

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

MONDAY, JUNE 14, 2004

SESSION OF 2004

188TH OF THE GENERAL ASSEMBLY

No. 37

HOUSE OF REPRESENTATIVES

The House convened at 1 p.m., e.d.t.

**THE SPEAKER (JOHN M. PERZEL)
PRESIDING**

PRAYER

REV. EDMOND C. GRESICK, Guest Chaplain of the House of Representatives, offered the following prayer:

Here is a promise from God for today. It is as sure as it was when it was spoken by Isaiah so long ago. Hear this word for today. "Fear not, for I am with you; be not dismayed, for I am your God. I will strengthen you, yes, I will help you; I will uphold you with my righteous right hand."

Let us pray:

Dear God, we claim this promise as we begin this work week. We are witnesses to Your perfect love casting out all our fears. Daily we see Your grace and goodness that You give to all people in the assurance that You will never leave or forsake us. We pray for Your promised strength to speak for those who have no voice. We stand up for those who would not be counted, and we open our minds to Your wisdom and guidance.

Bless the Representatives with a positive attitude to the challenges of this day and the week ahead. You love this great Commonwealth and want to provide these leaders with exactly what they will need to lead with excellence. Guide them as they discern what is best for this State and courageously vote their convictions. Enable communication between the parties so that this will be a week of progress.

We now remember with great sadness and admiration all those who have given their lives in defense of our country and to preserve freedom throughout the world. Let us pause now for a moment of silence as we especially remember the 43 Pennsylvanians who have given their lives in our current war with Iraq.

(A moment of silence was observed.)

You, dear God, are our Lord and savior. Amen.

PLEDGE OF ALLEGIANCE

(The Pledge of Allegiance was recited by members and visitors.)

JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Wednesday, June 9, 2004, will be postponed until printed.

JOURNALS APPROVED

The SPEAKER. However, the following Journals are in print: Wednesday, March 17; Monday, March 22; and Tuesday, March 23, 2004. Without objection, these Journals will be approved.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that HB 2299 be taken off the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL TABLED

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that HB 2299 be placed upon the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILLS REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that the following bills be taken from the table:

HB 2182;
HB 2668;
SB 137; and
SB 305.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

HB 2182, PN 3729; HB 2668, PN 3974; SB 137, PN 1544; and SB 305, PN 1665.

BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move the following bills be recommitted to the Committee on Appropriations:

HB 2182;
HB 2668;
SB 137; and
SB 305.

On the question,
Will the House agree to the motion?
Motion was agreed to.

**HOUSE BILLS
INTRODUCED AND REFERRED**

No. 2694 By Representative O'NEILL

An Act amending Title 62 (Procurement) of the Pennsylvania Consolidated Statutes, providing for consolidated contracts and for a transfer of funds to the Commonwealth Financing Authority.

Referred to Committee on STATE GOVERNMENT, June 14, 2004.

No. 2695 By Representatives WANSACZ, BELARDI, BELFANTI, COY, ARMSTRONG, BARD, BARRAR, BIANCUCCI, BOYD, BUNT, CAPPELLI, CORRIGAN, CREIGHTON, DALEY, DENLINGER, FAIRCHILD, GEORGE, TANGRETTI, WILT, YOUNGBLOOD, YUDICHAK, PAYNE, BROWNE, GERGELY, GILLESPIE, GOODMAN, GRUCELA, GRUITZA, HALUSKA, HANNA, HARHAI, HARRIS, HASAY, HENNESSEY, HERSHEY, HESS, HUTCHINSON, JOSEPHS, KOTIK, LEACH, LEWIS, McILHATTAN, McNAUGHTON, MILLARD, MUSTIO, PETRARCA, PHILLIPS, READSHAW, REICHLEY, SAINATO, SCAVELLO, SCHRODER, SEMMEL, SHANER, SOLOBAY and SURRA

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, adding definitions relating to inheritance tax; and further providing for transfers not subject to inheritance tax.

Referred to Committee on FINANCE, June 14, 2004.

No. 2696 By Representatives REICHLEY, BOYD, CAPPELLI, CRAHALLA, DeLUCA, HARHART, HENNESSEY, JAMES, MILLARD, PETRARCA, THOMAS, TIGUE, YOUNGBLOOD and YUDICHAK

An Act amending Title 75 (Vehicles) of the Pennsylvania Consolidated Statutes, further providing for emission inspection stations; and providing for a sales and use tax exclusion for enhanced emissions tests.

Referred to Committee on TRANSPORTATION, June 14, 2004.

No. 2698 By Representatives MACKERETH, WEBER, R. MILLER, GILLESPIE, SAYLOR, BASTIAN, BELFANTI, BLAUM, BROWNE, CAPPELLI, CAUSER, CRAHALLA, DeLUCA, EGOLF, FLICK, GINGRICH, GOODMAN, GRUCELA, HARPER, HERMAN, HORSEY, MAITLAND, McNAUGHTON, MILLARD, PAYNE, REICHLEY, SCAVELLO, SCHRODER, SOLOBAY, E. Z. TAYLOR, TIGUE, TRUE and YOUNGBLOOD

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for electronic monitoring of sexually violent offenders or predators.

Referred to Committee on JUDICIARY, June 14, 2004.

No. 2699 By Representatives SAYLOR, TIGUE, STERN, ARMSTRONG, BASTIAN, O'NEILL, GOODMAN, SOLOBAY, YOUNGBLOOD, GILLESPIE, DeWEESE, BALDWIN, BOYD, CAPPELLI, CREIGHTON, CRUZ, DENLINGER, GEIST, GINGRICH, HERSHEY, LEH, LEWIS, McILHATTAN, PAYNE, REED, RUBLEY, SCAVELLO, THOMAS and WILT

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, authorizing legislation to allow persons in the National Guard or in a reserve component of the armed forces of the United States, whether activated or not, to hold public office concurrently with their service.

Referred to Committee on VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS, June 14, 2004.

No. 2701 By Representative D. EVANS

An Act making an appropriation to the Arsenal Family and Children's Center.

Referred to Committee on APPROPRIATIONS, June 14, 2004.

No. 2702 By Representatives NICKOL, BUNT, CAPPELLI, CORRIGAN, DALLY, DENLINGER, GINGRICH, HESS, KOTIK, LAUGHLIN, LEWIS, MACKERETH, MAITLAND, MANN, McILHATTAN, MICOZZIE, R. MILLER, O'NEILL, PALLONE, PETRI, ROHRER, ROSS, RUBLEY, SATHER, SAYLOR, SCAVELLO, STEIL, R. STEVENSON, E. Z. TAYLOR, THOMAS, VANCE, WALKO, WATSON and YOUNGBLOOD

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, defining "qualified interest rate management agreement for interest on indebtedness" for purposes of provisions relating to reimbursements by Commonwealth and between school districts; further providing for approved reimbursable rental for certain approved leases, sinking fund charges on indebtedness and approved reimbursable payments, for payments on

account of certain approved leases and sinking fund charges on indebtedness for certain school buildings, for approval of Department of Public Instruction and for payments to school districts because of density factor; and making an editorial change.

Referred to Committee on EDUCATION, June 14, 2004.

No. 2703 By Representatives DeLUCA, MICOZZIE, FLICK, BIANCUCCI, BEBKO-JONES, BELARDI, BELFANTI, BUTKOVITZ, CALTAGIRONE, CAPPELLI, CASORIO, CIVERA, COHEN, COSTA, COY, CRUZ, CURRY, DALEY, DeWEESE, DIVEN, FABRIZIO, FICHTER, FRANKEL, FREEMAN, GOOD, GOODMAN, GRUCELA, HALUSKA, HANNA, HARHAI, HARPER, HASAY, HESS, HORSEY, KELLER, KENNEY, KOTIK, LAUGHLIN, LEDERER, LEH, LESCOVITZ, MANDERINO, MARKOSEK, MARSICO, McCALL, McGEEHAN, MUNDY, PALLONE, PETRARCA, PETRONE, PISTELLA, PRESTON, READSHAW, ROBERTS, ROEBUCK, ROONEY, RUFFING, SAINATO, SANTONI, SATHER, SCAVELLO, SCRIMENTI, SHANER, STETLER, STURLA, TANGRETTI, J. TAYLOR, TRAVAGLIO, TURZAI, VEON, WALKO, WATERS, WHEATLEY, WOJNAROSKI, YEWIC, YOUNGBLOOD and YUDICHAK

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, establishing a program of real property tax deferral for senior citizens.

Referred to Committee on LOCAL GOVERNMENT, June 14, 2004.

No. 2704 By Representatives TIGUE, KELLER, SEMMEL, PERZEL, ARMSTRONG, BIANCUCCI, CAWLEY, CORRIGAN, COSTA, CRAHALLA, DALEY, DALLY, DeWEESE, GEORGE, GRUCELA, KIRKLAND, LAUGHLIN, LEDERER, MARKOSEK, READSHAW, SHANER, STERN, J. TAYLOR, WASHINGTON, YOUNGBLOOD, DENLINGER, FABRIZIO, GOODMAN, HORSEY, KOTIK, LEACH, MANN, PHILLIPS, SCHRODER, SOLOBAY, E. Z. TAYLOR, THOMAS, WOJNAROSKI and YUDICHAK

An Act amending the act of July 10, 1989 (P.L.291, No.50), known as the Philadelphia Regional Port Authority Act, providing for criminal history checks and special identification cards in certain circumstances.

Referred to Committee on COMMERCE, June 14, 2004.

No. 2705 By Representatives VEON, BEBKO-JONES, CALTAGIRONE, CRAHALLA, DALEY, DeLUCA, DeWEESE, GEIST, GERGELY, HARHAI, HERSHEY, HORSEY, JOSEPHS, KOTIK, LEACH, LYNCH, THOMAS, WHEATLEY, WASHINGTON, JAMES, KIRKLAND, LaGROTTA, LEVDANSKY, SOLOBAY, WALKO and YOUNGBLOOD

An Act amending the act of March 10, 1949 (P.L.30, No.14), known as the Public School Code of 1949, defining "community service" for purposes of community colleges and the State System of Higher Education; and further providing for community college degrees and for diplomas and certificates from the State System of Higher Education.

Referred to Committee on EDUCATION, June 14, 2004.

No. 2706 By Representative ARGALL

A Supplement to the act of April 1, 1863 (P.L.213, No.227), entitled "An act to accept the grant of Public Lands, by the United States, to the several states, for the endowment of Agricultural Colleges," making appropriations for carrying the same into effect; and providing for a basis for payments of such appropriations and for a method of accounting for the funds appropriated.

Referred to Committee on APPROPRIATIONS, June 14, 2004.

HOUSE RESOLUTIONS INTRODUCED AND REFERRED

No. 786 By Representatives ADOLPH, ARMSTRONG, BARRAR, CAPPELLI, CAUSER, CRAHALLA, DENLINGER, FRANKEL, GOOD, HARPER, HARRIS, HENNESSEY, HORSEY, JAMES, LEH, McILHATTAN, McILHINNEY, MILLARD, R. MILLER, PICKETT, SAINATO, SAYLOR, SCHRODER, SEMMEL, R. STEVENSON, E. Z. TAYLOR, THOMAS, TIGUE, WEBER and YOUNGBLOOD

A Resolution directing the Legislative Budget and Finance Committee to study and report on filing and reporting requirements imposed by the Pennsylvania Public Utility Commission on local exchange carriers operating in a competitive telecommunications environment.

Referred to Committee on CONSUMER AFFAIRS, June 14, 2004.

No. 787 By Representatives PISTELLA, DeWEESE, LEVDANSKY, BELFANTI, CAPPELLI, CAWLEY, COSTA, CRAHALLA, CURRY, DALEY, DeLUCA, FAIRCHILD, GEORGE, GERGELY, GINGRICH, GODSHALL, GRUCELA, HERSHEY, HORSEY, HUTCHINSON, JOSEPHS, KOTIK, LAUGHLIN, LEACH, R. MILLER, NAILOR, O'NEILL, PHILLIPS, READSHAW, ROEBUCK, RUBLEY, SHANER, B. SMITH, SOLOBAY, SURRA, THOMAS, TIGUE, WALKO, WASHINGTON, WHEATLEY, WILT, WOJNAROSKI and YOUNGBLOOD

A Resolution directing the Speaker of the House of Representatives to appoint a task force to study wages paid by private State-funded community providers of mental health and mental retardation services, to make comparisons with wages paid by public and private employers for comparable work, to recommend the wages needed to afford at least a moderate standard of living while alleviating vacancy and turnover problems, to develop a multiyear timetable concluding in fiscal year 2010-2011 for advancement toward higher wages and to make recommendations to the General Assembly by November 30, 2004.

Referred to Committee on RULES, June 14, 2004.

SENATE BILLS FOR CONCURRENCE

The clerk of the Senate, being introduced, presented the following bills for concurrence:

SB 1024, PN 1687

Referred to Committee on Education, June 14, 2004.

SB 1100, PN 1573

Referred to Committee on Finance, June 14, 2004.

**BILLS REPORTED FROM COMMITTEES,
CONSIDERED FIRST TIME, AND
RECOMMITTED TO COMMITTEE ON RULES**

HB 1621, PN 4050 (Amended) By Rep. BIRMELIN

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, providing for a Children's Ombudsman Act, for powers and duties of ombudsman, for investigative and remedial powers, for response to complaints, for cooperation of agencies and providers, for confidentiality of investigators and records, for findings and recommendations, for protection from retaliation and for nonexclusivity of remedy.

CHILDREN AND YOUTH.

HB 2651, PN 3950 By Rep. GANNON

An Act amending the act of May 1, 1933 (P.L.216, No.76), known as The Dental Law, further providing for powers and duties of the board and for anesthesia.

PROFESSIONAL LICENSURE.

**BILL REPORTED FROM COMMITTEE,
CONSIDERED FIRST TIME, AND TABLED**

SB 1059, PN 1473 By Rep. GANNON

An Act amending the act of May 11, 1889 (P.L.188, No.210), entitled "A further supplement to an act, entitled 'An act to establish a board of wardens for the Port of Philadelphia, and for the regulation of pilots and pilotage, and for other purposes,' approved March twenty-ninth, one thousand eight hundred and three, and for regulating the rates of pilotage and number of pilots," further providing for certain charges.

PROFESSIONAL LICENSURE.

SENATE MESSAGE

**AMENDED HOUSE BILL RETURNED
FOR CONCURRENCE AND
REFERRED TO COMMITTEE ON RULES**

The clerk of the Senate, being introduced, returned **HB 304, PN 4020**, with information that the Senate has passed the same with amendment in which the concurrence of the House of Representatives is requested.

LEAVES OF ABSENCE

The SPEAKER. The Chair turns to leaves of absence.

The Chair recognizes the majority whip, who moves for a leave of absence for the gentleman from Philadelphia, Mr. TAYLOR; the gentleman from Warren, Mr. LYNCH; and the gentleman from York, Mr. NICKOL. Without objection, those leaves will be granted.

The Chair recognizes the minority whip, who moves for a leave of absence for the gentleman from Philadelphia, Mr. RIEGER; the gentleman from Northampton, Mr. GRUCELA; and the gentleman from Allegheny, Mr. KOTIK. Without objection, those leaves will be granted.

MASTER ROLL CALL

The SPEAKER. The Chair is about to take the master roll. The members will proceed to vote.

The following roll call was recorded:

PRESENT—197

Adolph	Egolf	Levdansky	Samuelson
Allen	Evans, D.	Lewis	Santoni
Argall	Evans, J.	Mackereth	Sather
Armstrong	Fabrizio	Maher	Saylor
Baker	Fairchild	Maitland	Scavello
Baldwin	Feese	Major	Schroder
Bard	Fichter	Manderino	Scrimenti
Barrar	Fleagle	Mann	Semmel
Bastian	Flick	Markosek	Shaner
Bebko-Jones	Forcier	Marsico	Smith, B.
Belardi	Frankel	McCall	Smith, S. H.
Belfanti	Freeman	McGeehan	Solobay
Benninghoff	Gabig	McGill	Staback
Bianucci	Gannon	McIlhattan	Stairs
Birmelin	Geist	McIlhinney	Steil
Bishop	George	McNaughton	Stern
Blaum	Gergely	Melio	Stetler
Boyd	Gillespie	Metcalfe	Stevenson, R.
Browne	Gingrich	Micozzie	Stevenson, T.
Bunt	Godshall	Millard	Sturla
Butkovitz	Good	Miller, R.	Surra
Buxton	Goodman	Miller, S.	Tangretti
Caltagirone	Gruitza	Mundy	Taylor, E. Z.
Cappelli	Habay	Mustio	Thomas
Casorio	Haluska	Myers	Tigue
Causar	Hanna	Nailor	Travaglio
Cawley	Harhai	O'Brien	True
Civera	Harhart	Oliver	Turzai
Clymer	Harper	O'Neill	Vance
Cohen	Harris	Pallone	Veon
Coleman	Hasay	Payne	Vitali
Cornell, S. E.	Hennessey	Petrarca	Walko
Corrigan	Herman	Petri	Wansacz
Costa	Hershey	Petrone	Washington
Coy Hess	Phillips	Waters	
Crahalla	Hickernell	Pickett	Watson
Creighton	Horsey	Pistella	Weber
Cruz	Hutchinson	Preston	Wheatley
Curry	James	Raymond	Williams
Dailey	Josephs	Readshaw	Wilt
Daley	Keller	Reed	Wojnaroski
Dally	Kenney	Reichley	Wright
DeLuca	Killion	Roberts	Yewcic
Denlinger	Kirkland	Roebuck	Youngblood
Dermody	LaGrotta	Rohrer	Yudichak
DeWeese	Laughlin	Rooney	Zug
DiGirolamo	Leach	Ross	
Diven	Lederer	Rubley	

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ADDITIONS—0

NOT VOTING—0

EXCUSED—6

Grucela Kotik	Lynch Nickol	Rieger	Taylor, J.
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LEAVES ADDED—2

Crahalla	Phillips
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LEAVES CANCELED—4

Grucela	Kotik	Lynch	Nickol
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GUESTS INTRODUCED

The SPEAKER. The Chair recognizes a guest of the Speaker here today, the daughter of the chief of staff of the Speaker, Lauren Preski. Is Lauren here? Would she please stand and be recognized.

The Chair welcomes John and Jane Bysko, the son-in-law and daughter from Old Line, Connecticut. They are here today as guests of Representative Merle H. Phillips. They are to the left of the Speaker. Would those guests please rise.

The Chair welcomes today Tom and Donna Speers and his son, Jim Speers, and family friend, Chrissy Ellinger. Tom serves as the solicitor for the Montgomery County Sheriff's Department. They are all here today as the guests of Representative Melissa Weber. They are to the left of the Speaker. Would those guests please rise and be recognized.

BILL REMOVED FROM TABLE

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that SB 1059 be taken off the table.

On the question,
Will the House agree to the motion?
Motion was agreed to.

BILL RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader. Mr. S. SMITH. Mr. Speaker, I move that SB 1059 be recommitted to the Committee on Appropriations.

On the question,
Will the House agree to the motion?
Motion was agreed to.

GUESTS INTRODUCED

The SPEAKER. The Chair would like to recognize, as a guest of Representatives Argall, Cappelli, and Feese, Dr. Robert Larson. Twenty-four years ago Dr. Larson was Representative Argall's European history professor and academic adviser at Lycoming College. Accompanying Dr. Larson are two German guests – Dr. Tilo Koehn, with the University of Pottsdam in Germany, and Johannes Koehn. Johannes spent the past academic year as a student at Williamsport Area High School. They are seated to the left of the Speaker. Would those guests please rise and be recognized.

C. F. MARTIN IV PRESENTED

The SPEAKER. The Chair recognizes the gentleman, Mr. Dally, for the purposes of a citation.

The gentleman, Mr. Dally, deserves to be heard. Please keep the noise levels down.

Mr. Dally.

Mr. DALLY. Thank you, Mr. Speaker.

Rest at ease. I am not going to be playing the guitar or singing, but I would like to thank the Speaker for the introduction.

Thank you. Thank you.

Since 1833 musicians have counted on the craftsmen at Martin Guitar Company to help them make beautiful music. In Nazareth, Pennsylvania, the family-owned Martin Guitar Company has been continuously producing acoustic instruments that are acknowledged to be the finest in the world.

Today Representative Grucela, my colleagues in the House, and I are proud to recognize Martin as they mark the crafting of their 1 millionth guitar and welcome the company's sixth-generation chief executive officer, Chris Martin, who is standing behind me, and his wife, Judge Diane Repneck, who is seated to the left of the Speaker, to the hall of the House.

Continuous operation under family management is a feat bordering on the remarkable, reflecting six generations of dedication to the guitarmaker's craft. In or out of the music industry, C. F. Martin has few rivals for sheer staying power.

The Martin's millionth guitar took 2 years to design and construct, as Chris will display behind me. It contains 65 diamonds, 26 rubies, 24 sapphires, 16 emeralds, and 10 aquamarines, and while this guitar, unfortunately, is not for sale, 50 similar but slightly plainer guitars are being sold by Martin for \$100,000, and Chris will be happy to take any orders from any House members at the conclusion of this presentation.

Past and present owners of Martin products include Gene Autry, Jimmy Buffett, Johnny Cash, Harry Chapin, Eric Clapton, Roy Clark, Judy Collins, Elvis Costello, Neil Diamond, Bob Dylan, Jerry Garcia, Vince Gill, Merle Haggard, Jimi Hendrix, John Lennon, Paul McCartney, Van Morrison, and the list goes on and on, including Elvis Presley, Roy Rogers, Will Rogers, Paul Simon, and the like.

Throughout its colorful history, the company has adapted successfully to continual changes in product design, distribution systems, and manufacturing methods. In spite of the many changes, C. F. Martin has never veered away from its initial commitment to quality. Over 600 people with a passion for perfection work at Martin, and today Representative Grucela

and I are proud to represent them as many are proud of the reputation their product has throughout the world.

I invite everyone watching and listening to visit Martin's expanded facility in Nazareth, tour the factory, and see the museum.

Congratulations once again to Chris Martin, the Martin Guitar Company, and the over 600 dedicated employees who make up the Martin family.

On behalf of the House of Representatives, I would like to present Chris Martin with the House citation recognizing this monumental achievement. This goes to him and his company and the 600 dedicated employees.

Thank you, Mr. Speaker.

CENTRAL HIGH SCHOOL GIRLS BASKETBALL TEAM PRESENTED

The SPEAKER. The Chair at this time recognizes the gentleman from Philadelphia, Mr. Roebuck, for the purpose of a citation.

The gentleman is entitled to be heard. Please keep the noise levels down.

Mr. ROEBUCK. Thank you, Mr. Speaker.

I am very proud to stand before the House this afternoon to present a citation to the Central High School girls varsity basketball team and to honor them for having won their third consecutive Philadelphia Public League championship. I am especially proud because Central High School is my alma mater as it is also of Representative Mark Cohen.

This team has a rather remarkable record. In the year 2001-2002 the team was 23 and 5, in 2002-2003 the team was 25 and 3, and in the year 2003-2004 the team worked even harder to continue its success, and they won their third consecutive Philadelphia Public League/PIAA District 12 championship with a record of 24 and 3.

The team has not lost a game in the Philadelphia Public League in 3 years. They have won 48 straight games in the Public League. But beyond that, beyond the academic success, there is also the quality of the academic performance of these young women, and I would note that they are led by four seniors, and we have three of those four with us today. We have Ashley Morris, who will next year be attending Temple University; we have Ashley Edwards, who will be attending St. Bonaventure, and both these individuals were Street & Smith Honorable Mention All-Americans; we have Sharae Middlebrook, who will be attending Cabrinni College; and we do not have the fourth senior and team leader, Megan Ellis, who will also be attending St. Bonaventure.

I would note that of those four young women, two of them will graduate from Central High School, which is the premier academic institution in high school in this Commonwealth, with over a 90 average. They are to be commended for their success, and I hope that you would join me in so recognizing them.

Let me then also note that we are joined as well by Frank Greco, who is the coach of the Lady Lancers and to whom much of the credit for their success must be given.

Thank you.

CENTRAL DAUPHIN HIGH SCHOOL BOYS TRACK AND FIELD TEAM PRESENTED

The SPEAKER. The Chair recognizes the gentleman from Dauphin, Mr. Marsico, for the purposes of a citation.

Mr. MARSICO. Thank you, Mr. Speaker.

Members of the House, I am very proud to present to you the Central Dauphin High School PIAA Class AAA boys State track and field championship team. They captured two gold medals, one silver medal, and a fourth-place medal, and today again I am very proud to have them here. This is the first time they have ever received, the track team, ever received a State championship or won a State championship and received a citation from the House of Representatives.

Standing behind me is the head track coach, Tom Eck; also Ryan Whiting, Mark Wieder, Justin McCarthy, and Ryan Jones. A fifth member of the team could not join us here today, and that is Andrew Rotz.

Justin, Mark, Andrew, and Ryan Jones won gold in the 4x800 meter relay with a winning time of 7:47.27. This time is well below the National High School Honor Roll time of 7:53.00, placing them in the top 4x800 meter high school relay teams in the nation. This relay team was also selected by the Pennsylvania Track and Field Coaches Association for second-team honors in the 4x800 meter relay on the 2004 All-State outdoor track and field team.

Ryan Whiting captured gold medal honors in the AAA discus with a throw of just 193 feet, setting a new State record by breaking the previous PIAA and State record set in 1985 of 184 feet. His throw exceeded the National High School Honor Roll distance of 184 feet. Ryan also won silver medals in the AAA shot put with a throw of just 59 feet. Ryan is ranked nationally in both the shot put and discus. He was also selected by the Pennsylvania Track and Field Coaches Association for first-team honors in the discus and third-team honors in the shot put.

This is remarkable as well. The same 4x800 meter relay team also clinched the team championship with a fourth-place medal in the 4x400 meter relay.

This is the first time, again, that they have won a track and field championship at Central Dauphin, and by the way, the way to the championship did include a lot of hard work and some injuries, but the desire and the determination of the coaches and the athletes did not succumb to defeat.

Also, I would like to direct your attention to the rear of the House floor to introduce the other athletes and the coaches who made this possible. Seated in the back, if you could please rise when I call your name, Jason McCarthy, Jamal James, Eric Smith, coach Michael Sage, coach Stacey Sutton, and coach Rick Leuschner.

Please join me in congratulating and recognizing the Central Dauphin Rams track and field championship team.

Thank you, Mr. Speaker.

POSTER DRAWING CONTEST WINNERS INTRODUCED

The SPEAKER. The Chair would like to recognize at this time Representative Julie Harhart for the purposes of an introduction.

Mrs. HARHART. Thank you, Mr. Speaker.

Mr. Speaker, each year I challenge third and fourth graders in my district to show their creativity and cleverness by participating in a poster drawing contest. This year's theme was "School Spirit." All of the posters were terrific. Two weeks ago the best in each class were elected, and those posters are now on display in the East Wing rotunda.

Today I have two of the winners visiting Harrisburg for the day to celebrate their efforts: Brianna Bennicoff, a third grade student from Mrs. Schecker's class at Steckel Elementary in the Whitehall-Coplay School District, and her mother, Cara Bennicoff; Sarah Heckman, a fourth grade student from Mr. Gober's class at Steckel Elementary in the Whitehall-Coplay School District, and her parents and her little brother, Mr. and Mrs. Heckman.

They are seated in the House gallery. So would you please stand to be recognized and the House please give them a very warm welcome.

FINANCE COMMITTEE MEETING

The SPEAKER. For what purpose does the gentleman, Mr. Leh, rise?

Mr. LEH. Mr. Speaker, for the purpose of announcing a committee meeting.

The SPEAKER. The gentleman is in order.

Mr. LEH. I would like to announce that there is a House Finance Committee meeting immediately at the call of break in room 60.

Thank you.

The SPEAKER. There will be a Finance Committee meeting in room 60 at the break.

GUESTS INTRODUCED

The SPEAKER. The Chair would like to welcome Mayor David Perruso of Wilson Borough; Wilson Borough council president, Bob Reiss; and Jen Templeton, a senior at Moravian College. They are our guests here today of Representative Robert Freeman of Northampton County. They are located in the balcony. Would they please rise and be recognized.

The Chair welcomes Matt Rozsa, an intern with Representative Freeman's office and a student at Bard College. He is the guest today of Representatives Robert Freeman and Rich Grucela of Northampton County. He is also seated in the balcony. Would that guest please rise.

The Chair welcomes members of the Carlstrom, DeLuca, and Sine families from Bethlehem. They are guests today of Representative Samuelson. They are also in the balcony. Would those guests please rise.

The Chair would like to welcome Tim Levdansky, the son of Representative Dave Levdansky. He is a guest page here today. He is in front of the rostrum. Tim, would you please rise – Tim Levdansky.

The Chair would like to welcome Amy Henegan, a student in the district of Representative Rod Wilt. Amy is a freshman student at Jamestown Area High School. Would she please rise and be recognized.

RULES COMMITTEE MEETING

The SPEAKER. The Chair recognizes the majority leader, who moves for an immediate meeting of the Rules Committee.

BILLS REREPORTED FROM COMMITTEE

HB 2357, PN 4023

By Rep. S. SMITH

An Act providing for the Department of Transportation to conduct a study on school zone safety.

RULES.

HB 2384, PN 4013

By Rep. S. SMITH

An Act amending the act of December 10, 1974 (P.L.852, No.287), referred to as the Underground Utility Line Protection Law, further providing for definitions, for duties of facility owners, for duties of a One Call System, for duties of contractors and for fines and penalties.

RULES.

HB 2643, PN 3931

By Rep. S. SMITH

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for unlawful devices and methods for taking furbearers.

RULES.

HB 2649, PN 3944

By Rep. S. SMITH

An Act designating a portion of State Route 405 from Clinton Township to Montgomery Borough, Lycoming County, Pennsylvania, as the Dr. Charles F. Taylor Memorial Highway; and designating a bridge over the West Branch of the Susquehanna River on State Route 405 between Muncy Creek Township and Clinton Township, Lycoming County, Pennsylvania, as the The Last Raft Memorial Bridge.

RULES.

HB 2651, PN 3950

By Rep. S. SMITH

An Act amending the act of May 1, 1933 (P.L.216, No.76), known as The Dental Law, further providing for powers and duties of the board and for anesthesia.

RULES.

BILL ON CONCURRENCE REPORTED FROM COMMITTEE

HB 2027, PN 4051 (Amended)

By Rep. S. SMITH

An Act amending the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, further providing for appointment and qualifications of members of authority.

RULES.

BILLS ON SECOND CONSIDERATION

The following bills, having been called up, were considered for the second time and agreed to, and ordered transcribed for third consideration:

HB 2357, PN 4023; HB 2384, PN 4013; HB 2643, PN 3931; and HB 2649, PN 3944.

BILLS RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that the following bills be recommitted to the Committee on Appropriations:

HB 2357;
HB 2384;
HB 2643;
HB 2649; and
HB 2651.

On the question,
Will the House agree to the motion?
Motion was agreed to.

GUESTS INTRODUCED

The SPEAKER. The Chair welcomes Bill Reil and Anne Whited, Jamie and Joyce Gregg, and Jim Gregg. They are here today as guests of Representative Jerry Stern. They are seated in the balcony. Would those guests please rise to be recognized.

The Chair welcomes Meghan Huss, who is a guest page today of the gentleman, Representative Egolf. Would that guest please rise and be recognized.

REPUBLICAN CAUCUS

The SPEAKER. The Chair would now recognize the woman who was made the "Outstanding Person in Chester County," the lovely, ever-dedicated E. Z. Taylor. The Chair recognizes the lady.

Mrs. TAYLOR. Thank you very much, Mr. Speaker.

The evening was a great success, and it put me back to my desk with renewed energy and compassion and commitment.

Thank you very much.

There will be at the call of the recess in the caucus room, the majority Republican Caucus will meet, and, Mr. Speaker, I believe we will need about 2 hours.

The SPEAKER. The Chair thanks the gentlelady.

DEMOCRATIC CAUCUS

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I agree with my Republican counterpart. It is a very long schedule. So we will be caucusing on the bills immediately upon the call of the recess.

The SPEAKER. The Chair thanks the gentleman.

APPROPRIATIONS COMMITTEE MEETING

The SPEAKER. Are there any further announcements?

Mr. Argall.

Mr. ARGALL. Thank you, Mr. Speaker.

Mr. Speaker, at 2 o'clock the House Appropriations Committee will meet in room 245.

The SPEAKER. We trust that will not take 2 hours, Mr. Argall.

The Appropriations Committee will meet at 2 o'clock in room 245.

RECESS

The SPEAKER. Any other announcements?

This House is now in recess until 4 p.m.

RECESS EXTENDED

The time of recess was extended until 4:30 p.m.; further extended until 4:45 p.m.

AFTER RECESS

The time of recess having expired, the House was called to order.

**BILLS REPORTED FROM COMMITTEE,
CONSIDERED FIRST TIME, AND
RECOMMITTED TO COMMITTEE ON RULES**

HB 2590, PN 3775

By Rep. ARGALL

An Act making an appropriation to the Lake Erie College of Osteopathic Medicine, Erie.

APPROPRIATIONS.

HB 2706, PN 4049

By Rep. ARGALL

A Supplement to the act of April 1, 1863 (P.L.213, No.227), entitled "An act to accept the grant of Public Lands, by the United States, to the several states, for the endowment of Agricultural Colleges," making appropriations for carrying the same into effect; and providing for a basis for payments of such appropriations and for a method of accounting for the funds appropriated.

APPROPRIATIONS.

BILLS REREPORTED FROM COMMITTEE

HB 375, PN 3630

By Rep. ARGALL

An Act establishing the Victims of Domestic Violence Employment Leave Act.

APPROPRIATIONS.

HB 798, PN 930

By Rep. ARGALL

An Act prohibiting any municipal pension or retirement system in a city of the first class from denying certain benefits to surviving spouses of police officers or certain employees upon a subsequent remarriage of the surviving spouse; and making repeals.

APPROPRIATIONS.

HB 1442, PN 4052 (Amended)

By Rep. ARGALL

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for the imposition of sales and use tax on certain services.

APPROPRIATIONS.

HB 1859, PN 3850

By Rep. ARGALL

An Act relating to the delivery of services and programs to persons with disabilities; conferring powers and duties on the Governor's Office; and creating the Office of Disabilities and providing for its funding.

APPROPRIATIONS.

HB 2182, PN 3729

By Rep. ARGALL

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further defining "average net income" and "corporation" for purposes of capital stock and franchise tax.

APPROPRIATIONS.

HB 2304, PN 3979

By Rep. ARGALL

An Act amending the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law, further providing for property subject to or exempt from claim and for content of claims entered; and providing for public record lists and for report of nonpayment of taxes.

APPROPRIATIONS.

HB 2305, PN 3849

By Rep. ARGALL

An Act amending the act of June 22, 2001 (P.L.374, No.24), known as the Optional Occupation Tax Elimination Act, further prohibiting occupation tax.

APPROPRIATIONS.

HB 2308, PN 3941

By Rep. ARGALL

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for information relating to prospective child-care personnel.

APPROPRIATIONS.

HB 2315, PN 3236

By Rep. ARGALL

An Act amending the act of July 7, 1947 (P.L.1368, No.542), known as the Real Estate Tax Sale Law, further providing for hearing and order for judicial sale; and providing for combined judicial sales.

APPROPRIATIONS.

HB 2336, PN 3289

By Rep. ARGALL

An Act amending the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, further providing for judicial sales; and providing for procedure for judicial sale of multiple properties.

APPROPRIATIONS.

HB 2358, PN 4053 (Amended)

By Rep. ARGALL

An Act amending the act of May 16, 1923 (P.L.207, No.153), referred to as the Municipal Claim and Tax Lien Law, providing for donation of property; and further providing for form of claims, for records of claims and tax liens and for report of nonpayment of taxes.

APPROPRIATIONS.

HB 2408, PN 3937

By Rep. ARGALL

An Act amending the act of November 10, 1999 (P.L.491, No.45), known as the Pennsylvania Construction Code Act, further defining "agricultural building"; and further providing for exemptions.

APPROPRIATIONS.

HB 2441, PN 3452

By Rep. ARGALL

An Act amending Title 54 (Names) of the Pennsylvania Consolidated Statutes, providing for surviving spouse to resume prior name.

APPROPRIATIONS.

HB 2589, PN 3873

By Rep. ARGALL

An Act amending the act of March 3, 1972 (P.L.102, No.37), entitled "An act regulating the importation and sale of live turtles and providing for permits to be issued by the Department of Health," by repealing certain provisions related to permits and certification.

APPROPRIATIONS.

HB 2649, PN 3944

By Rep. ARGALL

An Act designating a portion of State Route 405 from Clinton Township to Montgomery Borough, Lycoming County, Pennsylvania, as the Dr. Charles F. Taylor Memorial Highway; and designating a bridge over the West Branch of the Susquehanna River on State Route 405 between Muncy Creek Township and Clinton Township, Lycoming County, Pennsylvania, as the The Last Raft Memorial Bridge.

APPROPRIATIONS.

HB 2654, PN 4054 (Amended)

By Rep. ARGALL

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, reenacting and amending provisions relating to parking authorities and relating to taxicabs and limousines in cities of the first class; further providing for parking authority purposes and powers and special provisions in cities of the first class; providing for restrictions on parking authorities in cities of the first class; further providing for contract bids for parking authorities; further defining "limousine service"; making legislative

findings as to taxicabs in cities of the first class; further providing, as to taxicabs in cities of the first class, for rates, for contested complaints, for driver certification, for budgets and fees, for certificates and medallions, for contested complaints, for wages, for regulations and for budget and fees; further providing, as to limousines in cities of the first class, for certificates of public convenience and for regulations; and making repeals related to allocation assessments against public utilities for regulatory expenses, to certificates of public convenience for taxicabs and to taxicabs in cities of the first class.

APPROPRIATIONS.

SB 200, PN 1644

By Rep. ARGALL

An Act amending Title 24 (Education) of the Pennsylvania Consolidated Statutes, further providing for termination of annuities.

APPROPRIATIONS.

LEAVE OF ABSENCE CANCELED

The SPEAKER. For what purpose does the gentleman, Mr. George, rise?

Mr. GEORGE. Mr. Speaker, the gentleman, Mr. Grucela, should be placed on the roll. He is present and with us at this moment.

The SPEAKER. The Chair notes the presence in the hall of the House of the gentleman from Northampton, Mr. Grucela. The clerk will please place his name on the roll.

HOUSE BILL INTRODUCED AND REFERRED

No. 2713 By Representative PAYNE

An Act authorizing the Department of General Services, with the approval of the Governor, to grant and convey to Derry Township Municipal Authority a certain easement for sanitary sewer purposes, together with an existing sanitary sewer line and appurtenances, situate in Derry Township, Dauphin County.

Referred to Committee on STATE GOVERNMENT, June 14, 2004.

SUPPLEMENTAL CALENDAR A

RESOLUTION PURSUANT TO RULE 35

Mr. REICHLEY called up HR 785, PN 4036, entitled:

A Resolution commending the community service provided by The Right Information and Direction (TRIAD) program in Lehigh County, as well as in several other counties.

On the question, Will the House adopt the resolution?

(Members proceeded to vote.)

LEAVE OF ABSENCE CANCELED

The SPEAKER. The Chair returns to leaves of absence and notes the presence on the floor of the House of the gentleman, Mr. Nickol. Without objection, his name will be placed on the master roll.

CONSIDERATION OF HR 785 CONTINUED

On the question recurring, Will the House adopt the resolution?

The following roll call was recorded:

YEAS—197

Table with 4 columns of names: Adolph, Allen, Argall, Armstrong, Baker, Baldwin, Bard, Barrar, Bastian, Bebko-Jones, Belardi, Belfanti, Benninghoff, Biancucci, Birmelin, Bishop, Blaum, Boyd, Browne, Bunt, Buxton, Caltagirone, Cappelli, Casorio, Causer, Cawley, Civera, Clymer, Cohen, Coleman, Cornell, S. E., Corrigan, Costa, Coy Hershey, Crahalla, Creighton, Cruz, Curry, Dailey, Daley, Dally, DeLuca, Denlinger, Dermody, DeWeese, DiGirolamo, Diven, Donatucci, Eachus, Egolf, Evans, D., Evans, J., Fabrizio, Fairchild, Feese, Fichter, Fleagle, Flick, Forcier, Frankel, Freeman, Gabig, Gannon, Geist, George, Gergely, Gillespie, Gingrich, Godshall, Good, Goodman, Grucela, Gruitza, Habay, Haluska, Hanna, Harhai, Harhart, Harper, Harris, Hasay, Hennessey, Herman, Petri, Hess, Hickernell, Horsey, Hutchinson, James, Josephs, Keller, Kenney, Killion, Kirkland, LaGrotta, Laughlin, Leach, Lederer, Leh, Lescovitz, Levdansky, Lewis, Mackereth, Maher, Maitland, Major, Manderino, Mann, Markosek, Marsico, McCall, McGeehan, McGill, McIlhattan, McIlhinney, McNaughton, Melio, Metcalfe, Micozzie, Millard, Miller, R., Miller, S., Mundy, Mustio, Myers, Nailor, Nickol, O'Brien, Oliver, O'Neill, Pallone, Payne, Petrarca, Washington, Petrone, Phillips, Pickett, Pistella, Preston, Raymond, Readshaw, Reed, Reichley, Roberts, Roebuck, Rohrer, Rooney, Ross, Rubley, Sainato, Samuelson, Santoni, Sather, Saylor, Scavello, Schroder, Scrimenti, Semmel, Shaner, Smith, B., Smith, S. H., Solobay, Staback, Stairs, Steil, Stern, Stetler, Stevenson, R., Stevenson, T., Sturla, Surra, Tangretti, Taylor, E. Z., Thomas, Tigue, Travaglio, True, Turzai, Vance, Veon, Vitali, Walko, Wansacz, Waters, Watson, Weber, Wheatley, Williams, Wilt, Wojnaroski, Wright, Yewcic, Youngblood, Yudichak, Zug, Perzel, Speaker

NAYS—0

NOT VOTING—2

Butkovitz Ruffing

EXCUSED—4

Kotik Lynch Rieger Taylor, J.

The majority having voted in the affirmative, the question was determined in the affirmative and the resolution was adopted.

SUPPLEMENTAL CALENDAR B

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 1442, PN 4052**, entitled:

An Act amending the act of March 4, 1971 (P.L.6, No.2), known as the Tax Reform Code of 1971, further providing for the imposition of sales and use tax on certain services.

On the question,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?

The Chair recognizes the gentleman from Delaware, Mr. Vitali.

Mr. VITALI. Would the maker of this bill stand for brief interrogation?

The SPEAKER. Does the gentleman, Mr. Turzai, submit to interrogation by the gentleman, Mr. Vitali? The gentleman, Mr. Turzai, indicates that he will respond to interrogation. The gentleman, Mr. Vitali, is in order and may proceed.

Mr. VITALI. My first question really would be just a brief explanation of the bill.

Mr. TURZAI. The bill provides for a redefinition of what is subject to the sales and use tax. In the 1991 tax increase, a number of services were brought under the sales tax including car wash services. The bill was subsequently amended in committee by Representative Levdansky to limit the exemption to those car washes that have reclamation-type systems or use best practices in reclaiming water.

Mr. VITALI. I am sorry; I just missed the last maybe 10 seconds of that.

Mr. TURZAI. The bill was amended in committee by Chairman Levdansky of the Finance Committee. The exemption from the sales tax is limited to those car wash services that are provided by those operations that have water reclamation systems or best practices to reclaim water, and that was an agreed-to amendment, and it was added in committee.

Mr. VITALI. Okay. The bill as it stands does not exempt all car washes from the sales tax but just car washes that somehow are environmentally more friendly?

Mr. TURZAI. I mean, I believe that would be the characterization that would be used by the chairperson, yes, of that committee whose amendment it was; yes.

Mr. VITALI. Okay. So the typical car wash that we have gone to for years that you drive through and the suds comes and all the rest, that would still be subject to the sales tax?

Mr. TURZAI. You know, there are particular systems that can be used in a variety of car washes. I do not think it is limited to just those that go through the conveyer belt. It is also for those that if you have a system in place that reclaims your water, that can be true for any kind of a car wash. It is not limited to a particular kind of car wash. There are best practices that a variety of car washes could use, but they do have to have a system in place.

Mr. VITALI. Because, I mean, my concern is this was sort of described in caucus as just we have decided that just for no good policy reason exempt car washes from the sales tax.

Mr. TURZAI. Well, the argument is that a variety of services are not subject to the sales tax including dry-cleaning services and other type services and that really the 1991 increases were inappropriate in just attempting to get new revenues and were not what the original sales and use tax were designed for. So I do not know who described it, but it depends on your policy decision.

Mr. VITALI. So do you have any idea how many car washes there are in Pennsylvania and how many are exempted from sales tax by this bill?

Mr. TURZAI. I apologize; what was the question? I apologize.

Mr. VITALI. I am just trying to get a sense for, are we dealing with the whole universe of car washes? Are we just carving out a sales tax exemption for car washes generally or does this have some heightened environmental good attached to it? That is what I am trying to get out.

Mr. TURZAI. Oh, no. It does have a heightened environmental component to it. It was added into by Representative Levdansky, the chairman, in the Finance Committee. I mean, we voted on that and added it to the bill. It was a discussion that the chairman had reached with proponents of the bill and that was agreed to. There is absolutely a restriction that it is, quote, unquote, "environmentally friendly."

Mr. VITALI. Okay.

Do you have any idea how many, what percent of the automatic car washes this sales tax exemption would cover?

Mr. TURZAI. I do not, but our best estimate is that there are approximately 555 facilities in Pennsylvania. Of those 555 facilities, approximately half of those would have the environmental friendly component to it and would be able to use the exemption.

Mr. VITALI. And what do you have to do to get this environmentally friendly designation?

Mr. TURZAI. They have to show proof to DEP (Department of Environmental Protection) that they are in fact using water conservation best management practices, and it would be approved by DEP.

Mr. VITALI. The DEP would have to make that determination?

Mr. TURZAI. Yes.

Mr. VITALI. Okay. Thank you.

Mr. TURZAI. Thank you.

LEAVE OF ABSENCE CANCELED

The SPEAKER. The Chair returns to leaves of absence and notes the presence on the floor of the hall of the House of the gentleman from Warren, Mr. Lynch. Without objection, his name will be added to the master roll.

CONSIDERATION OF HB 1442 CONTINUED

The SPEAKER. At this time the Chair recognizes the gentledady from Luzerne, Ms. Mundy.

Ms. MUNDY. Mr. Speaker, may I interrogate the maker of the bill, please?

The SPEAKER. The gentleman, Mr. Turzai, indicates he will stand for interrogation. The gentledady is in order and may proceed.

Ms. MUNDY. I guess my first question would be, normally when we advocate for a reduction in revenues and in this case it is a revenue reduction of \$6,300,000 – at least that is my understanding of the fiscal note – we normally offset that by a decrease in spending, and can you tell me where you would offset \$6,300,000 in revenue?

Mr. TURZAI. I am sorry, Mr. Speaker; I did not hear that question. I heard your talk, but I did not get the question.

Ms. MUNDY. The question is, normally when we advocate for a \$6,300,000 or any amount of a reduction in revenue, we offset that with a reduction in spending, and I would like to know where you would offset the revenue in the spending.

Mr. TURZAI. Well, I do not know where you get that that is always the case. The fact of the matter is, I am a big proponent of the fact that you ought to be looking at what would be appropriate in terms of revenues and then decide your spending. So I guess there may be a philosophical difference, and I do not have an answer to your question.

Ms. MUNDY. Well, it is a very concrete \$6,300,000 decrease in revenue.

Mr. TURZAI. I do not have an answer.

Ms. MUNDY. Okay. You do not have an answer. There is the answer.

And I guess I am confused because I thought – and maybe you can correct me – I thought that the House Republican Caucus was advocating taxing everything at a lower rate, including things that are not currently taxed, and if that is the case, why would we now carve out car washes? One of my colleagues just asked me, are we afraid that car washes are going to move out of State?

Mr. TURZAI. It is an incremental approach to reducing the 1991 tax increases. The Governor Ridge administration started it to make the Commonwealth a more competitive Commonwealth. We ought to be helping all businesses in reducing taxes.

The fact of the matter—

Ms. MUNDY. So—

Mr. TURZAI. The fact of the matter is, Mr. Speaker, if you will let me complete my thought.

Ms. MUNDY. Sure.

Mr. TURZAI. The fact of the matter is that there is now a \$600 million surplus, and I would contend that this is a part of the rollback of the 1991 tax increases.

Thank you.

Ms. MUNDY. Mr. Speaker, may I speak on the bill, please?

The SPEAKER. The gentledady is in order and may proceed.

Ms. MUNDY. First of all, the gentleman is incorrect. This was not part of the 1991 tax increase. It has been part of the sales and use tax forever, ever since it was instituted. And I just, frankly, am at a loss as to why we would want to carve out a

special exemption for car washes. None of my constituents are coming to me and saying, I cannot afford to wash my car because of this 6-percent sales tax. On the contrary, they have other concerns about our lack of funding for public education, our lack of funding for mental health/mental retardation services, our lack of funding for libraries. All of these demands on our revenues are coming at me, and now I am being asked to carve out a \$6,300,000 tax exemption for a car wash, and I am just not understanding the rationale. And now I am told that the \$6,300,000 is only for 9 months.

I am at a loss, Mr. Speaker. I cannot figure out why we would want to do this. I guess the car wash industry must have a sugar daddy here in the legislature, but it will not be me.

Thank you.

The SPEAKER. The Chair thanks the gentledady.

The Chair recognizes the gentleman from Clearfield, Mr. George.

Mr. GEORGE. Thank you, Mr. Speaker.

Mr. Speaker, I do not want to make little about any legislator or colleague who might want to do something for a certain segment or any individual business, but the truth is, if this passes, there will be certain people that will be helped, but by the same token those in the same business will have to put up with an inappropriate competition in that they will not have that same benefit. And the gentledady that spoke before me, Mr. Speaker, makes good sense in that we will be about the task of trying to provide a budget, and before we get to where we ought to be, we should not be thinking about putting a tax on just about every commodity that a housewife has to purchase when at the same token we are relieving the obligation from a certain facet such as a car wash.

Now, if he was going to release that on all the car washes, then I believe the argument may be somewhat better, but I believe with what we are going to do in the next couple of weeks or hope to do, I think this is the wrong way to get to it, and I would believe that we should vote “no” on this measure.

BILL PASSED OVER

The SPEAKER. HB 1442 is over for today.

* * *

The House proceeded to third consideration of **HB 2441**, **PN 3452**, entitled:

An Act amending Title 54 (Names) of the Pennsylvania Consolidated Statutes, providing for surviving spouse to resume prior name.

On the question,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—200

Adolph	Evans, D.	Lewis	Sainato
Allen	Evans, J.	Lynch	Samuelson
Argall	Fabrizio	Mackereth	Santoni
Armstrong	Fairchild	Maher	Sather
Baker	Feese	Maitland	Saylor
Baldwin	Fichter	Major	Scavello
Bard	Fleagle	Mandirino	Schroder
Barrar	Flick	Mann	Scrimenti
Bastian	Forcier	Markosek	Semmel
Bebko-Jones	Frankel	Marsico	Shaner
Belardi	Freeman	McCall	Smith, B.
Belfanti	Gabig	McGeehan	Smith, S. H.
Benninghoff	Gannon	McGill	Solobay
Biancucci	Geist	McIlhattan	Staback
Birmelin	George	McIlhinney	Stairs
Bishop	Gergely	McNaughton	Steil
Blaum	Gillespie	Melio	Stern
Boyd	Gingrich	Metcalfe	Stetler
Browne	Godshall	Micozzie	Stevenson, R.
Bunt	Good	Millard	Stevenson, T.
Butkovitz	Goodman	Miller, R.	Sturla
Buxton	Grucela	Miller, S.	Surra
Caltagirone	Gruitza	Mundy	Tangretti
Cappelli	Habay	Mustio	Taylor, E. Z.
Casorio	Haluska	Myers	Thomas
Causar	Hanna	Nailor	Tigue
Cawley	Harhai	Nickol	Travaglio
Civera	Harhart	O'Brien	True
Clymer	Harper	Oliver	Turzai
Cohen	Harris	O'Neill	Vance
Coleman	Hasay	Pallone	Veon
Cornell, S. E.	Hennessey	Payne	Vitali
Corrigan	Herman	Petrarca	Walko
Costa	Hershey	Petri	Wansacz
Coy Hess	Petrone	Washington	
Crahalla	Hickernell	Phillips	Waters
Creighton	Horsey	Pickett	Watson
Cruz	Hutchinson	Pistella	Weber
Curry	James	Preston	Wheatley
Dailey	Josephs	Raymond	Williams
Daley	Keller	Readshaw	Wilt
Dally	Kenney	Reed	Wojnaroski
DeLuca	Killion	Reichley	Wright
Denlinger	Kirkland	Roberts	Yewcic
Dermody	LaGrotta	Roebuck	Youngblood
DeWeese	Laughlin	Rohrer	Yudichak
DiGirolamo	Leach	Rooney	Zug
Diven	Lederer	Ross	
Donatucci	Leh	Rubley	
Eachus	Lescovitz	Ruffing	Perzel,
Egolf	Levdansky		Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Kotik	Rieger	Taylor, J.
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

CALENDAR CONTINUED

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 2572, PN 3825**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for summary offenses involving vehicles.

On the question,
Will the House agree to the bill on third consideration?

Mr. **DeLUCA** offered the following amendment No. **A2011**:

Amend Title, page 1, line 2, by inserting after "for" exemptions from jury duty and for

Amend Bill, page 1, lines 6 and 7, by striking out all of said lines and inserting

Section 1. Section 4503(a) of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:

§ 4503. Exemptions from jury duty.

(a) General rule.—No person shall be exempt or excused from jury duty except the following:

* * *

(5) Persons 75 years of age or older who opt not to serve.

* * *

Section 2. Section 5553(c) and (e) of Title 42 are amended to read:
Amend Sec. 2, page 2, line 12, by striking out "2" and inserting

3

On the question,
Will the House agree to the amendment?

The **SPEAKER**. On that question, the Chair recognizes the gentleman, Mr. DeLuca.

Mr. DeLUCA. Thank you, Mr. Speaker.

Mr. Speaker, over the years I had individuals, elderly individuals, senior citizens, who were having problems when they reached a certain age of 75 being required to go down for jury duty. First of all, they cannot drive down there; secondly, they do not know how to get there; and third, to get dismissed they have to go to a doctor's office and pay for a doctor's visit to be dismissed.

Now, I think it is unfair that we do not give— I think it would be fairer if we give these individuals an opportunity or an option whether they want to serve or not serve. After 75 years in society, I think they paid their dues, and certainly throughout the years I am sure that they were called for jury duty.

So I am asking for some consideration for senior citizens who attain the age of 75, to give them the option whether they want to serve on jury duty or not, and I would appreciate an affirmative vote on this, Mr. Speaker.

Thank you.

The **SPEAKER**. The Chair thanks the gentleman.

On the question recurring,
Will the House agree to the amendment?

The following roll call was recorded:

YEAS—185

Adolph	Fabrizio	Lewis	Samuelson
Allen	Fairchild	Lynch	Santoni
Argall	Feese	Mackereth	Sather
Armstrong	Fichter	Maher	Saylor
Baker	Fleagle	Major	Scavello
Baldwin	Flick	Manderino	Schroder
Bard	Frankel	Mann	Scrimenti
Barrar	Freeman	Markosek	Semmel
Bastian	Gabig	Marsico	Shaner
Bebko-Jones	Gannon	McCall	Smith, B.
Belardi	Geist	McGeehan	Smith, S. H.
Belfanti	George	McGill	Solobay
Biancucci	Gergely	McIlhattan	Staback
Bishop	Gillespie	McIlhinney	Stairs
Blaum	Gingrich	McNaughton	Steil
Boyd	Godshall	Melio	Stern
Browne	Good	Micozzie	Stetler
Bunt	Goodman	Millard	Stevenson, R.
Butkovitz	Grucela	Miller, R.	Stevenson, T.
Buxton	Gruitza	Miller, S.	Sturla
Caltagirone	Habay	Mundy	Surra
Cappelli	Haluska	Mustio	Tangretti
Casorio	Hanna	Myers	Taylor, E. Z.
Causer	Harhai	Nailor	Thomas
Cawley	Harhart	Nickol	Tigue
Civera	Harper	O'Brien	Travaglio
Clymer	Harris	Oliver	True
Cohen	Hasay	O'Neill	Turzai
Cornell, S. E.	Hennessey	Pallone	Vance
Corrigan	Herman	Payne	Veon
Costa	Hershey	Petrarca	Walko
Coy Hess	Petri	Wansacz	
Crahalla	Hickernell	Petrone	Washington
Cruz	Horsey	Pickett	Waters
Curry	Hutchinson	Pistella	Watson
Dailey	James	Preston	Weber
Daley	Josephs	Raymond	Wheatley
Dally	Keller	Readshaw	Williams
DeLuca	Kenney	Reed	Wojnaroski
Dermody	Killion	Reichley	Wright
DeWeese	Kirkland	Roberts	Yewcic
DiGirolamo	LaGrotta	Roebuck	Youngblood
Diven	Laughlin	Rooney	Yudichak
Donatucci	Leach	Ross	
Eachus	Lederer	Rubley	
Evans, D.	Lescovitz	Ruffing	Perzel,
Evans, J.	Levdansky	Sainato	Speaker

NAYS—15

Benninghoff	Denlinger	Maitland	Vitali
Birmelin	Egolf	Metcalfe	Wilt
Coleman	Forcier	Phillips	Zug
Creighton	Leh	Rohrer	

NOT VOTING—0

EXCUSED—3

Kotik	Rieger	Taylor, J.
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The majority having voted in the affirmative, the question was determined in the affirmative and the amendment was agreed to.

On the question,
Will the House agree to the bill on third consideration as amended?

Bill as amended was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—200

Adolph	Evans, D.	Lewis	Sainato
Allen	Evans, J.	Lynch	Samuelson
Argall	Fabrizio	Mackereth	Santoni
Armstrong	Fairchild	Maher	Sather
Baker	Feese	Maitland	Saylor
Baldwin	Fichter	Major	Scavello
Bard	Fleagle	Manderino	Schroder
Barrar	Flick	Mann	Scrimenti
Bastian	Forcier	Markosek	Semmel
Bebko-Jones	Frankel	Marsico	Shaner
Belardi	Freeman	McCall	Smith, B.
Belfanti	Gabig	McGeehan	Smith, S. H.
Benninghoff	Gannon	McGill	Solobay
Biancucci	Geist	McIlhattan	Staback
Birmelin	George	McIlhinney	Stairs
Bishop	Gergely	McNaughton	Steil
Blaum	Gillespie	Melio	Stern
Boyd	Gingrich	Metcalfe	Stetler
Browne	Godshall	Micozzie	Stevenson, R.
Bunt	Good	Millard	Stevenson, T.
Butkovitz	Goodman	Miller, R.	Sturla
Buxton	Grucela	Miller, S.	Surra
Caltagirone	Gruitza	Mundy	Tangretti
Cappelli	Habay	Mustio	Taylor, E. Z.
Casorio	Haluska	Myers	Thomas
Causer	Hanna	Nailor	Tigue
Cawley	Harhai	Nickol	Travaglio
Civera	Harhart	O'Brien	True
Clymer	Harper	Oliver	Turzai
Cohen	Harris	O'Neill	Vance
Coleman	Hasay	Pallone	Veon
Cornell, S. E.	Hennessey	Payne	Vitali
Corrigan	Herman	Petrarca	Walko
Costa	Hershey	Petri	Wansacz
Coy Hess	Petrone	Washington	
Crahalla	Hickernell	Phillips	Waters
Creighton	Horsey	Pickett	Watson
Cruz	Hutchinson	Pistella	Weber
Curry	James	Preston	Wheatley
Dailey	Josephs	Raymond	Williams
Daley	Keller	Readshaw	Wilt
Dally	Kenney	Reed	Wojnaroski
DeLuca	Killion	Reichley	Wright
Dermody	Kirkland	Roberts	Yewcic
DeWeese	LaGrotta	Roebuck	Youngblood
DiGirolamo	Laughlin	Rohrer	Yudichak
Diven	Leach	Rooney	Zug
Donatucci	Lederer	Ross	
Eachus	Leh	Rubley	
Egolf	Lescovitz	Ruffing	Perzel,
	Levdansky		Speaker

NAYS—0

NOT VOTING—0

EXCUSED—3

Kotik	Rieger	Taylor, J.
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk present the same to the Senate for concurrence.

SUPPLEMENTAL CALENDAR C

**BILL ON CONCURRENCE
IN SENATE AMENDMENTS
AS AMENDED**

The House proceeded to consideration of concurrence in Senate amendments to the following **HB 2027, PN 4051**, as further amended by the House Rules Committee:

An Act amending the act of May 24, 1945 (P.L.991, No.385), known as the Urban Redevelopment Law, further providing for appointment and qualifications of members of authority.

On the question,

Will the House concur in Senate amendments as amended by the Rules Committee?

The **SPEAKER**. It is moved by the gentleman, Mr. Roberts, that the House concur in the amendments.

On the question recurring,

Will the House concur in Senate amendments as amended by the Rules Committee?

The **SPEAKER**. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—195

Adolph	Egolf	Lescovitz	Sainato
Allen	Evans, D.	Levdansky	Samuelson
Argall	Evans, J.	Lewis	Santoni
Armstrong	Fabrizio	Lynch	Sather
Baker	Fairchild	Mackereth	Saylor
Baldwin	Feese	Maitland	Scavello
Bard	Fichter	Major	Schroder
Barrar	Fleagle	Manderino	Scrimenti
Bastian	Flick	Mann	Semmel
Bebko-Jones	Forcier	Markosek	Shaner
Belardi	Frankel	Marsico	Smith, B.
Belfanti	Freeman	McCall	Smith, S. H.
Benninghoff	Gabig	McGeehan	Solobay
Bianucci	Gannon	McGill	Staback
Birmelin	Geist	McIlhattan	Stairs
Bishop	George	McIlhinney	Steil
Blaum	Gergely	McNaughton	Stern
Boyd	Gillespie	Melio	Stetler
Browne	Gingrich	Micozzie	Stevenson, R.
Bunt	Godshall	Millard	Stevenson, T.
Butkovitz	Good	Miller, R.	Sturla
Buxton	Goodman	Miller, S.	Surra
Caltagirone	Grucela	Mundy	Tangretti
Cappelli	Gruitza	Myers	Taylor, E. Z.
Casorio	Haluska	Nailor	Thomas
Causer	Hanna	Nickol	Tigue
Cawley	Harhai	O'Brien	Travaglio
Civera	Harhart	Oliver	True
Clymer	Harper	O'Neill	Turzai
Cohen	Harris	Pallone	Vance
Coleman	Hasay	Payne	Veon

Cornell, S. E.	Hennessey	Petrarca	Vitali
Corrigan	Herman	Petri	Walko
Costa	Hershey	Petrone	Wansacz
Coy Hess	Phillips	Washington	
Crahalla	Hickernell	Pickett	Waters
Creighton	Horsey	Pistella	Watson
Cruz	Hutchinson	Preston	Weber
Curry	James	Raymond	Wheatley
Dailey	Josephs	Readshaw	Williams
Daley	Keller	Reed	Wojnaroski
Dally	Kenney	Reichley	Wright
DeLuca	Killion	Roberts	Yewcic
Denlinger	Kirkland	Roebuck	Youngblood
Dermody	LaGrotta	Rohrer	Yudichak
DeWeese	Laughlin	Rooney	Zug
DiGirolamo	Leach	Ross	
Diven	Lederer	Rubley	Perzel, Speaker
Donatucci	Leh	Ruffing	
Eachus			

NAYS—5

Habay	Metcalfe	Mustio	Wilt
Maher			

NOT VOTING—0

EXCUSED—3

Kotik	Rieger	Taylor, J.
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the amendments as amended by the Rules Committee were concurred in.

Ordered, That the clerk return the same to the Senate for concurrence.

CALENDAR CONTINUED

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **SB 97, PN 1623**, entitled:

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for jurisdiction and proceedings, for relief and order and for sentencing procedure for murder of the first degree; and providing for mental retardation of defendant.

On the question,

Will the House agree to the bill on third consideration?

Mr. **LEACH** offered the following amendment No. **A1839**:

Amend Title, page 1, line 8, by removing the period after "DEFENDANT" and inserting

and for lethal injections.

Amend Sec. 2, page 6, line 30, by striking out "A SECTION" and inserting

sections

Amend Sec. 2, page 9, by inserting between lines 12 and 13

§ 9711.2. Lethal injections.

Notwithstanding the provisions of section 4 of the act of June 18, 1998 (P.L.622, No.80), entitled, "An act providing for a procedure and method of execution; and making repeals," pancuronium bromide may

not be used as an injection agent for lethal injections inflicting the death penalty.

On the question,
Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes the gentleman, Mr. Leach.

Mr. LEACH. Mr. Speaker, the amendment I offer today would relate to how we perform our lethal injections. It is an amendment, and let me just tell, first of all, what this amendment does not do. This amendment is not a ban on lethal injection. This amendment is not a moratorium on lethal injection. It would not prevent any lethal injection that is otherwise lawfully being carried out. What it would do is, it would ban a chemical that we use in lethal injection called pancuronium bromide. This chemical is a paralytic. This chemical does not kill the condemned man, and this chemical does not anesthetize the condemned man. This chemical is used typically in eye surgery. What it does is it completely paralyzes every bit of your body. There is absolutely no movement at all. Under typical general anesthesia, the eyes continue to twitch. This would completely paralyze everything, so it is typically used for eye surgery. We use it in Pennsylvania as part of lethal injection.

Now, the question is, if it does not kill the defendant and it does not anesthetize the defendant, why are we using it? Recently the courts around the country have begun to weigh in on this, and a number of cases have been stayed because of the feeling that this chemical is used to mask what is, under certain forms of lethal injection, extreme suffering.

A growing number of medical experts say it masks extreme pain as a person is suffocated over a 7- to 10-minute time period. Most recently, Tennessee judge Ellen Hobbs Lyle wrote that pancuronium bromide "...gives a false impression of serenity to viewers..." Dr. Sherwin Nuland, author of the book "How We Die," says it "makes no sense" to use a paralytic in executions, and Judge Lyle wrote that the paralytic serves "no legitimate purpose."

In the last couple of years 10 States have banned the use of pancuronium bromide, not for lethal injection of human beings but for euthanizing animals. The American Veterinary Association has said that you cannot use this chemical to euthanize animals because animals might feel suffering when this chemical is used. We will not use this chemical on a dog, Mr. Speaker, but we still use it on people.

It is important to note that the chemicals actually used in lethal injection without anesthesia would be considered extremely painful. According to one anesthesiologist in the packet I sent to every member of the House, it delivers as much pain as can be delivered by needle, which is a lot. The chemicals that kill us, they stop the breathing, which result in suffocation – slow, agonizing, potentially, suffocation if you are awake.

Now, we do deliver an anesthesia. The problem with the anesthesia that we use is it is extremely fast acting and it is also very quickly dissipating. It is typically used in brain surgery where we need to put people to sleep and wake them up quickly.

Fifteen courts have now recognized Eighth Amendment claims for the use of pancuronium bromide. Mr. Speaker, what this is, I think the best way of putting this is, this is a chemical

tomb where people are suffering but we are not allowed to see it. One woman testified before a court that struck this down, one woman testified that she was getting eye surgery with pancuronium bromide, and the anesthesia did not work. She had a 4-hour operation, a 4-hour operation for eye surgery, and she felt every bit of it, and she said it was the most pain that any human being could imagine. She said it was "worse than death," and she spent 4 hours desperately trying to move some muscle to let people know that the anesthesia was not working, and she could not.

Just 4 weeks ago the United States Supreme Court unanimously allowed a claim based on the cruel and unusual punishment of lethal injections to go forward in the case of *Alabama v. Nelson*.

Now, I sent everyone a packet, and in the packet there is article after article from all kinds of publications about how painful this can be. Now, Mr. Speaker, a couple of things. First, as I understand it, the District Attorneys Association has taken no position on this. They do not oppose this. And I just think, you know, you can be for the death penalty, you can be tough on crime, but we do not need to gratuitously inflict pain. What I am hoping happens, Mr. Speaker, is that if we ban this and we have a lethal injection, which this would not prevent, one of two things would happen. Either there would be no reaction on the part of the prisoner and we would know the anesthesia is working and no pain was being felt, in which case we could continue exactly as we are going, or there would be a horrible reaction and we would know there would be a problem. But, Mr. Speaker, that does not mean there does not have to be lethal injections. There are legitimate alternatives to it.

Right now we use for animals, as I understand it, a massive dose of phenobarbital. There are other ways to execute people. This way of executing people was arrived at innocently, before we understood the nature of what we were doing. But now we understand it, Mr. Speaker, and I would just say, you know, there are a lot of— I get all kinds of memos about Bible study, and there are a lot of people invoking religion on the floor of the House. There is no religious tradition that I am aware of that would allow us to deliberately and knowingly torture a man to death. That is not the purpose of capital punishment.

So, Mr. Speaker, I am asking for a "yes" vote to ban this paralytic. There is no use for this paralytic. There is no legitimate use. It is not what kills you. It is not an anesthetizing agent. Then why are we using it? And I would ask, because not only will this be a more humane thing but also because this closes the door to defendants who will challenge lethal injection based on its cruelty under the use of this. So in order to clear up our procedure and create a humane procedure, which is what we wanted to do when we originally switched to lethal injection, I would ask for support of this.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

On that question, the Chair recognizes the gentleman from Philadelphia, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

Mr. Speaker, I will just ask your attention for a brief moment.

This is an issue that has never been before the House. The gentleman said that we are using – and let me read this, because I have never heard of the substance before – "pancuronium bromide" to execute death penalty cases in

Pennsylvania. Well, when we created the death penalty in Pennsylvania, we specifically said we do not want to know what you use, so I do not know what they use. I do not know how you know what they use. But the fact that the Pennsylvania District Attorneys Association takes no position on this is not as significant as the fact that the Governor of Pennsylvania has taken a position, and he is against it. That means if we put this language in, he is going to veto the bill.

But let me get as close to the source as I possibly can on this issue. This has been talked about in other States, but let me talk to you about the comments I will read briefly from Senator Kyle Janek, who is an anesthesiologist in Texas, and I will just read part of this:

“Is pancuronium bromide some new, untested drug whose sole purpose is to torture? Is it perhaps an exotic street drug that should be outlawed? Well, actually...no.

“Pancuronium bromide is a federally approved medication used routinely in hundreds of thousands of medical procedures in this country every year. I know that because, as a licensed, practicing anesthesiologist for the last 20 years, I have given pancuronium bromide and similar drugs to thousands of patients in the operating room, albeit with different results.

“As any other anesthesiologist will tell you, this argument involving pancuronium bromide is bogus. But for the sake of argument, let’s look at the science.

“The Texas Department of Criminal Justice uses 3 drugs in its administration of the death penalty: sodium pentothal, pancuronium bromide and potassium chloride.

“Sodium pentothal is a barbiturate that until about 10 years ago was the most widely used medication for inducing general anesthesia. (It has since been displaced somewhat by newer drugs that cause fewer side effects upon awakening. For obvious reasons, that isn’t a concern for death penalty cases.)

“It is important to understand that sodium pentothal is given to an inmate 1st to render him completely unconscious and insensible to pain. For example, a normal surgical dose for a man weighing 220 pounds would be about 300 milligrams. Yet for lethal injection, the inmate receives 3 grams – or 10 times the normal amount based on body weight.

“I can attest with all medical certainty that anyone receiving that massive dose will be under anesthesia.

“The 2nd of the three drugs given in a lethal injection is pancuronium bromide – the subject of so much recent scrutiny.

“Pancuronium bromide and its newer cousins are members of a class called neuromuscular blockers. Simply put, those drugs paralyze the body’s skeletal muscles. In a lethal injection, the effect of the drug is to relax the chest wall muscles and the diaphragm in the now unconscious inmate.

“Now,” – listen to this, please – “as has been noted elsewhere, the American Veterinary Medical Association has adopted guidelines for euthanasia that preclude the use of this drug – when it is the only medication given” – when it is the only medication given. “In other words, it shouldn’t be used in animals that are awake.

“Some critics recently opined against using pancuronium bromide as part of lethal injection, noting that the state bans its use in animal shelters ‘because of its potential to shield pain and suffering.’

“Actually, state law makes no mention of the drug. Rather, it specifically names pentobarbital and compressed

carbon monoxide as the drugs that must be used. That was to address some abuses brought forth by animal rights groups that had nothing to do with pancuronium bromide.

“The last chemical in the three-drug lethal injection formula is potassium chloride, whose immediate effect in the dose given is to stop the heart and hasten death. In large doses given rapidly to a patient who is awake, the medication would cause pain in the arm due to irritation of the veins through which it courses. But for the sake of emphasis, we aren’t talking here about a patient who is awake or even remotely conscious at this point.

“The current argument against executions seems to hinge on the supposition that the second and 3rd drugs in this regimen would be cruel to someone who could feel them – and, to be candid, that assertion is true, since the pancuronium would cause a patient to be paralyzed and unable to respond to the pain of the potassium injection.

“Yet for that argument to be valid in any way, you must ignore the 1st drug in the process – sodium pentothal – that (1) renders the inmate to be completely unconscious, (2) has been used for decades to induce anesthesia in surgical patients and (3) is given in doses far exceeding what is needed to keep the inmate from being aware or feeling anything.

“Regardless of one’s feelings about the death penalty as a moral punishment, as a deterrent or whether it is meted out fairly – this latest objection has neither logic nor science to support it. If it did, it would follow that anesthesiologists and nurse anesthetists in this country have been treating patients ‘unconstitutionally’ for decades.

“Some years ago, a similar – and unsuccessful – protest was raised that the drugs given for lethal injection hadn’t been approved by the Food and Drug Administration as being ‘safe and effective.’ Such logic is every bit as tortured as the current flap over pancuronium bromide.”

Mr. Speaker, I ask for a negative vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Luzerne, Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

Mr. Speaker, I join Chairman O’Brien in opposing the amendment, simply because, and the members heard two eloquent presentations which probably were very, very complicated to every member of this House. We are talking about the execution of a human being and the lethal injections which are administered to do that. I do not believe it is appropriate on the floor of the House to be discussing whether or not one or all three of these drugs are the right ones to be administering. This certainly should at least have one hearing. I would submit it should have more than one hearing before it is brought to this floor for consideration.

I would ask the gentleman to withdraw this amendment, but in light of that, I would ask the members to vote “no,” and perhaps this issue will come back someday after it has been appropriately and thoughtfully considered. Certainly this issue deserves thoughtful consideration and not to be presented here in the form of an amendment when members have not had the time to study the issue.

So I would ask the members for a negative vote.

The SPEAKER. Does the gentleman, Mr. O’Brien, seek recognition?

AMENDMENT WITHDRAWN

The SPEAKER. Mr. Leach.

Mr. LEACH. Mr. Speaker, I have just been notified that the chairman of the committee has graciously agreed to hold a hearing on this, so I will be withdrawing this amendment, and I appreciate that.

I would just like to say one thing as I withdraw the amendment. I am familiar with the article Chairman O'Brien read. I believe that article makes my point, however, because there is dispute. I have articles from a Dr. Heath, I have articles by other people saying the opposite, but there is nothing in that article that says why we need it. All it says is, well, it does not do any harm, because the other chemicals already put the guy to sleep. There is not a line in that article, which I have read several times, which says why we actually use a paralytic in capital punishment.

So hopefully this will come out at the hearing. I am sure we will both be able to get anesthesiologists to maybe flesh this out a little bit. I appreciate the forbearance of the House, and I appreciate the consideration of the chairman.

Thank you, Mr. Speaker.

The SPEAKER. The gentleman, Mr. Leach, has withdrawn his amendment.

On the question recurring,
Will the House agree to the bill on third consideration?

Ms. MANDERINO offered the following amendment No. A1923:

Amend Title, page 1, line 5, by inserting after "PROVIDING" for eligibility for relief,

Amend Title, page 1, line 7, by inserting a period after "DEGREE"
Amend Title, page 1, lines 7 and 8, by striking out "; AND" in line 7 and all of line 8

Amend Bill, page 2, lines 16 through 30; pages 3 through 6, lines 1 through 30; page 7, lines 1 through 3, by striking out all of said lines on said pages and inserting

Section 1. Section 9543(a)(2) of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subparagraph to read:

§ 9543. Eligibility for relief.
(a) General rule.—To be eligible for relief under this subchapter, the petitioner must plead and prove by a preponderance of the evidence all of the following:

(2) That the conviction or sentence resulted from one or more of the following:

(ix) The existence of mental retardation as defined in section 9711(p) (relating to sentencing procedure for murder of the first degree).

Section 2. Section 9545 (b)(1) is amended to read:
§ 9545. Jurisdiction and proceedings.

(b) Time for filing petition.—

(1) Any petition under this subchapter, including a second or subsequent petition, shall be filed within one year of the date the judgment becomes final, unless the petition alleges and the petitioner proves [that] any of the following:

(i) [the] The failure to raise the claim previously was the result of interference by government officials with the presentation of the claim in violation of the Constitution or

laws of this Commonwealth or the Constitution or laws of the United States[;].

(ii) [the] The facts upon which the claim is predicated were unknown to the petitioner and could not have been ascertained by the exercise of due diligence[; or].

(iii) [the] The right asserted is a constitutional right that was recognized by the Supreme Court of the United States or the Supreme Court of Pennsylvania after the time period provided in this section and has been held by that court to apply retroactively.

(iv) The petitioner claims to be a person with mental retardation as defined in section 9711(p) (relating to sentencing procedure for murder of the first degree) and the time for raising that claim has expired as of the effective date of this subparagraph. A petition invoking this exception must be filed within 365 days of the effective date of this subparagraph or of the conclusion of an appeal pending on the effective date of this subparagraph from the judgment of sentence or from the denial of a previous petition under this chapter.

Section 3. Sections 9546 and 9711 of Title 42 are amended by adding subsections to read:

§ 9546. Relief and order.

(a.1) Mental retardation.—Upon a finding that evidence has been presented that is sufficient to establish, by a preponderance of the evidence, that the petitioner is a person with mental retardation as defined in section 9711(p) (relating to sentencing procedure for murder of the first degree), the court shall direct that the sentence of death be vacated and that the defendant be sentenced to life imprisonment.

§ 9711. Sentencing procedure for murder of the first degree.

(e.1) Mental retardation.—

(1) No person with mental retardation shall be eligible for the death penalty.

(2) The following apply:

(i) At least 90 days before the commencement of trial or later upon just cause shown to the court, counsel for the defendant must, upon written motion alleging reasonable cause to believe that the defendant is a person with mental retardation, apply for an order directing that a hearing to determine if the defendant is not eligible for the death penalty because the defendant is a person with mental retardation be conducted prior to trial. The written motion must set forth in particular the reasons and grounds to support the reasonable cause to believe that the defendant is a person with mental retardation.

(ii) Upon receipt of a motion for a determination that the defendant is not eligible for the death penalty because the defendant is a person with mental retardation, the trial court shall conduct a hearing for the presentation of evidence regarding the defendant's mental retardation. Both the Commonwealth and the defendant shall have the opportunity to present evidence, including expert testimony. The court shall order an expert psychiatric or psychological examination of the defendant to be performed by a licensed psychiatrist or licensed psychologist who is an expert in the diagnosis and evaluation of mental retardation. The defendant must prove that the defendant is a person with mental retardation by a preponderance of the evidence.

(iii) Prior to the time set for the hearing on the pretrial motion, the Commonwealth shall have the same rights of discovery as exist under the Pennsylvania Rules of Criminal Procedure, including the production of reports from experts and production of information which will further a full, fair and expeditious resolution of the

determination of whether the defendant is a person with mental retardation.

(iv) At the hearing on the pretrial motion to determine whether the defendant is a person with mental retardation, the defendant has the burden of proving that the defendant is a person with mental retardation by a preponderance of the evidence. The court shall consider the existence or absence of documentation, and reasons for the existence or absence of documentation, of the manifestation of mental retardation before 18 years of age.

(v) The court shall find that the defendant is not eligible for the death penalty, if it finds, by a preponderance of the evidence, that the defendant is a person with mental retardation. If the court finds that the defendant is a person with mental retardation, the trial shall proceed as a noncapital trial.

(vi) If the court enters an order under subparagraph (v) finding that the defendant is a person with mental retardation, the Commonwealth may appeal as of right from the order under Pa.R.A.P. 311 (a)(8) (relating to interlocutory appeals as of right). The taking of an appeal by the Commonwealth under this subsection stays the effectiveness of the court's order and an order fixing a date for trial for purposes of Pa.R.Crim.P. 600 (relating to prompt trial) and speedy trial rights under the Constitution of the United States and the Constitution of Pennsylvania.

(vii) If the court finds that the defendant is eligible for the death penalty, the trial may proceed as a capital case.

(viii) The pretrial determination of the court shall not preclude the defendant from raising any legal defense or factual evidence, including the existence of mental retardation during the trial or the sentencing phase of a capital trial under this section.

(ix) The jury shall not be informed of the prior proceedings or the court's findings concerning the defendant's motion with respect to the issue of mental retardation.

(3) If a defendant has already been sentenced to death as of the effective date of this subsection and postsentence motions are still pending or a direct appeal is still pending, pursuant to rule of court a defendant may file a motion raising a claim that the defendant ineligible for a death sentence because he is a person with mental retardation. The trial court that imposed the sentence on the defendant shall conduct an evidentiary hearing on the motion and determine whether the defendant is a person with mental retardation.

* * *

(p) Definition.—As used in this section, the term “person with mental retardation” means an individual who has a mental disability characterized by

Amend Sec. 2 (Sec. 9711.1), page 7, lines 6 through 8, by striking out “WHICH THE DEFENDANT MUST PROVE BY” in line 6 and all of lines 7 and 8 and inserting

as established by all of the following:

Amend Sec. 2 (Sec. 9711.1), page 7, line 9, by striking out “THAT HIS” and inserting

The individual's

Amend Sec. 2 (Sec. 9711.1), page 7, line 13, by striking out “THAT HE” and inserting

The individual

Amend Sec. 2 (Sec. 9711.1), page 7, line 22, by striking out “THAT HIS” and inserting

The individual's

Amend Sec. 2 (Sec. 9711.1), page 7, line 25, by striking out “WHERE THE DEFENDANT ESTABLISHES” and inserting

if it is established

Amend Sec. 2 (Sec. 9711.1), page 7, line 26, by striking out “DEFENDANT” and inserting
individual

Amend Sec. 2 (Sec. 9711.1), page 7, line 29, by striking out all of said line and inserting

Section 4. Title 42 is amended by adding a section to read:

§ 9711.1. Waiver of confidentiality.

A defendant who raises a

Amend Bill, page 8, lines 8 through 30; page 9, lines 1 through 13, by striking out all of said lines on said pages and inserting

Section 5. Applicability shall be as follows:

(1) This act shall apply to defendants who are sentenced on or after the effective date of this act.

(2) If a defendant who has already been sentenced to death as of the effective date of this section wishes to raise the issue of mental retardation, and postsentence motions are still pending, the defendant must, pursuant to court rule, amend the postsentence motions to raise the claim that imposition of the death penalty would have been barred under 42 Pa.C.S. § 9711(e.1) if it had been in effect at the time of the sentencing hearing. The trial court that imposed the sentence on the defendant shall conduct an evidentiary hearing on the motion. Upon a finding that evidence has been presented sufficient to establish that the defendant is a person with mental retardation as provided under section 9711(e.1), the court shall vacate the sentence of death and shall sentence the defendant to life imprisonment.

(3) If a defendant who has already been sentenced to death as of the effective date of this section wishes to raise the issue of mental retardation and direct appeal is still pending, the defendant must, pursuant to court rule, after disposition of the appeal, raise the issue in a Post Conviction Relief Act petition under 42 Pa.C.S. § 9545(b) after the disposition of the appeal.

Section 6. This act shall take effect immediately.

On the question,

Will the House agree to the amendment?

The SPEAKER. On that question, the Chair recognizes Representative Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

Amendment 1923 provides for a pretrial determination of mental retardation in the case of capital punishment crimes.

By way of a little bit of background, in 2002 the United States Supreme Court ruled that it is unconstitutional to execute mentally retarded people. The United States Supreme Court left up to each of the States to determine how they will implement the procedure to make sure that they are not executing mentally retarded people.

The bill before us raises two issues that we have to decide in this regard. One is the definition of mentally retarded, who is mentally retarded, and the second is, what is the procedure by which we will determine that somebody is mentally retarded and thus ineligible for the death penalty?

This issue is not about whether somebody can be tried. This issue is not about whether somebody can be sentenced. This issue is not about whether somebody could get a life sentence for a capital crime. This issue is about whether somebody can be put to death, and if they are mentally retarded, they cannot.

The definition of “mental retardation” that is in SB 97 as it comes before us out of the House Judiciary Committee is one that I agree with and is one that there is no dispute. Both the District Attorneys Association and the coalition of advocates for the mentally retarded have agreed on the definition that is in the

bill, and I just want to touch on that, because it is critical to the arguments of the procedure as well.

There are three components of the definition. All three components must be met for a person to be found mentally retarded, and the third component of that that I just want to focus on for a second is that the onset of the first two conditions, subaverage intellectual functioning and significant limitations in adaptive ability, both of those had to be manifest in the individual that we are looking at prior to when they were 18 years old. So they had to have been diagnosed as a youth mentally retarded and meet the significant tests that are in our definition, and I raise that because some of the arguments that people have been written about and told about against my amendment intimated that people can fake mental retardation as a way to get out of the death penalty, and the point that I am making to you is we have a definition that all have agreed to, that is not in dispute or challenged by my amendment, that clearly states that the mental retardation is something that was determined and manifest in the person's youth and not something that is manufactured.

The second point and the point that is in dispute is, now that we have a definition that Pennsylvania is going to apply to somebody that is mentally retarded, when do we apply it? SB 97 as it came out of committee said we should apply the definition after the person has been convicted of the crime, and the decision should be made by the jury that just convicted them of the crime. My amendment approaches it differently. My amendment says we ought to determine whether the person is mentally retarded before we go to trial and hear the facts of the case, and it ought to be determined pretrial by a judge, and that is what is in dispute.

That issue was also in dispute when this legislation was heard in the Senate, and it was presented in the Senate chambers in the opposite direction, because in the Senate chambers, the bill came out of committee in the Senate with a pretrial determination by a judge, similar to my amendment, and there was an attempt on the floor of the Senate to change it to a postconviction after the facts of the case had been heard by the same jury. And I just want to share with you some very critical summary points that were made during the Senate debate, because I think they say very succinctly the reasons that I share in the determination that this ought to be a decision made, whether or not somebody is mentally retarded, before they go to trial.

First I want to read some of the comments from Senator White. Quote: "Either you are retarded or you are not. And if you are retarded and were retarded before age 18, you are not getting better. We are not talking mental illness, we are not talking insanity. People recover from mental illness, but if you are mentally retarded, you are mentally retarded, and that is a fact. We are not also talking about a defense," a criminal defense. "Insanity is a defense to a crime. Mental..." retardation "...is not. We are not" talking about "giving you a defense to your crime. We are simply saying you are now within a class of protected persons for whom the death penalty may not be imposed. This, to me," the Senator says, "is a perfectly appropriate pretrial determination made by a judge," and I agree.

And there are other cases and other instances where we have determined or that we have, based on United States Supreme Court decisions, determined that other folks are in a

protected class, and all of these decisions are decisions that are made to protect classes from the death penalty. For example, a death penalty cannot be imposed for an ordinary murder. That is *Godfrey v. Georgia*. It cannot be imposed for rape of an adult woman – *Coker v. Georgia*. It cannot be imposed for a felony murder unless the defendant possesses a sufficiently culpable state of mind – *Enmund v. Florida*. It cannot be imposed on an insane person – *Ford v. Wainwright*. And now it cannot be imposed on a mentally retarded person. That is the *Atkins v. Virginia*. All of the previous cases that I mentioned are determined pretrial by a judge, and *Atkins*, we are asking that Pennsylvania also put *Atkins* in the same category of determining pretrial by a judge.

Also in the Senate debate Senator Jane Orie spoke against the amendment to make it after conviction by the jury and in favor of it being pretrial by a judge and said, quote, "I recognize that the District Attorneys Association views that the mentally retarded issue should not be decided within the pretrial proceeding. In support of this argument, they point to the fact that the trial court does not decide pretrial matters involving issues of law such as entrapment justification and guilty but mentally ill. However, mental retardation is not a defense to a crime. The status of being a person with mental retardation is constitutionally recognized and enjoys greater status than an affirmative defense such as alibis, self-defense, or duress. It is well established—"

Ms. MUNDY. Mr. Speaker?

Ms. MANDERINO —"that in cases where there is evidence raising an affirmative defense—"

Ms. MUNDY. Mr. Speaker?

The SPEAKER. For what purpose does the gentelady rise?

Ms. MUNDY. I am trying to hear the lady, and there is an extreme amount of noise here. I cannot— I am preparing my debate, and I do not want to repeat what she is saying, so I would appreciate just a little bit of quiet so I can hear what is happening.

The SPEAKER. The gentelady is correct. If you have conversations, please take them outside. Representative Manderino deserves to be heard.

The gentelady, Ms. Manderino, please proceed.

Ms. MANDERINO. Thank you, Mr. Speaker.

I appreciate the order. This truly is an issue of life and death, and I know that members recognize that, and I appreciate their attentiveness to that.

Mental retardation in the context that we are talking about it is not about a defense to a crime. It is the status of a person with mental retardation. It is a constitutionally recognized status, and it enjoys greater significance than an affirmative defense would.

We got a lot of information about this issue, and I know people have been inundated with the issue, but I just want to make one other point that I think gets to the crux of what we are talking about and why there is such a distinction. In the Pennsylvania District Attorneys Association talking points, they say mental retardation is a punishment issue, and I guess that is where we disagree, because I could not disagree more. The death penalty is a punishment issue; mental retardation is not. Mental retardation is a physical, social, adaptive, intellectual condition that a person has or they do not have. It is not based on the facts of the case that are in front of us; it is based on that status of that person as an individual, and that is the status that

I believe ought to be determined before we go forth with an expensive and involved capital death penalty trial.

I think this is the fairest way to implement the Atkins case in Pennsylvania, and I ask for an affirmative vote.

The SPEAKER. The Chair recognizes the gentleman from Philadelphia, Mr. O'Brien.

Mr. O'BRIEN. Thank you, Mr. Speaker.

Mr. Speaker, let me first start out by congratulating my former colleague, Senator Ed Helfrick. We came into the legislature together back in 1976 along with a number of other House members that are currently over in the Senate, and we had a very large class, but I chose to stay here and torture my fellow House members. But having said that, I would like to congratulate Senator Helfrick for introducing SB 26, and I would also very much like to congratulate Representative Gannon for having the courage to introduce a bill in the House that really framed the parameters for a year-long discussion that brought us to this point, SB 97.

In SB 26, which is basically the Manderino amendment, it provided for two things. It provided for a process of pretrial determination of the death penalty of mental retardation, and it also provided for a definition. As the gentlelady from Philadelphia articulated, we have now taken the second part of that SB 26, and I think by all, by all accounts we have improved the definition significantly across the board.

Having said that, the difference between the Gannon bill and the Helfrick bill comes down to this: pretrial determination. And in the Gannon bill what we started out with was that you would have to convince all 12 jurors that the defendant was mentally retarded, and you would have to do that by a standard of clear and convincing evidence.

When this bill came before the Judiciary Committee, I said we would try to do something about the process, and we would really try to do something about the definition. As I have said, we have done something about the definition, but we also have significantly addressed the process issue. No longer do you have to convince all 12 jurors that a defendant is mentally retarded; you simply have to convince 1. And you do not have to do that by a clear and convincing standard; you have to do that by a mere preponderance of the evidence.

But what, Mr. Speaker, is the effect of pretrial determination? Let me talk to you first, Mr. Speaker, about three issues as I see pretrial determination affecting this issue: stigma, cost, and delay.

Mental retardation individuals are overwhelmingly nonviolent. They commit very little crime, and they certainly do not commit murder 1. Mr. Speaker, I have one dog in this fight, and it is the individuals with mental retardation. As many individuals in this House know of my advocacy for individuals with disabilities, that is who I am standing before this microphone advocating for.

The stigma that I am talking about very simply is that Atkins would not have happened in Pennsylvania because we are not executing the mentally retarded in Pennsylvania. The Supreme Court has said that we have to respond to the hole that the Atkins decision has made in our death penalty statute in Pennsylvania, and I suggest that we do that in the framework of the existing death penalty statute. To do otherwise would be to put the constitutionality of our death penalty statute in jeopardy.

To have every death penalty case play out in front of the media and in the courts, understand, Mr. Speaker, these are the most heinous crimes known to man. But what this amendment does by having a pretrial disposition is create a nexus in the consciousness of the people of Pennsylvania that every time there is a heinous crime, we are going to debate for 3 years the issue of mental retardation.

I see the possibility that parents walk in with their children, and they will see a mentally retarded child and they will say, very quickly, let us get out of here, because of the stories that they have heard because of this nexus. I see parents worried about having their kids going to schools with the mentally retarded. That is flatout wrong. I see policymakers making decisions not to fund programs that are so important to the mentally retarded community, because frankly, Mr. Speaker, there is a lack of understanding about this important issue.

Let me talk about the cost. With each pretrial notice from the Commonwealth of intent to seek the death penalty, there will be a defense motion filed alleging that the defendant is mentally retarded and the court appointment of a psychiatrist at the court's expense. This expense will be incurred even though in most cases the notice of intent to seek the death penalty is withdrawn prior to the start of trial as the Commonwealth learns additional facts related to the case. A postconviction determination will save money and time, as experts will be brought into a case where the death penalty is actually pursued.

Additionally, the percentage of first-degree murderers who are truly retarded and will be properly granted relief under this statute are infinitesimal, and the savings from capital proceedings stopped pretrial would be insignificant. But the percentage of undeserving capital defendants who will nonetheless take their shot in the hopes of getting a favorable decision from a staunchly anti-death-penalty judge would be substantial under the ACLU (American Civil Liberties Union) version. Moreover, Commonwealth appeals from adverse pretrial decisions would add 3 years' additional delay, the average time for resolving interlocutory appeals, before the case could be tried. Thus, the pretrial determination proposal clearly encourages undeserving, nonretarded defendants to engage in meritless, delaying pretrial litigation.

And let me just talk about the effect of delay, Mr. Speaker. As I said, it will delay the proceedings for 3 years before it even goes to trial. The families of murder victims are without closure. Witness memories fade. Justice is compromised. And again, bearing in mind that this question is raised only in the most heinous crimes known to man, one could assume that the potential to have witnesses intimidated or killed is not out of the question.

The issue before us is not whether a person with mental retardation who has been found guilty of first-degree murder is eligible for the imposition of the death penalty. This is a question of law, and the U.S. Supreme Court answer is no. Our answer is also no. The issue before us is to implement the constitutional prohibition against executing a person with mental retardation. The two issues left for us to decide in the wake of Atkins are, how will we define mental retardation, and when will this determination be made? All sides agree that we have come up with the best definition of mental retardation possible. The bill and this amendment keep the most recent definition of mental retardation used by the

American Association on Mental Retardation. This definition is as good as it gets.

The bill and the amendment differ, however, with regard to when will this determination be made. The bill in compliance with the Atkins case and the U.S. and State Constitutions says the determination should be made by a jury after a finding of guilt as part of the sentencing process. The amendment in compliance with Atkins says the determination should be made before the start of a trial by a judge.

The only issues decided pretrial are competency – whether a trial can go forward at all because a defendant is unable to participate in his defense – and suppression motions – what evidence will be permitted to be introduced at trial. Both of these questions must be decided before the trial starts. On the other hand, insanity, self-defense, entrapment, duress, are all decided by the jury. A convicted first-degree murderer's defense to the sentence of death should be treated like all other defenses by the jury. All sentencing issues in death penalty cases are decided by a jury after conviction.

Further, unlike the question of law decided by the U.S. Supreme Court in the Atkins case, the question of whether a given set of facts satisfies a statutory or legal definition is a factual question to be determined by a jury. If both the defendant's psychologist and the Commonwealth's psychologist agree as to whether the defendant is a person with mental retardation, there is no dispute, and the fact is that the defendant upon conviction for first-degree murder is not eligible for the death penalty. But if the experts disagree, there is a factual dispute, and the dispute must be resolved. The fact-finder must decide what weight to be given to the testimony and opinion of the disagreeing experts as to whether the defendant is mentally retarded. This is a question of fact.

Despite the fact that the Atkins case did not require a particular procedure for determining mental retardation, the U.S. Supreme Court has said that a jury, not a judge, must determine all facts that are a precondition to a particular defendant's eligibility for a death sentence.

On June 24 the United States Supreme Court held 7 to 2 in *Ring v. Arizona* that the Constitution requires that a jury, not a judge, determine all facts that are preconditions to a defendant's eligibility for a death sentence. In so holding, the court said that where a jury has not determined all such facts, a death sentence violates a defendant's Sixth Amendment right to a trial by jury. Article I, section 6, of the Pennsylvania Constitution also guarantees a defendant a right to a jury trial.

CONSTITUTIONAL POINT OF ORDER

Mr. O'BRIEN. Mr. Speaker, I move that the amendment is unconstitutional and that it violates a defendant's Sixth Amendment right to a jury trial under the Constitution of the United States and a defendant's Article I, section 6, right to a jury trial under the Constitution of the Commonwealth of Pennsylvania.

The SPEAKER. The gentleman, Mr. O'Brien, raises the point of order that amendment A1923 is unconstitutional.

The Speaker, under rule 4, is required to submit questions affecting the constitutionality of an amendment to the House for decision, which the Chair now does.

On the question,
Will the House sustain the constitutionality of the amendment?

POINT OF ORDER

The SPEAKER. On that question, the Chair recognizes the gentledady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. A point of order, Mr. Speaker.

The SPEAKER. The gentledady will state her point of order.

Ms. MANDERINO. Thank you.

Since I am going to be arguing that my amendment is constitutional, I am asking to affirm the constitutionality and for a "yes" vote, correct?

The SPEAKER. Yes, you are.

Ms. MANDERINO. Thank you, Mr. Speaker.

I ask members for a "yes" vote to vote that my amendment is constitutional.

Regardless of how you feel on this issue, it truly is one of the more critical issues and a matter of life and death for Pennsylvania to make a decision given to us to decide our own procedure within accordance with the United States Supreme Court's decision in the Atkins case. And by way of justification for the constitutionality, I would like to share with you parts of a letter that I was cc'd on that went to the Speaker from Professor James Ellis, a Dickason professor of law at the University of New Mexico, the gentleman who argued the Atkins case before the United States Supreme Court:

"...I am a Professor of Law, specializing in constitutional law, criminal law, and mental disability law, and have worked in the field of mental retardation law for three decades. I previously served as national President of the American Association on Mental Retardation.... I argued the case of *Atkins v. Virginia* on behalf of Petitioner Daryl Atkins. Following the Court's decision in that case, I have worked with legislators from a number of States in crafting implementing legislation, and authored *Mental Retardation and the Death Penalty: A Guide to State Legislative Issues* which was published by the American Bar Association's *Mental and Physical Disability Law Reporter* last year, and which has been used in several States. I also testified in Harrisburg on Senate Bill 26 last year and have continued to remain in touch with legislators and advocates in Pennsylvania on this issue.

"While I appreciate the efforts of all the legislators who have worked on this issue in Pennsylvania, and while I certainly approve of enacting appropriate legislation implementing *Atkins*, Senate Bill 97, as currently drafted, would do substantially more harm than good in Pennsylvania's criminal justice system," and then he goes on to describe from a constitutional basis why he thinks the pretrial position that I am advocating is the better way.

He talks about the definition of mental retardation, which I will not repeat, and then he says, "The key issue, which I believe is the most important question in the legislation, is the timing of the adjudication of...mental retardation.... The vast majority of State Legislatures, both before and after the *Atkins* decision, have chosen to have the mental retardation issue resolved before the criminal trial begins, rather than waiting until the penalty phase of the trial. Significantly, every State Supreme Court that has addressed this issue in the absence of State legislation has also provided for pretrial determination.

The most recent constitutional case addressing this issue is State v. Flores..., decided by the Supreme Court of New Mexico on June 3 of this year, and the Flores decision reached the same conclusion as had the courts in other States.” And then he goes on to describe why they reached the decision that a pretrial determination is both the most practical and the most constitutional approach.

After he talks about the practical reasons for the decision, he says, “These practical considerations also have Constitutional implications. For a State to deny defendants the opportunity to present their Atkins claim prior to trial opens any subsequent death sentences to protracted litigation under the Eighth and Fourteenth Amendments.”

“Pennsylvania can now profit from the experience in other States on this and other issues,” and he goes on to urge the determination that Pennsylvania institute a pretrial procedure.

For these reasons I argue that a pretrial procedure is a constitutional procedure. It has been proven to be so through other court cases. Other States have implemented it without challenge by the United States Supreme Court, and so should we.

The SPEAKER. The Chair thanks the gentledady.

The Chair recognizes the gentleman from Montgomery, Mr. Leach.

Mr. LEACH. Thank you, Mr. Speaker.

On the issue of constitutionality.

As I understand, the chairman’s argument is that we are violating the defendant’s right to a trial by jury, because the defendant is the one with constitutional rights, if we do not allow the jury to determine everything which may disqualify him or her from the death penalty. That is, with all due respect to the chairman, simply not true, and there is an easy example to demonstrate that.

Another bar, similar to the bar that says you cannot execute retarded people, is the United States Supreme Court decision that you cannot execute people under 16. However, there is no constitutional right to submit the question of whether a defendant is under 16 to a jury. We would never do that. The judge determines, the judge looks at his birth certificate or whatever and determines whether he is 16 or not. It is a pretrial determination. It is exactly analogous to what we are discussing now.

And I think, you know, we just had the Democratic chairman of the Judiciary Committee wisely say that my amendment was probably too complicated to discuss on the floor. I agree, and I withdrew my amendment, but it is the same thing. I mean, on most of these constitutional issues, most of us have no idea whether it is constitutional or not. If we read a 50-page brief on either side and heard oral arguments, you know, we may have an opinion on it, and even then the Supreme Court might split 4 to 3 on it.

So, you know, my point is, we should not use constitutionality as a method to avoid actually confronting issues. I mean, no one knows if this is unconstitutional. My analogy, I think, proves it is not unconstitutional, Ms. Manderino’s amendment, which passed the Senate, incidentally, 48 to 1. But I do not think we should blithely use constitutionality to avoid actually discussing real issues. I think we should vote this as constitutional and then vote it up or down depending on the merits of it, and I have some things to say

and I know others do on the merits of it. So I would ask for a “no” vote, Mr. Speaker.

Thank you.

Oh, I am sorry, Mr. Speaker. One more point, if I may.

Since the defendant is the one with the constitutional right, it would be very easy to cure any constitutional defect with a waiver provision, allowing the defendant to waive a pretrial determination and demand a jury trial. But allowing a pretrial determination by the defendant does not violate the defendant’s constitutional rights. I mean, this is relatively straightforward, black-letter law.

Thank you, Mr. Speaker. A “yes” vote.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Philadelphia, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, I am somewhat saddened that we are even having this conversation, especially on whether or not this amendment is constitutional.

Mr. Speaker, mental retardation is a condition. The Atkins case left open the door of how we go about addressing that condition, and that door allows us to either make a determination prior to trial or allow the jury to make such a determination. But it is a question that has been left for legislatures throughout this country to address.

The author of the amendment believes that the question of whether or not mental retardation is an existing condition and a death penalty case is one that should be subjected to a pretrial determination and not one that should be subjected to a jury. Mr. Speaker, it is a matter of law, not one of fact. The only question is, at what point in the process do you make the determination, and because she suggested by and through her amendment that that determination should be made prior to trial rather than under existing statutes and/or under SB 97 is one that is clearly open for debate, open for debate and, oh, subject to a “yes” or “no” vote.

To raise the question of constitutionality is tantamount to running interference on the debate. It is tantamount to train-wrecking the debate. It is tantamount to practicing avoidance behavior with respect to the debate. It is not a substantive problem. There is not a substantive problem that runs to the constitutionality of this issue. And so, Mr. Speaker, to that end we should be allowed to debate on whether or not mental retardation determinations are made prior to trial or during trial or posttrial. We should be allowed to do that, and we should not, we should not utilize the tool of constitutionality, especially our Constitution, which is one of the most precious documents in this country. It is the foundation upon which we govern ourselves. It is not a tool of interference; it is not a tool of frustration; it is not a tool of avoidance behavior. It is a very precious tool, and, Mr. Speaker, I urge my colleagues on both sides of the aisle to vote “yes” on the constitutionality of this amendment, and let us move on with whether or not we support the amendment. But the amendment clearly is not unconstitutional.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Union, Mr. Fairchild.

Mr. FAIRCHILD. Thank you, Mr. Speaker.

I rise to state and urge my fellow legislators to concur with Representative Manderino that this is a constitutional

amendment. I say so because I followed this issue probably from the very beginning because my Senator, Senator Helfrick, was very involved in it. Myself and many members of the General Assembly here in a bipartisan fashion held hearings all across the Commonwealth on many mental retardation issues. And I really find it amazing that all of a sudden we are saying that this is unconstitutional, what we are trying to do here. I suspect, and I am not an attorney, but I suspect many other States have Constitutions that say trial by jury, rights by jury, but what we are doing here today, we are not saying that a person gets let loose because a judge pretrial found that they had mental retardation or did not have mental retardation. That is not the intent. That is not what the Atkins decision said. The Supreme Court simply said that you cannot execute a person with mental retardation.

What the Manderino amendment does is essentially restore Senator Helfrick's language in SB 26 back in its original form concerning the pretrial issue. That issue was debated greatly in the Senate, and by the way, the Senate had hearings on this for, I think they went on all day. To my knowledge, this bill did not have a hearing. They spent many, many hours and days working out the issues. At the end of the day, this came down to the vote of 38 to 11 to advocate and to keep the pretrial issue. The final vote was 48 to 1, but the key vote, the key vote that is addressed by the Manderino amendment, was 38 to 11.

I do not think there was a constitutional question in the Senate's mind. I do not think there was a constitutional question in a lot of people's minds until we came to this as a tactic to try to derail the amendment.

I would like to speak on the amendment, but I have tried to keep it to the constitutional issue, and I thank you very much, and please do not leave this issue die. Follow us with the Manderino amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentlelady from Montgomery, Ms. Weber.

Ms. WEBER. Thank you, Mr. Speaker.

I rise in support of Chairman O'Brien's motion on constitutionality. As he aptly pointed out, the United States Supreme Court has ruled that a defendant's Sixth Amendment right is protected when issues of fact are determined by a jury, not a judge, and whether an accused falls within the definition of mental retardation is an issue of fact. I would note, however, that the definition of "mental retardation" certainly is different than the definition of "age 16." The definition of mental retardation is something that involves that of an area of expertise that will be an issue of fact for a jury to decide.

But I would like to also remind this body that in 1998 it amended the Pennsylvania Constitution, Article I, section 6, to permit another fundamental right, and that is the Commonwealth's right to a jury trial. Under the Pennsylvania Constitution, the Commonwealth of Pennsylvania, the attorneys representing the Commonwealth of Pennsylvania in criminal matters have the right to request a jury trial. The Manderino amendment would not only remove a defendant's right to a jury trial on the issue of fact regarding mental retardation; it would also remove the recognized Commonwealth's right to have a jury trial on an issue of fact regarding mental retardation.

So I would strongly urge the members of this House to vote that the Manderino amendment is unconstitutional.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentleman from Lehigh, Mr. Reichley.

Mr. REICHLEY. Thank you, Mr. Speaker.

Representative Weber did such a good job; I do not know that there is too much more to add, but let me just offer a couple of observations here.

As she just stated, this is not an issue which would be blatantly obvious in raising constitutional issues such as the defendant's race, if one was discriminated against, or age, as the gentleman from Montgomery County raised. This is not a hard-and-fast determination. And I do not know if other members in the chamber have prosecuted or defended death penalty cases; I have. This is not an issue to be taken lightly by a prosecutor. You have to formulate the necessary facts.

But what the Manderino amendment would do is to inject a pretrial agenda into the ultimate disposition of responsibility. Under the current statute, a defendant would not be somehow precluded from having to be proven by the Commonwealth beyond reasonable doubt that he had both specific intent and malice, because when you put this as a pretrial determination, you are taking the sentencing aspect away from a jury without regard to what the conviction is. The fact-finder must still determine whether the defendant was able to formulate specific intent and possess malice; a defense attorney would still be able to offer motions of incompetency to stand trial, offer a defense of diminished capacity at trial – none of which would be prevented by the current bill – and the Manderino amendment would take to more or less wipe out the jury's ultimate determination in this.

We have had a situation in Philadelphia, Mr. Speaker, where I think many members are aware that a judge who evaluated the case of a person who was running an illegal drug operation had ordered the deaths of other individuals was somehow now, upon conveniently finding an expert witness who could say, well, this person is retarded, now a judge, making a pretrial determination, took the responsibility question away from a jury of that person's peers and unilaterally, singlehandedly precluded that person from facing a jury in full aspect of what the consequences of the act could be.

So I am asking the members to find that the Manderino amendment is unconstitutional. As was mentioned before by the chairman of Judiciary, the Supreme Court decision in *Arizona v. Ring* found that specifically questions of the death penalty must be provided to a jury; it cannot be provided to a judge.

The Atkins decision, which has been waved around much, I relooked at it tonight. The decision does not require a pretrial determination. It does not even define what mental retardation is. That is why this question has been left to the States. But most importantly, even in the majority opinion, it writes that mentally retarded persons frequently know the difference between right and wrong and are competent to stand trial, and that means a defendant can be convicted of murder in the first degree and can be subjected to the death penalty.

Mental retardation is not a hard-and-fast concept. It is a fluid and ever-evolving notion, which has to be determined by a fact-finder of jurors, and I urge the Assembly to reject the Manderino amendment and approve the O'Brien motion to find it unconstitutional.

Thank you.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Luzerne, Mr. Blaum.

Mr. BLAUM. Thank you, Mr. Speaker.

So as not to take the time of the members of the House, let me say that I associate myself with the comments of Representatives Weber, Reichley, and Dennis O'Brien that this amendment is unconstitutional and should be found that way, and I ask the members for a negative vote, and we will then have before us a very fine piece of legislation.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the gentleman from Westmoreland County, Mr. Pallone.

Mr. PALLONE. Thank you, Mr. Speaker.

I rise in support of the constitutionality of the Manderino amendment. As much as this is such a rudimentary procedure that she is suggesting by her amendment, it does not change the factual determinations by the jury and/or the bench in the regular trial. All the amendment asks for is, very simply put, a predetermination at the beginning of the trial to determine the existence or the nonexistence of the mental retardation. It does not change anything else procedurally in the trial. All it does is allow for a determination on the front side to determine whether or not the individual meets the standard for mental retardation, and all it then prevents from happening is that individual being eligible for the death penalty.

While we certainly do not want to encourage crime at any standard, we have extenuating circumstances here, particularly when the actor is an individual who has a mental disability. It is very simple, very plain. It does not change anything else in the procedure of the trial. It does not change the determination of the fact. It does not change the position of the Commonwealth. It does not change the position of the defense. They still have to put on a case. All this does is give the individual the opportunity, if they have the preexisting mental condition that meets the standard for mental retardation, that it prevents them from getting the worst penalty under the standards of death.

That is all it does. It does not change the procedure. It does not change anything else. All this is, is treating an individual with exceptional circumstances under a standard that says, you either are or you are not mentally retarded, and that is not a factual determination as to what happened in a particular case or in this particular crime. It is a standard that that individual meets, whether or not he or she committed a crime. It is, they either are mentally retarded or they are not. It does not change anything else other than the penalty that the individual may or may not be eligible for by the standard of death.

All I can say is, it affords an exceptional individual with circumstances that give him or her the opportunity to be treated fairly under exceptional circumstances.

This body, to try and determine, to avoid letting this issue come to fruition only on the issue of constitutionality is just an avoidance of what really should be done. All we can do is encourage you all to vote in favor of the Manderino amendment and allow an individual with exceptional circumstances to be able to be treated fairly when they are in a situation, they are in a criminal proceeding.

All it does is change the determination of mental retardation on the front side of the trial. It does not change anything else. The rest of the case goes on. The Commonwealth has to meet

their burden. The defense has to meet their burden. All it does is change the final ending of the case where the individual will not be eligible for the death penalty if he or she is predetermined to be mentally retarded.

We need to afford individuals in situations like this an exceptional standard, so please consider it and vote in favor of the Manderino amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Delaware, Mr. Gannon.

Mr. GANNON. Thank you, Mr. Speaker.

I rise to urge a vote that this amendment is not constitutional. It is unconstitutional.

Now, Mr. Speaker, I was listening to some of the other remarks from prior speakers, and from the tenor of their remarks, you would think we were debating whether or not we are going to deal with the issue of the execution of folks that are mentally retarded. That is not what this is about. We are addressing that issue, and when this amendment is declared unconstitutional, we are going to get to the bill in chief, which is a question of whether or not we should prevent the execution of people who are actually, really, and truly mentally retarded.

Now, this amendment is unconstitutional, Mr. Speaker, because it opens up all kinds of avenues and troubling arguments and troubling scenarios with respect to somebody who claims that they are mentally retarded, alleges that they are mentally retarded, and only has to show that to one person.

The way the bill speaks, when we get past this amendment, it says that that is a question of fact to be put forward by the defendant if he so wishes and to be determined by the jury. That is where this belongs. We are going to address that issue, and these comments and remarks that, oh, if we do not do this amendment, we are going to have mentally retarded people being executed all over the place, that is not true. It begs the argument, and it is an attempt to get this amendment before this body, an amendment that is clearly unconstitutional, that will provide all kinds of mischief, mischievous opportunities for perpetrators of the most heinous crimes, the most heinous crimes, and we will talk about some of those crimes when we get to the amendment in chief, Mr. Speaker.

I urge a "no" vote on this amendment. I urge a "no" vote on constitutionality. It is unconstitutional.

The SPEAKER. The Chair thanks the gentleman for that clarification.

The Chair recognizes the majority leader, the gentleman from Jefferson, Mr. Smith.

Mr. S. SMITH. Thank you, Mr. Speaker.

I also would like to urge the members to vote that the amendment is not constitutional, hence a "no" vote.

While there certainly has been a lot of discussion on this and some of it from kind of a purely legal perspective, I think from just the layman's perspective, it is simple enough to say that this amendment, the reason it is unconstitutional is that it would violate the defendant's and the Commonwealth's, not just the defendant but the defendant and the Commonwealth's, right to a jury trial, and I think that is something that is significant and certainly warrants a "no" vote relative to the constitutionality of that.

There are several law enforcement agencies that are in concurrence with that opinion, that would like to see this bill

passed as it is without the Manderino amendment, and because of its unconstitutionality, you know, the associations of district attorneys, the Attorney General’s Office, the F.O.P. (Fraternal Order of Police), the coalitions of crime victims organizations, which includes families of murder victims, on behalf of each of these organizations, I would urge a “no” vote on the constitutionality of the Manderino amendment.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

LEAVES OF ABSENCE

The SPEAKER. The Chair returns to leaves of absence and recognizes the majority whip, who moves for a leave of absence for the gentleman, Mr. PHILLIPS, and the gentlady, Mrs. CRAHALLA. Without objection, those leaves will be granted.

CONSIDERATION OF SB 97 CONTINUED

The SPEAKER. Those voting “aye” will vote to declare the amendment to be constitutional; those voting “no” will vote to declare the amendment to be unconstitutional.

On the question recurring,

Will the House sustain the constitutionality of the amendment?

The following roll call was recorded:

YEAS—79

Table with 4 columns of names: Adolph, Bebko-Jones, Belardi, Belfanti, Biancucci, Bishop, Butkovitz, Buxton, Cawley, Cohen, Costa, Curry, Daley, DeLuca, Dermody, DeWeese, Diven, Eachus, Evans, D., Fabrizio, Fairchild, Forcier, Frankel, Freeman, Gergely, Good, Goodman, Haluska, Hanna, Harhai, Horsey, Hutchinson, James, Josephs, Kenney, Kirkland, Kotik, Leach, Lescovitz, Levdansky, Maher, Manderino, Markosek, Melio, Mundy, Myers, Nickol, O’Neill, Pallone, Petrarca, Petrone, Pistella, Preston, Raymond, Readshaw, Roebuck, Ross, Ruffing, Samuelson, Sather, Schroder, Scrimenti, Shaner, Stetler, Sturla, Surra, Tangretti, Thomas, Tigue, Travaglio, Vance, Veon, Vitali, Wansacz, Washington, Waters, Wheatley, Williams, Wilt

NAYS—120

Table with 4 columns of names: Allen, Argall, Armstrong, Baker, Baldwin, Bard, Barrar, Bastian, Benninghoff, Birmelin, Blaum, Boyd, Browne, Egolf, Evans, J., Feese, Fichter, Fleagle, Flick, Gabig, Gannon, Geist, George, Gillespie, Gingrich, Godshall, Lewis, Lynch, Mackereth, Maitland, Major, Mann, Marsico, McCall, McGeehan, McGill, McIlhattan, McIlhinney, McNaughton, Rubley, Sainato, Santoni, Saylor, Scavello, Semmel, Smith, B., Smith, S. H., Solobay, Staback, Stairs, Steil, Stern

Table with 4 columns of names: Bunt, Caltagirone, Cappelli, Casorio, Causer, Civera, Clymer, Coleman, Cornell, S. E., Corrigan, Coy Hess, Creighton, Cruz, Dailey, Dally, Denlinger, DiGirolamo, Donatucci, Grucela, Gruitza, Habay, Harhart, Harper, Harris, Hasay, Hennessey, Herman, Hershey, Petri, Hickernell, Keller, Killion, LaGrotta, Laughlin, Lederer, Leh, Metcalfe, Micozzie, Millard, Miller, R., Miller, S., Mustio, Nailor, O’Brien, Oliver, Payne, Yewcic, Pickett, Reed, Reichley, Roberts, Rohrer, Rooney, Stevenson, R., Stevenson, T., Taylor, E. Z., True, Turzai, Walko, Watson, Weber, Wojnarowski, Wright, Youngblood, Yudichak, Zug, Perzel, Speaker

NOT VOTING—0

EXCUSED—4

Table with 4 columns of names: Crahalla, Phillips, Rieger, Taylor, J.

Less than the majority having voted in the affirmative, the question was determined in the negative and the constitutionality of the amendment was not sustained.

On the question recurring,

Will the House agree to the bill on third consideration?

Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.

The question is, shall the bill pass finally?

The Chair recognizes the gentleman, Mr. Leach.

Mr. LEACH. Mr. Speaker, just a few comments on the merits of the bill.

First, I would commend the author of the legislation for the hard work I know that went into this legislation. I just do think there are a couple of objections which we have to talk about.

One of the main objections – and I think this is a constitutional objection – is this: The Supreme Court has said that we may in death penalty cases death-qualify a jury. That means we can eliminate from the jury people who oppose capital punishment. The Supreme Court acknowledged numerous studies which showed that these juries, death-qualified juries, are more likely to convict. But the Supreme Court said, that is okay; we accept that, but we still have to allow it, because you could not have a death penalty if you allow jurors on the jury who are unwilling to administer the death penalty or unwilling to provide for the full range of punishment.

However, I do not believe the Supreme Court sanctions death-qualifying a jury and therefore in essence stacking the deck against the defendant when the defendant is, from the moment he is born, ineligible for the death penalty. Keep in mind that this is not like some cases where someone is tried, the jury is death qualified, and then he becomes ineligible for the death penalty because of some prosecutorial misconduct or because some fact comes out that indicates it was not really first-degree murder or whatever it is. This is a person who was

ineligible for the death penalty the moment the district attorney's office certified the case as a death penalty case.

So what we have is a situation where we have a jury that is death qualified, that is more likely to convict, significantly more likely to convict, and not only that, Mr. Speaker, but the same studies show they are less likely to find, they are less likely to be sympathetic to defenses like insanity and like mental retardation.

So you are taking a jury and eliminating people who are most sympathetic to the claim of mental retardation and more likely to convict the defendant, and I do not believe that you can death-qualify a jury for someone who is ineligible for the death penalty. Think of this scenario: A district attorney who has a tough case – and I know the district attorneys are pushing for this, and God bless them, they are doing their job – but if a district attorney had a tough case, he could file a death penalty certification, even knowing that the jury was going to define that the person was retarded. Let us say it was not even a close case on that. He could file that, get his death-qualified jury, try the case, get his conviction, and at the end of which, all right, the jury finds that he is mentally retarded and ineligible for the death penalty, but the defendant has had a fundamentally unfair trial on the guilt and innocence phase.

The other issue, Mr. Speaker, I want to raise is this: Chairman O'Brien worked very hard and others worked very hard to create a standard, a complicated standard, well thought out, thoughtful standard on what retardation is. If you submit this to a jury in the penalty phase of a trial, we are never going to know if that standard was ever applied. We are never going to have any way of knowing, because we cannot ask the jury what they discussed. We cannot second-guess the jury. We are not even allowed to know what they considered. They come back with a verdict; we do not even know if they said, you know what, he is retarded, but we do not like him and we are going to execute him anyway. We will never have any way of knowing that, and because the factual determinations – and I dispute that this is a factual determination, but if we submit it to a jury, it is – because factual determinations of a jury are not second-guessable on appellate review, we are going to have a situation where the jury is just going to sentence someone to death; we will not be able to know what they considered, and no appellate court will be able to review it, as long as there is some scintilla of evidence, some expert who says that the guy is not retarded, whatever it is, and so this creates a very difficult and I think constitutionally infirm situation.

Keep in mind, if a judge has to determine this pretrial and either the prosecutor or the defendant appeals that determination – they do not agree with that determination – the judge has to write an opinion defending the determination, explaining this is why I thought the guy was retarded, this is why I thought the guy was not retarded, and has to cite cases and explain the prongs of the test and the evidence that came in under the prongs of the test. A jury does not have to do that. In fact, as I said, we cannot ask a jury to do that. A jury simply says, we are going to put him to death, and we hope they applied that complicated legal standard. Even if we were to provide specific interrogatories to a jury, we could never do it in such a way that reflects the standard accurately and guarantees they actually considered the standard and appropriately applied it.

Mr. Speaker, finally, I just want to talk briefly about the white elephant that is in the room here, which is the fact we all

know what this is about. The jury will hear unpleasant facts, and they will be more likely to sentence the person to death and find he is not retarded than a judge dispassionately reviewing the case.

Again, the district attorneys are for this, and let me just say this, Mr. Speaker. With all due respect to the chairman and the author of this bill, and I mean that from the bottom of my heart – the chairman is a very, very bright man and a very fair chairman, and I have the utmost respect for him – but I do not understand the argument that, well, I have a lot of bona fides as a defender of disabled people, and therefore, trust me on this. The fact is, whatever bona fides you have, this is not about protecting disabled people. The district attorney's office, the district attorneys of the Commonwealth, would not be supporting this legislation if they thought it made it more difficult to have people convicted and sent to death. That is their job. I do not disagree with their position in terms of their right to have it, but the district attorneys are not here trying to make sure we get the absolute most protection for the defendants in these cases; they are here to make it less difficult to convict and less difficult to get the death penalty.

On the other hand, every single, almost every single – that I am aware of – advocacy group for the disabled and the retarded opposes a pretrial determination. They are not doing that because they want to make it more difficult and they want to provide less— I mean, I am sorry; I misspoke. They oppose a posttrial determination. I thank all my various correctors out there. They oppose that. Now, they do not oppose it because they want to make it easier.

The fact is, Mr. Speaker, this is going to result in more people who are retarded being sentenced to death. That is obvious. It is going to result in more people who claim to be retarded, one way or another, being sentenced to death. So I do not think we can say this is about protecting the retarded or protecting disabled people. It is not. And, Mr. Speaker, I think we ought to face that.

Finally, Mr. Speaker, keep in mind, this very procedure, this posttrial determination in Chairman O'Brien's bill, was considered by the Senate in an amendment in the Senate. It was defeated, I believe, 37 to 11. Senator Orie, a former prosecutor; Senator White, I believe a former prosecutor, all spoke eloquently about why that is not the appropriate determination, and I urge you to look at their testimony.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The gentlelady from Luzerne, Ms. Mundy.

Ms. MUNDY. Thank you, Mr. Speaker.

Without the Manderino amendment, this is a bad bill.

The Senate had it right. They said use the carefully crafted definition of what determines whether someone is mentally ill and apply it pretrial and go forward.

Now, in caucus I asked the proponents of this bill about the cost involved here, and the answer was somewhat vague. They had some kind of an e-mail or a memo from the district attorneys saying that there were no real additional, substantial costs; that on the contrary, the costs would be incurred if we did it, if we made this determination, pretrial as opposed to posttrial.

Well, then that did not sound right to me. I am not a lawyer; I am just a businesswoman, but I like to apply some common sense to these issues, and I know that when you are going for

the death penalty, you have to tell the judge and the jury that before you even pick a jury. So I set about trying to gather some information about the cost of the death penalty and what the implications would be for this bill, and this is what I learned.

There was a Kansas study. In its review of death penalty expenses, the State of Kansas concluded that capital cases are 70 percent more expensive than comparable non-death-penalty cases. The investigation costs were three times greater than non-death-penalty cases. The trial costs were 16 times greater than for non-death-penalty cases.

Indiana's death penalty is 38 percent greater than the total cost of life-without-parole sentences.

North Carolina spends more per execution than on a non-death-penalty murder case. The most comprehensive death penalty study in the country in North Carolina found that the death penalty costs North Carolina \$2.16 million more per execution than a non-death-penalty murder case.

Florida spends millions extra per year on the death penalty. Florida would save \$51 million each year by punishing all first-degree murderers with life in prison.

California spends \$90 million annually above and beyond the ordinary costs of the justice system on capital cases. Florida spent an average of \$3.2 million per execution from 1973 to 1988. Texas death penalty cases cost more than noncapital cases. That is about three times the cost of imprisoning someone in a single cell at the highest security level for 40 years.

Now, this is what I found when I did some research on the cost of the death penalty, and when you apply it to this bill, common sense would dictate that before you incur all these enormous additional costs, before you incur all these enormous additional costs, you should use the carefully crafted standard for whether a person is mentally retarded or not and go forward from there. It makes absolutely no sense to me to wait until you have spent all this additional money, only to find that you cannot execute this person because he or she is mentally retarded.

Let common sense rule here, Mr. Speaker. Please vote against SB 97 and for the Senate version of the Atkins case.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentlelady from Philadelphia, Ms. Manderino.

Ms. MANDERINO. Thank you, Mr. Speaker.

I rise against SB 97 on final passage.

A couple of my colleagues asked me, after my amendment was ruled unconstitutional, well, we want to vote "yes" on final passage anyway because this is better than nothing, and my answer is absolutely not.

Let us make one thing clear: Pennsylvania cannot execute mentally retarded people. They cannot execute mentally retarded people. Whether we pass this bill or not will not be the determination of, well, now we are going to execute mentally retarded people because we did not get something passed on the books. The Atkins decision was decided in 2002. Since the Atkins decision was decided, a number of States have revamped their laws, and we are in the process of revamping ours, but I believe it is important that we do it right.

Since the Atkins decision was made, which says you absolutely cannot execute mentally retarded people, eight States have reviewed and revised or enacted new laws. Seven of those

States – California, Delaware, Idaho, Illinois, Louisiana, Nevada, and Utah – have implemented pretrial determination of mental retardation. Only one State, Virginia, has instituted postconviction determination of mental retardation. But make no mistake about it – whether it is SB 97, SB 26, or some compromise version in between there, until we get an affirmative decision on the books, we still are not allowed to execute mentally retarded people. So I say let us do it right.

In support of a pretrial determination and against the procedure that is in SB 97 is the ARC of Pennsylvania, formerly the Association for Retarded Citizens; Pennsylvania Protection & Advocacy; the Disability Law Project; the Institute on Disability; the MH/MR Pennsylvania Coalition; Spina Bifida; United Cerebral Palsy; Vision for Equality; the Pennsylvania Disabilities Council. All are against SB 97 in its current form.

Earlier on the issue of constitutionality, I read to you some of the constitutional concerns that Professor Ellis, who argues the Atkins case, made in favor of pretrial determination, but I did not share with you, because it was not appropriate at that time, some of his practical concerns, and so I would like to do that now.

"The foremost issue is just practical. Given that capital trials are substantially more costly (and stressful) than noncapital cases, there would need to be a particularly weighty reason for proceeding with a case as a capital prosecution of the defendant was, because of mental retardation, not eligible for the death penalty.... A useful comparison would be to the statutory age limit for the death penalty. I believe that no one would propose preparing for and conducting a costly capital trial, and only after the defendant's conviction would the defendant's birth certificate be examined to decide whether..." or not it should have been a capital case at all. "Similarly with mental retardation, the question of death eligibility should be determined before those resources are wasted.

"There is another, perhaps even more persuasive, practical reason for pretrial determination of...mental retardation.... We now have experience, sometimes extending a decade and more, from States that have had statutory protections for defendants with mental retardation. The results of that experience are instructive. In those States that provide for pretrial determination" – and I want to stop and emphasize this, because there has been a lot of rhetoric about frivolous appeals and dragging things on for years and how everybody is going to do this and we will never get any business done – the fact of the matter is that "in...States that provide for pretrial determination, it has turned out that relatively few cases proceed to contested hearings at all. An example of such a State is Tennessee, which enacted its law in 1990. Once prosecutors and defense lawyers and judges become familiar with mental retardation evaluations, most cases are resolved by agreement, involving either acceptance of a guilty plea or withdrawal of the mental retardation claim. By contrast, those few States that postpone the mental retardation issue until after verdicts find that relatively few cases settle and that 'battles of the experts' become the rule rather than the exception."

And finally, on the question before us right now, Professor Ellis says, "...Senate Bill 97, as currently drafted, would do substantially more harm than good in Pennsylvania's criminal justice system. Although I believe that appropriate legislation can be enacted, it would be better to have no legislation at all than to enact S.B. 97 in its current form."

I agree with that assessment. I ask you all for a negative vote.

Thank you.

The SPEAKER. The Chair thanks the gentlelady.

The Chair recognizes the gentleman from Philadelphia, Mr. Thomas.

Mr. THOMAS. Thank you, Mr. Speaker.

Mr. Speaker, I rise to oppose SB 97, and I rise to oppose it, Mr. Speaker, for a number of reasons.

Number one, Mr. Speaker, the Atkins court made it very clear, subjecting the mentally retarded to death penalty cases is wrong as a matter of law and fact, as a matter of law and fact, because the court determined that the mentally retarded is ineligible, ineligible, for that kind of exposure.

Mr. Speaker, we have heard that costs associated with pretrial determinations, for some reason or another, are going to overburden the courts and drag out many cases. Mr. Speaker, if my memory is correct, there has been a determination made that over 180-some people have been wrongly executed in this country, wrongly executed in this country, exposed to trials that have been fundamentally unfair, because as we know, when you look at the question of American jurisprudence in our criminal procedures, it sometimes becomes a question of haves versus the have-nots; that if you have the money and the talent, you win over those who are without the money and talent.

Mr. Speaker, we declared that pretrial determination of one's condition is unconstitutional, so now we are faced with this whole debate of posttrial determinations, and, Mr. Speaker, I say that SB 97 should go down on its face, because once you open the doors to trial, once the door is opened, juries are going to be influenced by facts that are presented to them prior to such a determination of whether or not the defendant was mentally retarded. They are going to be unfairly influenced, and ultimately that influence is going to affect their decisionmaking during that posttrial process.

So on the question of costs, Mr. Speaker, I think that when we start talking about taking a life for a life, we tell young people and tell people, thou shalt not kill, but now we are discussing government-sponsored death, and, Mr. Speaker, for me, the question of "thou shalt not kill" applies both to man and to government. And now we are debating on whether or not an individual who is born, who is born handicapped, whether or not there should be special circumstances. We should prosecute him first and then ask the question of whether or not they were born with a lag in their development or whether they were born with an IQ above or below a certain level. Mr. Speaker, in this whole notion about letting the jury decide, juries more often than not will decide unfairly because of the early exposure prior to that determination, making that determination of retardation.

And last but not least, Mr. Speaker, we need to, we need to get back, get back to the protection of life. We need to get back to dealing with, follow the Atkins court. We need to get back to determining that mental retardation is what it is, and those who are mentally retarded should be ineligible, ineligible for death penalty cases.

Has our passion, has our passion to kill been elevated to such a level that we can afford to now talk about whether the mentally retarded should die or not, whether we should start talking about— I remember in the early days, if you were mentally retarded, you were kept in a back room away from everybody. In some cases they killed them at birth if they

thought they were mentally retarded. Now, we are not doing that today, but any time we entertain the notion of whether a determination should be made, then, Mr. Speaker, we have gone too far.

And so in closing, I say vote "no" on SB 97, because number one, we ran out when we had an opportunity to look at this whole question of pretrial determination about one's condition; we ran out on declaring it unconstitutional. Secondly, Mr. Speaker, there are no costs that are too much, there are no costs that are too much that outweigh, outweigh the opportunity to be correct in the end, so this whole notion of costs is a false one.

And last but not least, this bill provides for post, posttrial determinations, posttrial determinations. In other words, we are going to present to the jury, a jury that has already been exposed to facts that taint the defendant's, taint the defendant's case, and if it happens to be a poor defendant, he or she is in big trouble.

So this whole notion of posttrial determination is wrong, Mr. Speaker, because it is going to overly influence the jury's decisionmaking because of their early exposure, and so I ask my colleagues on both sides of the aisle, on both sides of the aisle — men, women, public policymakers, folks with hearts and compassion — stop this train now; vote "no" on SB 97, and let us get on to public education, jobs, economic stimulus. Let us get on to those things that can make Pennsylvania a great State, a great State. Vote "no" on SB 97.

Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Lehigh, Mr. Reichley.

Mr. REICHLEY. Thank you, Mr. Speaker.

As some of the previous members have referred to, this is a very serious situation, but I would like to bring some factual focus back into clarity in this entire conversation.

We have heard a lot of rhetorical hyperbole, which would almost make you think that mentally retarded individuals are going to be shoved into rooms at the State prisons to be executed, and that is far from the truth.

This bill will create more protections for those individuals who would be able to assert they are mentally retarded and therefore should not be subjected to the death penalty. This is not a situation such as the gentleman from Montgomery County implied where prosecutors are hanging around like blood-thirsty vultures, waiting for some kind of mentally retarded or mentally diminished individual to come along to prosecute. These are serious accusations made by a prosecutor who would take the step of asking 12 strangers to end another person's life. It is not something done in some willy-nilly, backroom fashion.

And for the other speakers to imply that somehow these should be evaluated under dollars-and-cents evaluations, that other States have spent millions of dollars on the death penalty defendants over the non-death-penalty defendants, I would offer to the lady from Luzerne County that every single penny was spent wisely in those situations, as it is in Pennsylvania, from the defense perspective, because it might prove that the defendant is ultimately innocent, but also if you ask the families and the friends of those victims, they would tell you, every penny was well worth it, if that person was brought to ultimate justice.

We have also heard reference to the fact that people are mentally retarded, and therefore, you cannot execute the

mentally retarded, but no one here tonight has been able to tell you what the Supreme Court defined as mentally retarded, because they did not, because there is no set definition of mental retardation. It is not like 2 plus 2 equals 4.

That is why you would have a situation under this bill where a defense counsel will first be able to offer the issue the defendant is not competent to stand trial. He will then be able to offer a trial defense of diminished capacity – the defendant could not formulate specific intent. If the defendant is convicted after all that of murder in the first degree, then that same defense attorney will be able to put on witnesses to testify before the jury of the defendant's mental retardation.

And to counter the statement from the gentleman from Montgomery County, appellate courts throughout Pennsylvania review factual determinations all the time made by juries based upon the evidence, based upon the testimony of witnesses such as experts, and the appellate courts will be able to determine if in fact the jury had a reasonable, factual basis to come to its conclusion.

I know this may sound like just going on or a lot of rhetoric, but we are doing this for a purpose today, for making a legislative record, because appellate courts years from now are going to look back at the debate and decide what our motivations and what our intentions were when we passed this legislation, as we should in the next minute.

This is meant to protect defendants, giving them an opportunity to defeat the charges at trial, to prevent the imposition of a death penalty in a postguilt process, and then go on to offer mitigating evidence during the death penalty phase.

And it is most important to remember that this is a situation that can be obviated by 1 single vote on that panel of 12 people who have gone through the benefit of hearing trial evidence and then postconviction evidence. If just 1 juror of the 12 decides that they cannot vote that the person is not mentally retarded, that they would find the person mentally retarded, the whole process ends, and that defendant gets life in prison.

This is not some kind of processing machine or conveyor belt sending defendants who perhaps have mental difficulties down to a sentence of death. This is a well-reasoned, well-thought-out bill. I applaud the Judiciary chairman for marshaling this through the committee and urge all members to vote "yes" on SB 97.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Union, Mr. Fairchild.

Mr. FAIRCHILD. Thank you, Mr. Speaker.

During the Vietnam era, I was called upon to serve our country in Vietnam, and during that service I was in the infantry, and yeah, I took other people's lives. It is not something I readily admit. I am doing it here today because this is such an important issue. I know there are others in here who have served their country and also have done the same.

But today we are really talking about an issue that I think is paramount. I think the Senate realized that. I think if we pass the bill as it is today, it is going to come back to us, if not from the Senate, I believe that the Supreme Court will send this back to us someday.

I would just like to read you another story that I received on the Internet. I think a lot of it is perhaps apropos to this issue, and I will tell you how.

The story goes like this: "A story is told about a soldier who was finally coming home from the war. He called his parents from San Francisco. 'Mom and Dad, I'm coming home, but I've a favor to ask. I have a friend I'd like to bring home with me.' 'Sure,' they replied, 'we'd love to meet him.' 'There's something you should know,' the son continued. 'He was hurt pretty badly in the fighting. He stepped on a land mine and lost an arm and a leg. He has nowhere else to go, and I want him to come live with us.' 'I'm sorry to hear that, son. Maybe we can help him find somewhere to live.' 'No, Mom and Dad, I want him to live with us.' 'Son,' said the father, 'you don't know what you're asking. Someone with such a handicap would be a terrible burden on us. We have our own lives to live, and we can't let something like this interfere with our lives. I think you should just come home and forget about this guy. He'll find a way to live on his own.' At that point, the son hung up the phone. The parents heard nothing more from him. A few days later, however, they received a call from the San Francisco police. Their son had died after falling from a building.... The police believed it was suicide. The grief stricken parents flew to San Francisco and were taken to the city morgue to identify the body of their son. They recognized him, but to their horror they also discovered something they didn't know, their son had only one arm and one leg.

"The parents in this story are like many of us. We find it easy to love those who are good looking or fun to have around, but we don't like people who inconvenience us or make us feel uncomfortable. We would rather stay away from people who aren't as healthy, beautiful, or smart as we are."

Well, unfortunately, Mr. Speaker, in today's society, many people with disabilities are still looked upon as second-class citizens and do make people uncomfortable. After a murder trial of an MR person that will probably expose a heinous or heinous acts of violence, will that prejudice prevail throughout the jury?

A person's mental retardation makes them vulnerable during the trial itself, which is why it is important to decide one's mental retardation before the trial commences. Consider the following:

People with mental retardation are often ashamed of their label and will go to great lengths to hide it. They may wrap themselves in a cloak of competence and try to appear smarter. In his last telephone conversation with his lawyers before he was executed, Jerome Bowden talked about the IQ test. "I tried real hard," he said. "I did the best I could." Jerome Bowden was executed on June 24, 1986.

The issues around communication for people with mental retardation can be very problematic. When persons do not understand what is being asked and the very nature of the disability makes it difficult for them to express themselves, it can lead to a number of problems. There is often an inability to reason abstractly and everything is very concrete. Eddie Mitchell, a man on death row in Louisiana, waived all his rights during interrogation. When an attorney asked if he had understood what waiving his rights meant, Mitchell raised his right hand and waved.

Individuals with mental retardation often have the desire to please persons in authority. They may look to authority figures for answers if they do not know how to answer. While in police custody, Earl Washington waived his Miranda rights and, after a lengthy interrogation, confessed to five crimes, including the stabbing death of Rebecca Williams. He told police that

Rebecca was black (she was in fact white), that she was short (she was 5 foot 8 inches tall). He said he kicked the door down (the door was not damaged), that he stabbed her 2 to 3 times (she was stabbed 38 times), and that she was alone (her 2 children were present). Earl Washington later recanted his confession and said, "I guess I just agreed with whatever the police told me, that's what I agreed, whatever they said I agreed with I guess." An individual with mental retardation may actually come to believe their own false confession, especially after repeating it several times to authority figures, who then validate its truth. In 2001 Earl Washington walked out of prison in Virginia as a free man. DNA evidence showed that he did not commit the crime for which he was about to pay the consequence of death.

I ask you, Mr. Speaker, to oppose the final version of SB 97. It is not fair and balanced. It is not fair to a person with mental retardation, and ask yourself, I do not know how many of you know people with mental retardation. I know quite a few. I had two institutions in my district. I have one.

As I previously stated on the constitutional amendment by Representative Manderino, I have been around the State. I have probably been to, I think, every institution in Pennsylvania. I have been to group homes, to personal-care homes. I have personal friends who have people with mental retardation, and without a doubt, without a doubt, every one of those persons, if they were accused of a capital murder offense, I would want a panel of experts to evaluate that. I would feel very uncomfortable, knowing what I know about mental retardation, serving on a jury.

There is expertise in this issue, and we need it desperately. This current version is unfair, and I think we make a drastic mistake if we vote for it. Vote "no."

Thank you.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Shall the bill pass finally?

The SPEAKER. Agreeable to the provisions of the Constitution, the yeas and nays will now be taken.

The following roll call was recorded:

YEAS—135

Allen	Eachus	LaGrotta	Rohrer
Argall	Egolf	Lederer	Rooney
Armstrong	Evans, D.	Leh	Ross
Baker	Evans, J.	Lescovitz	Rubley
Baldwin	Feese	Lewis	Ruffing
Bard	Fichter	Mackereth	Sainato
Barrar	Fleagle	Maitland	Santoni
Bastian	Flick	Major	Saylor
Belfanti	Gabig	Mann	Scavello
Benninghoff	Gannon	Marsico	Semmel
Birmelin	Geist	McCall	Shaner
Blaum	George	McGeehan	Smith, B.
Boyd	Gillespie	McGill	Smith, S. H.
Browne	Gingrich	McIlhattan	Solobay
Bunt	Godshall	McIlhinney	Stairs
Butkovitz	Good	McNaughton	Steil
Caltagirone	Goodman	Metcalfe	Stern
Cappelli	Grucela	Micozzie	Stevenson, T.
Casorio	Gruitza	Millard	Tangretti
Causer	Habay	Miller, R.	Taylor, E. Z.
Civera	Hanna	Miller, S.	Tigue
Clymer	Harhai	Mustio	True

Coleman	Harhart	Nailor	Turzai
Cornell, S. E.	Harper	Nickol	Vance
Corrigan	Hasay	O'Brien	Watson
Coy Hennessey	Pallone	Weber	
Creighton	Herman	Payne	Wojnaroski
Dailey	Hershey	Petri	Wright
Daley	Hess	Pickett	Yewcic
Dally	Hickernell	Preston	Yudichak
DeLuca	Hutchinson	Readshaw	Zug
Denlinger	Keller	Reed	
DiGirolamo	Kenney	Reichley	Perzel,
Diven	Killion	Roberts	Speaker
Donatucci			

NAYS—63

Adolph	Frankel	Melio	Stevenson, R.
Bebko-Jones	Freeman	Mundy	Sturla
Belardi	Gergely	Myers	Surra
Bianucci	Haluska	Oliver	Thomas
Bishop	Harris	O'Neill	Travaglio
Buxton	Horsey	Petrarca	Veon
Cawley	James	Petrone	Vitali
Cohen	Josephs	Pistella	Walko
Costa	Kirkland	Raymond	Wansacz
Cruz	Kotik	Roebuck	Washington
Curry	Laughlin	Samuelson	Waters
Dermody	Leach	Sather	Wheatley
DeWeese	Levdansky	Schroder	Williams
Fabrizio	Maher	Scrimenti	Wilt
Fairchild	Manderino	Staback	Youngblood
Forcier	Markosek	Stetler	

NOT VOTING—1

Lynch

EXCUSED—4

Crahalla	Phillips	Rieger	Taylor, J.
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The majority required by the Constitution having voted in the affirmative, the question was determined in the affirmative and the bill passed finally.

Ordered, That the clerk return the same to the Senate with the information that the House has passed the same with amendment in which the concurrence of the Senate is requested.

The SPEAKER. There will be no further votes this evening.

BILLS SIGNED BY SPEAKER

Bills numbered and entitled as follows having been prepared for presentation to the Governor, and the same being correct, the titles were publicly read as follows:

HB 1972, PN 2571

An Act amending Title 34 (Game) of the Pennsylvania Consolidated Statutes, further providing for the offense of resisting or interfering with an officer; and prescribing penalties.

SB 1047, PN 1455

An Act authorizing the sale and transfer of ownership of Project 70 land located in Wharton Township, Fayette County, Pennsylvania.

Whereupon, the Speaker, in the presence of the House, signed the same.

BILL ON THIRD CONSIDERATION

The House proceeded to third consideration of **HB 2519, PN 3830**, entitled:

An Act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes, further providing for grounds for denying employment and for existing or transferred employees; and providing for certificate of employability for certain applicants or employees and for powers and duties of the Bureau of Professional and Occupational Affairs.

On the question,
Will the House agree to the bill on third consideration?

BILL RECOMMITTED

The SPEAKER. The Chair recognizes the majority leader.
Mr. S. SMITH. Mr. Speaker, I move that HB 2519 be recommitted to the Committee on Rules.

On the question,
Will the House agree to the motion?
Motion was agreed to.

The SPEAKER. Any further announcements?

BILLS AND RESOLUTIONS PASSED OVER

The SPEAKER. Without objection, any remaining bills and resolutions on today's calendar will be passed over. The Chair hears no objection.

ADJOURNMENT

The SPEAKER. The Chair recognizes the gentleman, Mr. Wheatley, from Allegheny County.

Mr. WHEATLEY. Mr. Speaker, I move that this House do now adjourn until Tuesday, June 15, 2004, at 11 a.m., e.d.t., unless sooner recalled by the Speaker.

On the question,
Will the House agree to the motion?
Motion was agreed to, and at 7:16 p.m., e.d.t., the House adjourned.