, witnesses, litigants,  
9 lawyers, court employees and potential jurors are treated; and

10 WHEREAS, THE JUSTICE CENTER FOR RESEARCH AT THE PENNSYLVANIA ←  
11 STATE UNIVERSITY, IN CONJUNCTION WITH THE PENNSYLVANIA  
12 INTERBRANCH COMMISSION ON GENDER, RACIAL AND ETHNIC FAIRNESS, IS  
13 CONDUCTING A STUDY OF THE ADMINISTRATION OF THE DEATH PENALTY IN  
14 PENNSYLVANIA AND HAS EXPRESSED INTEREST IN COLLABORATING WITH  
15 THE TASK FORCE AND ADVISORY COMMITTEE ESTABLISHED BY THIS  
16 RESOLUTION; AND

17 WHEREAS, Postconviction DNA testing has shown that there are  
18 wrongful convictions, even in capital cases; therefore be it

19 RESOLVED, That the Senate direct the Joint State Government  
20 Commission to establish a bipartisan task force of four members  
21 of the Senate to conduct a study of capital punishment in this  
22 Commonwealth; and be it further

23 RESOLVED, That the President pro tempore of the Senate  
24 appoint two members of the task force and the Minority Leader of  
25 the Senate appoint two members of the task force; and be it  
26 further

27 RESOLVED, That the Joint State Government Commission oversee  
28 the creation of an advisory committee to assist the task force  
29 in conducting the study and making recommendations; the advisory  
30 committee to have approximately 30 members and be comprised of



1 representatives from those groups most likely to make useful and  
2 insightful contributions, such as representatives of the  
3 judiciary, prosecution, defense, law enforcement, corrections,  
4 victim assistance organizations and also representatives of  
5 academia, the faith community, private and public organizations  
6 involved in criminal justice issues and other criminal justice  
7 experts; and be it further

8       RESOLVED, That the task force, with the assistance of the  
9 advisory committee, conduct a study of the following subjects  
10 including:

11           (1) Cost: Whether there is a significant difference  
12 between the cost of the death penalty from indictment to  
13 execution and the cost of life in prison without parole; in  
14 considering the overall cost of the death penalty in  
15 Pennsylvania, the cost of all the capital trials that result  
16 in life sentences as well as death sentences that are  
17 reversed on appeal must be factored into the equation;

18           (2) Bias and unfairness: Whether the selection of  
19 defendants for capital trials in Pennsylvania is arbitrary,  
20 unfair or discriminatory in any way and whether there is  
21 unfair, arbitrary or discriminatory variability at any stage  
22 in the process including in the sentencing phase;

23           (3) Proportionality: Whether there is a significant  
24 difference in the crimes of those selected for the punishment  
25 of death as opposed to those who receive life in prison and  
26 whether there is an adequate process for determining when  
27 death sentences are excessive or out of line with sentences  
28 imposed in other cases where a sentence other than death was  
29 imposed;

30           (4) Impact on and services for family members: The

1 impact of the death penalty on family members and loved ones  
2 of murder victims and the availability and cost of services  
3 currently being provided in Pennsylvania for family members  
4 and loved ones of murder victims and whether these services  
5 are sufficient to meet the needs of surviving families;

6 (5) Mental retardation: Whether, in light of the Supreme  
7 Court ruling in *Atkins v. Virginia*, there are adequate  
8 procedural protections in place to assure that people with  
9 mental retardation are not in fact being sentenced to death  
10 and executed;

11 (6) Mental illness: Whether persons suffering from  
12 mental illness constitute a disproportionate number of those  
13 on death row, what criteria should be used in judging the  
14 level of mental illness involved and whether people with  
15 mental illness who are convicted of murder should be  
16 executed;

17 (7) Juries: The impact on the reliability and fairness  
18 of capital trials of death qualifying jurors and the impact  
19 of this practice on the ability of women, people of color and  
20 people of faith to serve on capital juries; whether there are  
21 adequate procedural protections and remedies in place to make  
22 sure that women and African Americans are not excluded from  
23 serving as jurors in capital cases; and whether there are  
24 adequate procedural protections in place to assure that  
25 jurors are able to understand and apply instructions in  
26 determining guilt or innocence and the appropriate punishment  
27 in a capital case;

28 (8) State appeals and postconviction: Whether there are  
29 adequate procedures in place to assure that serious error in  
30 capital cases is identified and corrected and to what extent

1 procedural doctrines, such as waiver or forfeiture, operate  
2 to prevent judicial review of serious constitutional claims  
3 on the merits;

4 (9) Clemency: Whether the current clemency process has  
5 procedures in place to assure that it functions as a safety  
6 net to assure that factual and procedural errors that  
7 directly undermine the reliability and fairness of a capital  
8 sentence are remedied;

9 (10) Penological intent: Whether the death penalty  
10 rationally serves a legitimate penological intent such as  
11 public safety or deterrence;

12 (11) Innocence: Whether there is a risk of execution of  
13 an innocent person and whether there are adequate procedural  
14 protections in place to prevent an innocent person from being  
15 sentenced to death and executed;

16 (12) Alternatives: Whether alternatives to the death  
17 penalty exist that would sufficiently ensure public safety  
18 and address other legitimate social and penological  
19 interests;

20 (13) Counsel: The quality of counsel provided to  
21 indigent capital defendants and whether such counsel and the  
22 process for providing counsel assures the reliability and  
23 fairness of capital trials;

24 (14) Secondary trauma: The impact of the death penalty  
25 process on law enforcement, prosecutors, defense counsel,  
26 judges, jurors, correctional officers, family members and  
27 loved ones of victims and family members of the accused;

28 (15) Length and conditions of confinement on death row:  
29 Whether the conditions comply with the requirements of the  
30 United States Constitution, the Constitution of the

1 Commonwealth of Pennsylvania and standards of international  
2 law and the impact of those conditions on correctional  
3 officers;

4 (16) Lethal injection: Whether there are adequate  
5 procedures and protocols in place to assure that the death  
6 sentence is administered in accordance with requirements of  
7 the United States Constitution and the Constitution of the  
8 Commonwealth of Pennsylvania; and

9 (17) Public opinion: The opinions of Pennsylvania  
10 residents regarding capital punishment, including whether it  
11 is a just and appropriate punishment and, if so, under what  
12 circumstances should it be imposed;

13 and be it further

14 RESOLVED, THAT THE TASK FORCE AND ADVISORY COMMITTEE  
15 COLLABORATE WITH THE JUSTICE CENTER FOR RESEARCH AT THE  
16 PENNSYLVANIA STATE UNIVERSITY IN CONDUCTING A STUDY OF THE  
17 ADMINISTRATION OF THE DEATH PENALTY IN THIS COMMONWEALTH; AND BE  
18 IT FURTHER

19 RESOLVED, THAT THE COLLABORATION BETWEEN THE TASK FORCE AND  
20 ADVISORY COMMITTEE AND THE JUSTICE CENTER BE FORMALIZED THROUGH  
21 A MEMORANDUM OF UNDERSTANDING SPECIFYING WHAT EACH ORGANIZATION  
22 WILL PROVIDE TO THE OTHER IN CONDUCTING THIS STUDY; AND BE IT  
23 FURTHER

24 RESOLVED, That the task force and advisory committee hold  
25 public hearings as necessary to receive testimony about any of  
26 the subjects of study enumerated in this resolution; and be it  
27 further

28 RESOLVED, That the task force and advisory committee report  
29 their findings and recommendations to the Senate no later than  
30 two years after the date this resolution is adopted.



# **Exhibit C**

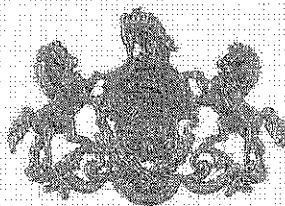
PLEASE REPLY TO:

**SENATOR  
STEWART J. GREENLEAF**

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**Senate of Pennsylvania**

February 19, 2015

**COMMITTEES**  
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INTER-GOVERNMENTAL OPERATIONS  
VICE CHAIR  
APPROPRIATIONS  
CONSUMER PROTECTION AND  
PROFESSIONAL LICENSURE  
URBAN AFFAIRS AND HOUSING

**BOARD OF DIRECTORS**  
SOUTHEASTERN PA TRANSPORTATION  
AUTHORITY (SEPTA)  
MUNICIPAL POLICE OFFICERS' EDUCATION  
& TRAINING COMMISSION (MPOETC)

The Honorable Tom Wolf  
Office of the Governor  
225 Main Capitol Building  
Harrisburg, PA 17120

Dear Governor Wolf:

On December 14, 2011, the Senate adopted Senate Resolution 6, which directed the Joint State Government Commission to conduct a study and make recommendations with regard to Pennsylvania's death penalty system. Since that time, the Joint State Government Commission has worked with the Justice Center for Research at the Pennsylvania State University to examine seventeen factors and produce the most comprehensive study of the death penalty that has been completed to date. At your request, we write to provide an update regarding the status of the study.

Although Senate Resolution 6 directed that a report should be issued by December 14, 2014, the Joint State Government Commission and the Justice Center for Research have encountered delays. Funding and logistical constraints impeded the Justice Center's ability to collect and analyze the necessary data. The collection of data requires people to visit each county courthouse to read and manually code capital case files. Despite its assiduous efforts to complete this comprehensive study in a timely manner, the Joint State Government Commission anticipates that data collection will be completed by the middle of 2015 and that a report will be produced within six to twelve months after the completion of data collection.

We hope that this information will aid you in your planning.

Sincerely,

Handwritten signature of Stewart J. Greenleaf.  
Senator Stewart J. Greenleaf  
Majority Chairman  
Senate Judiciary Committee

Handwritten signature of Daylin Leach.  
Senator Daylin Leach  
Minority Chairman  
Senate Judiciary Committee

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# **Exhibit D**



OFFICE OF THE ATTORNEY GENERAL OF THE STATE OF PENNSYLVANIA

OFFICIAL OPINION No. 83-2

*1983 Pa. AG LEXIS 13; 1983 Op. Atty Gen. Pa. 32*

February 14, 1983

**SYLLABUS:**

[\*1]

Board of Pardons - Interrelationship between the Governor's authority to issue Warrants for Execution in capital cases and the Board's authority to consider applications for commutation of a capital punishment sentence.

1. The Board does not have the ability to grant reprieve without the Governor's approval in order that the Board have sufficient time to carry out a review of an application for clemency.
2. The Board may request the Governor to grant a reprieve.
3. The Governor has authority to grant reprieves unilaterally.

**REQUESTBY:**

LeRoy S. Zimmerman, Attorney General

**OPINION:**

Honorable William W. Scranton, III  
Lieutenant Governor  
Chairman  
Board of Pardons  
200 Main Capitol Building  
Harrisburg, Pennsylvania 17120

On behalf of the Board of Pardons and as its Chairman, you have requested my opinion to numerous questions regarding the interrelationship between the Governor's authority to issue Warrants for Execution in capital cases as provided by Section 3 of the Act of June 19, 1913, P.L. 528 § 3 (61 P.S. § 2123, pocket part) n1 and the Board of Pardons' authority to consider applications for commutation of a capital punishment sentence. In particular, you have inquired whether [\*2] the Board has the ability to grant a reprieve without the Governor's approval in order that the Board have sufficient time to carry out a review of an application for clemency and whether a written recommendation should be made to the Governor to commute the sentence. A reprieve is a temporary suspension of the execution of a sentence. For the reasons set forth below it is my opinion and you are so advised that the Board has no authority to grant a reprieve and that the Governor has exclusive authority to grant reprieves.



n1 Section 3 of the Act of June 19, 1913 provides:

After the receipt of the said record, the Governor of the Commonwealth shall issue his warrant, directed to the warden of the Western Penitentiary, commanding said warden to cause such convict to be executed in said penitentiary, within the week to be named in said warrant, and in the manner prescribed by law.

In order to respond to your request, it was necessary to explore whether the Board has an express constitutional or statutory authority, or an inherent ability concomitant to its constitutional and statutory authority to recommend commutation, to grant reprieves.

A review of the historical constitutional [\*3] power of the Governor to grant clemency aids in analyzing this issue. In the Constitution of 1776, Section 20 provided to the President (the Governor) with a quorum of the executive counsel the power to grant pardons except in cases of impeachment and limited the power of pardon in cases of treason and murder to the granting of reprieves until the end of the next sessions of the Assembly. This authority to grant reprieves and pardons was vested in the Governor acting alone by the Constitution of 1790, Article II, Section 9, and the limitation on the power to pardon in cases of treason and murder was removed. The Constitution of 1838 repeated verbatim the powers conferred upon the Governor by the Constitution of 1790 (please see Article II, Section 9 of the Constitution of 1838). n2

n2 The verbatim reiteration found its way into the Constitution of 1838 despite controversy at the constitutional convention over alleged abuse. One delegate spoke of "extensive complaints... of the abuse of the pardoning power," and offered an amendment to place the power in the legislature who would be limited to consider only those cases submitted by the Governor. Proceedings and Debates of the Convention of the Commonwealth of Pennsylvania to Propose Amendments to the Constitution, (Harrisburg, 1838), Vol. IX, p. 290.

[\*4]

The Governor's exclusive power to grant reprieves and pardons was circumscribed by the adoption of the Constitution of 1874 establishing a Board of Pardons. In the Constitution of 1874, and Governor continued to have unfettered power to remit fines and forfeitures and to grant reprieves, but could only grant pardons and commute sentences upon the written recommendation of the Board of Pardons. This distinction between fines, forfeitures and reprieves on one hand and pardons and commutations on the other, continues in the Constitution of 1968 as amended (please see Article IV, Section 9 of the Constitution of 1968).

The Board of Pardons has been granted to constitutional responsibility to consider applications for reprieves and its action is not a limitation on the Governor's power to reprieve. Likewise, Section 909 of the Act of April 9, 1929, P.L. 177, Article IX, as amended (71 P.S. § 299) does not grant to the Board the power to reprieve. n3 To the contrary, it provides only "the power to hear applications for... the granting of reprieves... and to make recommendations in writing to the Governor thereon, in the manner provided in and under [\*5] and subject to Article IV, Section 9 of the Constitution of this Commonwealth." (71 P.S. § 299, emphasis supplied) Because no manner is provided by Article IV, Section 9 of the Constitution for the Board to be involved in the decision to reprieve and the intent of the General Assembly in enacting this provision was to make it subject to Article IV, Section 9 of the Constitution, no real authority has been granted to the Board by this section to even hear applications for reprieve much less to grant a reprieve. n4

n3 Section 909 of the Act of April 9, 1929, as amended, provides:

The Board of Pardons shall have the power to hear applications for the remission of fines and forfeitures, and the granting of reprieves, commutations of sentence, and pardons, except in cases of impeachment, and to make recommendations in writing to the Governor thereon, in the manner provided in and under and subject to Article IV, Section 9 of the Constitution of this Commonwealth.

The Board of Pardons shall adopt rules and regulations governing its actions and no hearings or recommendations except those involving applicants under sentence of death shall be contrary thereto.

n4 This fact is implicitly recognized by the Board in its regulations setting forth the subject matter jurisdiction of the Board. *37 Pa. Code § 81.11.*

[\*6]

Having explored whether there is either specific constitutional or statutory authority to the Board of Pardons to grant reprieves, the only remaining avenue of inquiry is whether the Board has the inherent power to grant reprieves in order to consider an application for commutation which might otherwise be rendered moot by the carrying out of a Warrant for Execution. In this regard, it must be remembered that the Governor has the ultimate authority to grant commutation and may deny a recommendation for clemency submitted to him by the Board of Pardons. Likewise, as discussed above, the Governor has unfettered discretion to grant a reprieve after imposition of sentence and on a case by case basis. Certainly, the available reasons the Governor may grant a reprieve include giving the Board of Pardons the opportunity to consider an application for commutation.

Therefore, because the Board has been granted no constitutional authority to grant reprieves, and to permit it to do so even for the purpose of considering an application for commutation would constitute a derogation of the Governor's constitutional and statutory authority, the Board may not grant reprieves. It is, of course, [\*7] within the province of the Board to request the Governor to grant a reprieve.

You have also asked if the Governor has authority to grant reprieves unilaterally. This question was reached and answered in considering whether the Board has authority to grant reprieves. The Governor may stay an execution by granting a reprieve.

The remaining questions you have asked in regard to who may apply on behalf of the condemned and whether transcripts of public hearings of the Board should be submitted to the Governor in capital cases, are matters of policy within the sound discretion of the Board to consider. Therefore, I do not find them to be the appropriate subjects of binding legal opinion.

**Legal Topics:**

For related research and practice materials, see the following legal topics:

Civil Procedure  
Justiciability  
Mootness  
General Overview  
Criminal Law & Procedure  
Sentencing  
Capital Punishment  
Stays of Execution  
Criminal Law & Procedure  
Postconviction Proceedings  
Clemency

IN THE SUPREME COURT OF PENNSYLVANIA

COMMONWEALTH OF  
PENNSYLVANIA,

*Petitioner*

v.

TERRANCE WILLIAMS,

*Respondent.*

No. 14 E.M. 2015

**CERTIFICATE OF SERVICE**

I, Gregory E. Dunlap, hereby certify that on this 20th day of February, 2015, the foregoing *Response of Governor Tom Wolf to Emergency Commonwealth Petition for Extraordinary Relief under King's Bench Jurisdiction* has been served upon the following counsel and in the manner indicated below, which service satisfies the requirements of Pennsylvania Rule of Appellate Procedure 121:

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By: /s/Gregory E. Dunlap  
**GREGORY E. DUNLAP**