SB 12 By Senators FISHER, GREENLEAF, JUBELIRER, LOEPER, MELLOW, SHAFFER, HECKLER, BELL, HOLL, BRIGHTBILL, MUSTO, STEWART, PORTERFIELD, LEMMOND, ARMSTRONG, BAKER, TILGHMAN, PETERSON, DELP, TOMLINSON, WAGNER, STAPLETON, ULIANA, GERLACH, MADIGAN, RHOADES, SHUMAKER, STOUT, AFFLERBACH, WENGER, SALVATORE, CORMAN, PUNT, ROBBINS, HART, MOWERY, LAVALLE, SCHWARTZ, KASUNIC, DAWIDA, ANDREZESKI and BODACK.

Prior Printer's No. 12. Printer's No. 113.

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for bail.

Referred to JUDICIARY, Jan. 24, 1995
Reported as committed, Jan. 31, 1995
First consideration, Jan. 31, 1995
Second consideration, Feb. 1, 1995
Third consideration and final passage, Feb. 6, 1995 (43-6)
(Remarks see Senate Journal Page 30), Feb. 6, 1995

In the House

Referred to JUDICIARY, Feb. 7, 1995
Reported as committed, March 14, 1995
First consideration, March 14, 1995
Laid on the table, March 14, 1995
Removed from table, March 14, 1995
Re-referred to APPROPRIATIONS, March 14, 1995
Re-reported as committed, March 16, 1995
Second consideration, March 16, 1995
Third consideration, with amendments, April 18, 1995
Final passage, April 18, 1995 (177-22)
(Remarks see House Journal Page 245), April 18, 1995

In the Senate

Referred to RULES AND EXECUTIVE NOMINATIONS, April 19, 1995
Re-reported on concurrence, as committed, April 24, 1995
Senate concurred in House amendments, April 25, 1995 (44-6)
(Remarks see Senate Journal Page 137), April 25, 1995
Signed in Senate, April 25, 1995
Signed in House, April 26, 1995
Filed in the Office of the Secretary of the Commonwealth, April 26, 1995
Pamphlet Laws Resolution No. 3
Passed Session of 1995

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

TUESDAY, APRIL 25, 1995

1995 FIRST SPECIAL SESSION No. 27

SENATE

TUESDAY, April 25, 1995

The Senate met at 4:29 p.m., Eastern Daylight Saving Time.

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the Chair.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Special Session of April 24, 1995.

The Clerk proceeded to read the Journal of the preceding Special Session, when, on motion of Senator FISHER, further reading was dispensed with and the Journal was approved.

LEGISLATIVE LEAVES

The PRESIDENT. The following leaves granted in today's Regular Session will also be granted in the Special Session:

Temporary Capitol leaves for Senator Jones, Senator Dawida, Senator Bodack, Senator Andrezeski, Senator Corman, Senator Robbins, Senator Afflerbach, and Senator Porterfield; and legislative leave for Senator Williams.

HOUSE MESSAGE

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Weekly adjournment.

REPORTS FROM COMMITTEE

Senator GREENLEAF, from the Committee on Judiciary, reported the following bills:

SB 75 (Pr. No. 97)

An Act conferring police powers on Federal law enforcement officers in certain circumstances.

HB 5 (Pr. No. 142) (Amended)

An Act amending the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, further providing for the powers and duties of the Board of Pardons.

HB 6 (Pr. No. 143) (Amended)

An Act amending the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, further providing for investigations and recommendations to the Board of Pardons.

HB 24 (Pr. No. 144) (Amended)

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for a mandatory minimum penalty for delivery of contraband to certain confined persons; and imposing a penalty for possession of a controlled substance by an inmate.

CALENDAR

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 4 (Pr. No. 112) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

Senator FISHER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 4.

On the question,
Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Fisher.

Senator FISHER. Mr. President, on that motion, I would urge that the Members of the Senate do concur in House amendments to Senate Bill No. 4, and while discussing Senate Bill No. 4, I would urge similarly on the next bill on the Calendar that the Senate also concur in House amendments to Senate Bill No. 12.

But in talking about concurrence in the amendments to both of these bills, I think it is important for us to recognize that at this stage in our Special Session the Senate and the House, working collectively in a bipartisan fashion with the Ridge administration, have made what I believe is unprecedented progress in meeting the goals of the Special Session. With the hopeful passage today on concurrence of the two constitutional amendments which are before us and, hopefully, with the passage of House Bill No. 19, the record of both the House and

Senate will be that as of the passage of these two constitutional amendments there will have been 11 bills that will have been signed into law as acts and there will have been 3 constitutional amendments which will have been given final approval by both Chambers.

One of those constitutional amendments is Senate Bill No. 11, a constitutional amendment sponsored by the gentleman from Montgomery, Senator Greenleaf, which was passed for the second consecutive Session by this General Assembly, and it will appear on the ballot this fall. With the passage of Senate Bill No. 4 and the hopeful passage of Senate Bill No. 12, we will then have had two additional constitutional amendments which will have been passed the first time and will be in a position to be considered by the next General Assembly in the next Session.

Mr. President, I think the progress that we have made has not only been an outstanding example of bipartisan cooperation between the Chambers, but the progress that we have made has made a significant change in State law, particularly as it applies to juvenile crime as well as adult crime. There are more bills to be considered in the Special Session. There are about five or six additional bills that were part of the initial phase, as well as perhaps another dozen bills which will be considered in a second phase. But all in all, I think all of us can be proud, the Legislature and the Ridge administration combined, that we have taken historic steps in less than 100 days in this administration to pass some laws which I believe will make the Commonwealth of Pennsylvania a safer place in which to live.

So with that, Mr. President, I would, once again, ask that the Senate do concur in House amendments to Senate Bill No. 4.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator FISHER and were as follows, viz:

YEAS—45

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Shumaker
Armstrong	Heckler	Musto	Stapleton
Baker	Helfrick	O'Pake	Stewart
Belan	Holl	Peterson	Stout
Bell	Jubelirer	Porterfield	Tartaglione
Brightbill	Kasunic	Punt	Tilghman
Corman	LaValle	Rhoades	Tomlinson
Dawida	Lemmond	Robbins	Uliana
Delp	Loeper	Salvatore	Wagner
Fisher	Madigan	Schwartz	Wenger
Gerlach			

NAYS—5

Bodack	Hughes	Jones	Williams
Fumo			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request temporary Capitol leaves for Senator Fumo and Senator Hughes.

The PRESIDENT. Senator Mellow requests temporary Capitol leaves for Senator Fumo and Senator Hughes. Without objection, those leaves will be granted.

CONSIDERATION OF CALENDAR RESUMED

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 12 (Pr. No. 113) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for bail.

Senator FISHER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 12.

On the question,
Will the Senate agree to the motion?

The yeas and nays were required by Senator FISHER and were as follows, viz:

YEAS—44

Afflerbach	Fisher	Loeper	Salvatore
Andrezeski	Gerlach	Madigan	Shaffer
Armstrong	Greenleaf	Mellow	Shumaker
Baker	Hart	Mowery	Stapleton
Belan	Heckler	Musto	Stewart
Bell	Helfrick	O'Pake	Stout
Bodack	Holl	Peterson	Tilghman
Brightbill	Jubelirer	Porterfield	Tomlinson
Corman	Kasunic	Punt	Uliana
Dawida	LaValle	Rhoades	Wagner
Delp	Lemmond	Robbins	Wenger

NAYS—6

Fumo	Jones	Tartaglione	Williams
Hughes	Schwartz		

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SPECIAL ORDER OF BUSINESS GUESTS OF SENATOR CLARENCE D. BELL PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Bell.

Senator BELL. Mr. President, we have in the gallery another group of visitors from southeastern Delaware County. We

entitled "The Administrative Code of 1929," further providing for rights of crime victims and local correctional facilities.

SENATE CONCURRENT RESOLUTION

WEEKLY ADJOURNMENT

Senator LOEPER offered the following resolution, which was read, considered, and adopted:

In the Senate, February 6, 1995

RESOLVED, (the House of Representatives concurring), That when Special Session No. 1 adjourns this week it reconvene on Monday, February 13, 1995 unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when Special Session No. 1 of the House of Representatives adjourns this week it reconvene on Monday, February 13, 1995, unless sooner recalled by the Speaker of the House of Representatives.

Ordered, That the Secretary of the Senate present the same to the House of Representatives for concurrence.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 12 (Pr. No. 12) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for bail.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Fisher.

Senator FISHER. Mr. President, I rise to urge support for Senate Bill No. 12. Senate Bill No. 12 will be the fourth bill that this Senate has considered on final passage during the Special Session on crime over the past 2 weeks.

Mr. President, Senate Bill No. 12 is indeed another important bill in that overall package which tries to improve not just our laws but our Constitution to make it tougher on criminals across this Commonwealth. Mr. President, how many times have we heard from our constituents when they were upset about someone who they learned was out on bail who was subsequently arrested for committing another crime, whether it be for the commission of a crime in stalking an ex-wife, a girlfriend, or whether it be a crime in committing a random shooting in their community after they have been previously arrested and placed out on bail?

Mr. President, one of the reasons for these facts having occurred in this Commonwealth is that our Constitution limits the right of our State courts to deny bail to that one area of cases which are referred to as capital cases, or death penalty cases.

Mr. President, Senate Bill No. 12 proposes an amendment to the Constitution of this Commonwealth which will bring our law in line with the law of approximately 25 other States and the Federal government, which will allow our courts to detain pretrial a person whom the court believes that "no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community...."

Mr. President, I think this is a very needed change in our law for the reasons that I have previously stated. I believe that the State courts across this Commonwealth, when petitioned by the district attorney, should have the right to say once evidence is produced, once a prima facie case is made, that an individual defendant is so dangerous, whether it be to one person or to the community, whether it be because of his propensity for violence, whether it be from his past record, whether it be from his large-scale drug dealing that he or she is involved with, that the courts should have the right to protect the community. Today our courts do not have that right.

Mr. President, this is a proposal which will need to be approved in two consecutive Sessions by both the Senate and the House of Representatives. In having worked with the Ridge administration and with the House, I know that there is widespread support for this legislation. There is support for this legislation in the police community. There is support for this legislation among the district attorneys across the Commonwealth. I have had the opportunity to talk with the FBI agents in this State, I have had the opportunity to talk with U.S. Attorneys who work here in the Commonwealth of Pennsylvania, and all of them have shared with me their experience in how the Federal system has worked well for them, not in a broad number of cases but in those limited numbers of cases where, in fact, there are dangerous people who should be denied bail pretrial.

So, Mr. President, I would urge that as we move forward in this Special Session, as we look at the various causes of crime, whether it be rape, whether it be juvenile violence, whether it be repeat offenders, that we take this step to address an issue where we are, quite frankly, out of step with the majority of States across this nation and where we take this step forward to amend Pennsylvania's Constitution, to give our courts and to give our prosecutors another tool to keep those people in jail who pose a threat to our community. Mr. President, I would urge strong bipartisan support for Senate Bill No. 12.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I rise out of concern for the basic premise that in America, as different from most other countries in the world, an individual is innocent until proven guilty. Mr. President, there is no stronger premise in our Constitution or in our belief as a free society than the fact that a person is innocent until proven guilty beyond a reasonable doubt.

Mr. President, I have often said that regrettably through media hype and ignorance of our own voters, that it would be impossible to pass in this Chamber today the Bill of Rights that keeps this country as strong as it is. Everyone is concerned with their own rights and not at all concerned with the rights of others.

Mr. President, there is no doubt that there are those occasions where someone is out on bail and may have committed another crime. There is no question about that. But I submit to you that in Philadelphia there is even a bigger problem, and that is the fact that because of a prison cap we cannot keep people in jail whether they make bail or not, and because of a prison cap and a total breakdown of law and order, defendants do not even show up for court. At last count, I believe there were something like 50,000 or 70,000 bench warrants in the city of Philadelphia that have been going unnoticed and are not able to be enforced because we simply do not have the space, and that breaks down law and order.

Mr. President, I disagreed with the Federal courts when they instituted this bizarre concept, because if you take the concept to its logical end, what does it say? It says that we, the government, the prosecutor, the police, and remember, the Bill of Rights was designed to protect citizens from their government. We are unique in the world with the Bill of Rights, but our forefathers recognized how government could get too big, how government could get too powerful, and how individuals needed some protection from government.

But in this constitutional amendment, what we are saying is that government can determine whether or not an individual is so dangerous to society that they should be denied the very basic right of bail. It is not what the crime was, it is not even the fact that they were convicted of a crime, but the determination is being made on the character of the individual.

If I read from the bill, it states, for crimes "which the maximum sentence is death or life imprisonment," we understand that, "or unless no condition or combination of conditions other than imprisonment will reasonably assure the safety of any person and the community...." Very pious words. Very well sounding words. The kinds of words that make the public think we are doing something for them. But who is going to make that determination, Mr. President? Government will make that determination.

Mr. President, it was said much better by Justice Stevens of the U.S. Supreme Court when he looked at this very same issue, and he stated in the opinion of *United States v. Salerno*, "If the evidence of imminent danger is strong enough to warrant emergency detention, it should support that preventive measure regardless of whether the person has been charged, convicted, or acquitted of some other offense...It is equally unrealistic to assume that the danger will vanish if a jury happens to acquit them."

And that is the ultimate logic here, Mr. President. What we are saying is that government will now have the right to arrest someone and say you are so dangerous we are going to incarcerate you. You are dangerous maybe because of prior convictions, you are dangerous because we do not like the color of your skin, you are dangerous because you live in a bad neighborhood, you are dangerous because we do not like your ethnicity, you are dangerous because we say you are dangerous. Well, has that person gotten any less dangerous because a jury ultimately found them not guilty? Not by this logic.

Then why do we have jury trials? Why do we even have trials? Mr. President, it has often been said that an enlightened dictatorship is the most effective form of government and the most efficient form of government known to man. The only problem is, how do we get together to pick the dictator and what happens if we make a mistake? Mr. President, as was said by Thurgood Marshall, "Honoring the presumption of innocence is often difficult; sometimes we must pay substantial social costs as a result of our commitment to the values we espouse. But at the end of the day the presumption of innocence protects the innocent; the shortcuts we take with those whom we believe to be guilty injure only those wrongfully accused and, ultimately, ourselves."

Mr. President, I can think of nothing more repugnant to the freedom of man than to even consider this. However, I recognize the conservative bent, I recognize how everybody thinks we are going to protect them from crime by doing these kinds of stupid things, but in the end we have thrown the baby out with the bath water.

Mr. President, I have sat here for many weeks and watched this Special Session in action, and I was not about to comment today but I think I must now that I see this type of legislation coming forth. Mr. President, all we have done in the last few weeks is to say to victims, after they have become victims, if we are lucky we have caught the guy and we are putting him away forever. But we have done nothing to prevent that person from becoming a victim in the first place because we do not want to hear anything about social programs. That is not meant for a Special Session on crime. So we will continue to fuel the flames, we will continue to infuriate the public, we will satiate every demand that they may have that arises out of anger and frustration. We will abdicate our responsibility to lead, and we will become flamethrowers. Mr. President, in the end we will have done nothing to prevent the number of victims, yet we will have trampled over the rights of every citizen in this Commonwealth.

Mr. President, I plead with my fellow Members of this Senate, and I am shocked by the number of people who I see have sponsored this, both in my party and in the Republican Party. I can only assume that they did so without really thinking about the consequences of their act. I am not worried too much about the rights of criminals; no one is. But I do worry about the rights of an innocent individual who has been charged wrongfully. It was not too long ago that I can remember back when police departments were out of hand, when the quickest way to get a confession was to beat somebody up in a police station and have them sign on a dotted line, but we as a society said no, we cannot allow that to happen. Yet we come back with this type of legislation that says we can take away the basic right, the basic right of an individual, that individual's right to freedom, because we suspect, A, they may have done something wrong, and, B, we think they are dangerous. Mr. President, there can be no more dangerous precedent set than that type of legislation. Someday it may happen to you, and then I will be hearing some people complain about their rights.

I remember as a young trial attorney when I was doing criminal defense work, and when I would be at cocktail parties the big thing was Miranda. Well, what is this nonsense that we

have to give these criminals this warning that they cannot talk to us without a lawyer? How absurd that is. And then I waited a little bit and the drug problem began to spread into the middle class. It was no longer poor kids, black and white, in the inner city getting arrested for marijuana, now it was suburban kids with parents of affluence, parents who were doctors and lawyers. And now when I would get these kids and their parents in my office, the first thing they would say to me, the very first thing: the police never gave him his rights. All of a sudden that case had some meaning because the problem had spread to their community, and now there was some concern for the rights of the accused because their own children were the accused.

We have to lead in this Senate. We have to set an agenda that is reasonable. We have to be smart on crime, not tough on crime. Try telling the next victim of a shooting that we are tough on crime and we will catch that person and put him away, but by the way, it is a shame you are in that wheelchair for the rest of your life, but we will get them the next time. That does nothing for that victim, and this type of legislation just tramples, tramples on 200 years of proud history in this democracy, people who have fought for the Constitution, people who did not know how to read and write in the Army, who went and fought and gave their lives for the Constitution that they could not read but they knew the basic principle was that they were free men and women. This takes that freedom away and says that the government will now determine who will be free, not the individual. And that is 200 years of history down the drain.

And I am not impressed that those bimbos in the United States Congress adopted this cockamamie thing, the same way I am not impressed with the way they have driven up the Federal deficit. And I am not impressed that there are some other colleagues of ours around the country who also have lost the spirit of democracy and adopted other such lousy legislation. I am concerned with Pennsylvania and I am concerned with my rights and the rights of my constituents here in this State, and I can only plead to the gathered intelligence in this room to reject this concept and make sure that at least Pennsylvanians, where this country began, will continue to have the very basic right in our democracy, and that is the right of freedom.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Williams.

Senator WILLIAMS. Mr. President, I do believe that Senate Bill No. 12 is an effort to do something that I think should be done, and that is to in some way address the problem of people who may be threats to the safety of particular people or a community in general. I believe that that approach should be done with some precision and some legal certitude, and I believe that that can be done.

I believe that Senate Bill No. 12, however, addressing the bail question, not only is off the mark but may very well be beyond the bounds of our basic structure of government and, therefore, overreaching. In short, it may not solve the problem that our constituents need and want solved.

As it reads, if one looks at it very closely, it says that there is an offense which is in the mind of some judge, and that offense merely is whether or not the offense that you are charged with is theft or some other kind of felony which may be innocuous, if that judge, for whatever standard, believes or says he believes that no condition or combination of conditions other than the punishment of imprisonment will ensure the safety of some general person, then you are imprisoned. You are imprisoned; therefore, sentenced.

I suggest that that creates another crime. It does not even connect what is in that judge's mind with the crime that brought you before him in the first place. It does not say if as in the famous O.J. case that you have beaten your wife, as is alleged, and it may be dangerous and severe, that if we have some kind of a hearing and we determine by evidence that you should be detained, it says you should be imprisoned for whatever the crime is. If that judge decides in his mind he does not like you, you may not look like him, you may be a Republican or a Democrat or a communist, or whatever you might be, he merely decides under this provision, he looks at you and says no condition or combination of conditions other than putting you in jail, imprisonment, punishing you, will reasonably assure something he thinks should relate to another person who is in the community.

I believe that this provision is so poorly drawn and so ineptly crafted to meet a condition that our voters are concerned about that we need to take at least a close and effective look at it. It does not follow that because we want to put criminals off the streets and we want to rectify the circumstances under which they get bail, it does not automatically follow that a rhetorical provision which says something does that. So it is my observation, it is my plea that I would love to see something that does that. But my observation is that this is so ineptly drawn that it really does not say anything.

Let us say that someone is charged with the crime of theft or larceny. He went in a big place and stole a lot of money, and he is a Republican Indian fellow from Utah, but he was in New York. And under this, all judges are not always cool, all Senators are not always cool, all Democrats, all Republicans, all lawyers, all anything are not always cool. And history has proven that given the power, oftentimes absolute power results in what our country resulted in: that is, a revolution to bring about some basic rules that avoids absolute and corruptible power. This provision allows for a judge to have absolute power to send that Republican Indian from Utah to prison. It says he can do that. It says, I decide, no condition, and that judge may be someone who cannot help not liking Republican Indians from Utah who are charged with stealing some emeralds from wherever. That is what it says.

Now, there are a lot of other hypotheticals that might sound more simple and more crazy, but can we draft something that gives absolute power to one person and apply it to a case like that that has no connection? I submit that is exactly what this provision says: no bail unless no condition, blah, blah, blah, and the judge decides that. It does not even say unless the crime that you are charged with has some connection with the danger that he finds.

I would like to vote for a bill that adjusts the bail and also adjusts the danger that exists in our various communities because we do not do something with the people we have in there already. That is to say, we have overcrowded prisons which some people belong in and thousands belong out, and no one has the drive to put those out who could be out and put those in who should be in.

I, therefore, urge defeat of this bill for the simple reason that it would ultimately be a legislative failure addressing a very serious problem for which our citizens are waiting for some relief. I urge the defeat and, hopefully, a redrafting of a bill that can pass muster.

The PRESIDENT. The Chair recognizes the gentlewoman from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, I wonder if the maker of the legislation, the gentleman from Allegheny, Senator Fisher, would stand for brief interrogation?

The PRESIDENT. The gentleman from Allegheny, Senator Fisher, indicates he will.

Senator SCHWARTZ. Mr. President, just a couple of questions to be clear. We have heard a number of comments about what this bill would actually do, in reality. I wonder if the sponsor of the bill could speak to whether, in fact, it would be true that any judge could hold anyone pretrial, regardless of what they are arrested for, regardless of what the crime is, before they are tried or found guilty, but would it be true that anyone could be held regardless of what they are arrested for?

Senator FISHER. Mr. President, under the Rules of Criminal Procedure which govern bail in this Commonwealth, which this provision would come under if approved by the voters of the Commonwealth, once a person was arrested they would be brought first before a district magistrate. Currently, unless a case is a capital case, the district magistrate has to set a monetary amount of bail. If the Constitution were changed pursuant to Senate Bill No. 12, that district magistrate, who may be the first judicial person that the arrested defendant would see, that person could deny bail for any number of circumstances. The legal reason for which that person could deny bail are for those reasons stated within this constitutional amendment. If, in fact, a defendant has bail denied, they can immediately, through their attorney, whether it be a private attorney or a court-appointed attorney, petition a criminal court judge to review that decision of the district magistrate so that there would then be a full bail hearing on the issue of whether or not bail should be set, and if, in fact, bail would be set, the amount of the bail.

Now, let us say that that common pleas court judge determined that the district magistrate was right, and for the reasons stated in this Constitution because they felt the person was dangerous to a person and to the community, they sustained the magistrate's position and refused to set bail. That person could then appeal to the Superior Court of Pennsylvania. So there are at least three steps in the process by which an individual decision on an individual case could be reviewed on the issue of bail.

Senator SCHWARTZ. Mr. President, then I do understand that the short answer is, yes, while it might not be a single judge, there might be a series if appealed, it is true that a person, regardless of what crime they are arrested for, there is no rule that, in fact, they could be denied bail and held pretrial? Is that correct, Mr. President?

Senator FISHER. Mr. President, well, it is hard to give a "yes" or "no," but if you force me to give a "yes" or "no," the answer would be "yes." I might say that today the same thing could happen. It would be just as arbitrary if the facts did not justify the refusal.

Senator SCHWARTZ. Mr. President, the maker of the bill has actually referred to the notion of dangerous offenders and has assured us in his previous comments that, in fact, it would not be broadly applied, and yet there is nothing in this bill that I can find that says anything about how narrowly or broadly it could be applied, or, in fact, the word "dangerous." The bill is actually fairly simple. What it basically says is that a person could be held if there is not reasonable assurance for the safety of the community or a person. That seems to be extremely broad. Could the sponsor of the amendment speak to how this would be limited? What would, in fact, assure us that someone, a series of judges, would not broadly interpret this and broadly interpret the notion of safety of the community? It is possible, we have been told, that someone who has been picked up for shoplifting could be held without bail prior to trial. Could the maker of the amendment actually explain what would reassure me, and possibly others of us, that this would not be broadly applied and what, in fact, the definition of safety would limit that definition of safety to not be something that makes us feel unsafe, and many of us feel unsafe, but truly is a danger to the community in some very, very serious way that we would deny some potential constitutional rights to this person?

Thank you, Mr. President.

Senator FISHER. Mr. President, certainly, as sponsor of this constitutional amendment, it is not my intention, nor would I hope it would be the intention of anyone in this Chamber who would vote on this bill, that, for instance, a person who was arrested for retail theft would be held without bail. But, in fact, in drafting Senate Bill No. 12, we have tried to take language from other statutes across this country and have attempted to define as best we could that category of person, that category of cases that should be put in our Constitution. It is my belief that utilization of the words "condition or combination of conditions" with the word "safety" are those words that best try to define what it is that we are trying to deal with in this bill.

Mr. President, I had indicated earlier that, in fact, if this bill is passed and approved by the voters of this Commonwealth, which a constitutional amendment takes, the definition of what will happen and how the procedures would be administered most likely in our Commonwealth would be decided by the further implementation of the Rules of Criminal Procedure. We could attempt to do that by statute, but I suspect that the Supreme Court would rule that that is within their jurisdiction. So I would fully believe that procedures will be set out and that various tests will be specified for the courts that will be dealing with the bail questions, but clearly it will be safety, and safety is connected to dangerous. Someone who is dangerous to another is obviously a threat to that person's safety or to the

safety of the community.

So it is my intention that those elements be involved, but I believe that the wording as stated in the Constitution is consistent with what we want and is consistent with statutes in other States.

Senator SCHWARTZ. Mr. President, I take from that that the answer is that these words are fairly soft and we are relying on some future action, either by ourselves or by some other body, to give greater definition to the word "safety" and some other greater explanation about the conditions that might apply, but at this point we are dealing with some fairly soft terms that really may hit some buttons for us but, in fact, do not provide very much, informationally, about how it would be applied.

One last question and then I would like to make some comments on the bill. The last question is, what happens in the situation where someone is, in fact, found not guilty but has spent a year or longer, maybe 2, in a county facility because they were found by a judge or a series of judges to be so dangerous as to require incarceration before they are found not guilty? One of our reasons for presumption of innocence, except in the most serious, serious cases, which generally apply to capital punishment, is I believe to not incarcerate people prematurely. Could the maker of the bill actually talk about what would happen, whether the State would be liable in some way, whether the county would be liable in some way, for having incarcerated a person for a year or 2 and then he was found not guilty, particularly given the soft definitions in this language?

Thank you, Mr. President.

Senator FISHER. Mr. President, there is no cause of action in Pennsylvania, there is no cause of action in the Federal courts, in the event that someone who is detained would be found not guilty. There are all sorts of reasons why a verdict of not guilty could be returned. It could have been on a technicality. It could have been on the facts. But I think the important thing to understand today is that in Pennsylvania the only person who could be held pretrial would be a person whose acts resulted in the death of another. I do not think that that simple distinction should exist. The mere fact that a victim did not die but was the subject of a brutal beating or a brutal rape should not be the sole determining factor by which a court should make a decision as to whether or not a person's safety is in danger or the community's safety is in danger or whether a person is dangerous. That is why this amendment is proposed.

I recognize that there are certain risks. There are certain risks, but there is nothing in this amendment, and I emphasize, there is absolutely nothing in this amendment that denies any individual in Pennsylvania, whether it be a resident or a visitor, of that sacred presumption of innocence.

The Supreme Court of the United States, in the Salerno case, reviewed the Federal Courts Bail Act, the Court of Appeals of the District of Columbia, also in *U.S. v. Edwards* reviewed the pretrial detention in the District of Columbia, and they all ruled and came to the conclusion that pretrial detention was an outgrowth of a legitimate regulatory goal for reducing potential harm to the public. I stand behind that. I think that is what we are doing. There are risks, but the bottom line is that there also is no cause of action for someone who would be acquitted.

Senator SCHWARTZ. Mr. President, I am finished with my interrogation and I would like to make some general comments on the bill.

In fact, I would like to lead directly from the comments made by the gentleman from Allegheny, Senator Fisher, about the bill, and that is that many of us, particularly in reading the little blurb that was circulated about cosponsorship, would consider extending pretrial detention to some other extremely dangerous offenders, or at least those who have been arrested. We would consider that and have a great deal of sympathy, maybe that is not a strong enough word, to the feeling that many have in the public that there are people who commit crimes who are dangerous and ought to be held pretrial and are not.

But, in fact, Mr. President, as the maker of the bill pointed out in my interrogation, there is no definition, really. It is just much too loose. It is not just an extension of pretrial detention to some few other very serious crimes. It is, in fact, so broadly written that anyone arrested for any crime perceived by a judge, or on appeal a series of judges, as violating the safety of any person or the community could be held for pretrial detention. I believe that is a risk, Mr. President. It is, as the maker of the bill pointed out, some risk. I would say that is too serious a risk for us to take. If he were going to limit in some very carefully crafted way holding people for some other serious crimes, I believe a number of us would be very supportive of that. But for those of us who take very seriously allowing for these broad, undefined powers to be handed out in order to respond emotionally to what some of the feelings are out in the community, that is something we cannot allow ourselves to do. We have a responsibility as elected representatives to take public concern and turn it into action that is appropriate and does respond to the need for greater public safety and feelings of public safety but does not so overstep the bounds that we walk away from here saying what we did was to violate not just the potential rights of someone who was found not guilty later on but potentially the rights of all of us.

Mr. President, I would say that I will vote against this bill and I hope that many of my colleagues will as well. Thank you.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Hughes.

Senator HUGHES. Mr. President, aside from going on a continuous refrain here, aside from addressing the issue of another unfunded mandate, because local counties probably are going to have to bear the costs of the increase in the number of individuals who will be incarcerated, I would remind the Members as they come into the front steps of our illustrious building, of our illustrious complex here, that carved into the front steps, and I was reminded of this by one of my colleagues, is a statement by Benjamin Franklin: Anyone willing to give up freedom for security deserves neither freedom nor security.

Mr. President, this country was born on the concept, if you will, of innocent until proven guilty. There is clearly a tremendous amount of tyranny which exists within our communities, within our cities, within our rural counties, wherever we exist around this State, Mr. President, but the tyranny upon which this country was created was the tyranny of the State, the all-powerful State. Mr. President, if we are to move forward down this slippery slope of passing this constitutional amendment, we will move down the slope which this country was created to prevent, the tyranny of the all-powerful State. To take away individual rights, to take away individual liberties, the liberties that may unfortunately protect some who may not need protection but clearly protect all of us, the good and the bad, is wrong, it is misdirected, and will clearly not make our communities any more safe.

I would ask for a "no" vote on this bill and ask that we seriously consider what it is that we are about and what it is we should be trying to contribute in the course of discussion on the protection of all of us in this society.

Thank you, Mr. President.

LEGISLATIVE LEAVE CANCELLED

The PRESIDENT. For the record, the Capitol leave of Senator Tomlinson will be cancelled.

And the question recurring,
Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Williams.

Senator WILLIAMS. Mr. President, as a result of the last discussion between the gentleman from Allegheny, Senator Fisher, and the gentlewoman from Philadelphia, Senator Schwartz, a point that it made, and I guess the point I was trying to make, is that Senator Fisher accurately stated what he was after, and I support that strongly. Where you have someone who has committed an aggravated crime and there is a threat, we ought to define that, deal with it, do something in detention, and I think that is ascertainable.

On the other hand, the bill does not say that. If it was assault without aggravation, two people say we had a fight and we did not like each other, for whatever reason it is, and if the judge is agitated and says that he thinks that safety is endangered, that person can be imprisoned. That is what it says, and I do not think anybody wants that and I do not think that the drafter wants that either, but I do believe that the conversation demonstrated just that.

I wanted to state that that is what I found wrong with the bill and I would support a tighter, more defined version. As we know, and as the gentleman knows, we draft something legal to cover all eventualities, not leave it to the whim of someone to interpret from A to Z. So I just wanted to put on the record and to say to the drafter of this bill that what I find wrong is just that. What the gentleman is after would be included, of course, but scores of other things not included would be in the power of one person to imprison someone for an indefinite length of time.

Thank you, Mr. President.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Fisher.

Senator FISHER. Mr. President, I request a temporary Capitol leave for Senator Shumaker.

The PRESIDENT. Senator Fisher requests a temporary Capitol leave for Senator Shumaker. Without objection, that leave will be granted.

The Chair recognizes the gentleman from Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request a temporary Capitol leave for Senator Stapleton.

The PRESIDENT. Senator Mellow requests a temporary Capitol leave for Senator Stapleton. Without objection, that leave will be granted.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—43

Afflerbach	Gerlach	Madigan	Shaffer
Andrezeski	Greenleaf	Mellow	Shumaker
Armstrong	Hart	Mowery	Stapleton
Baker	Heckler	Musto	Stewart
Belan	Helfrick	O'Pake	Stout
Bodack	Holl	Peterson	Tilghman
Brightbill	Jubelirer	Porterfield	Tomlinson
Corman	Kasunic	Punt	Uliana
Dawida	LaValle	Rhoades	Wagner
DeLp	Lemmond	Robbins	Wenger
Fisher	Loeper	Salvatore	

NAYS—6

Fumo	Jones	Tartaglione	Williams
Hughes	Schwartz		

A constitutional majority of the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

The PRESIDENT pro tempore (Robert C. Jubelirer) in the Chair.

BILL REREFERRED

SB 16 (Pr. No. 16) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for attempted murder and for sentencing.

Upon motion of Senator LOEPER, and agreed to, the bill was rereferred to the Committee on Appropriations.

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 House proceeded to third consideration of **SB 12, PN 12**, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for bail.

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

Mr. **VEON** offered the following amendment No. **A1515**:

Amend Sec. 1 (Sec. 14), page 1, line 11, by inserting after "unless"
the prisoner is charged with an offense which is graded as a felony of the first degree and

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

AMENDMENT WITHDRAWN

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman from Beaver, Mr. Veon.

Mr. VEON. Thank you, Madam Speaker.

I am withdrawing that amendment.

The SPEAKER pro tempore. Thank you very much.

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

Mr. **FEESE** offered the following amendment No. **A1576**:

Amend Sec. 1 (Sec. 14), page 1, lines 10 and 11, by striking out "for which the maximum sentence is death or life imprisonment" and inserting
or for offenses for which the maximum sentence is life imprisonment

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

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Feese.

Mr. FEESE. Thank you, Madam Speaker.

Madam Speaker, the intent of the Senate bill is to make certain offenses not bailable.

Under the Constitution as it exists now, capital offenses – that is, offenses for which the death penalty may be imposed – are not bailable. The intent of the Senate bill was to include within that category of offenses offenses for which life imprisonment could be imposed; that is, first-degree murder, when there are no aggravating circumstances, or second-degree murder, which we commonly refer to as "felony murder."

The bill, however, as it is drafted does not achieve that purpose, so this amendment is merely to clarify that that is in fact the purpose, and it is agreed to by Senator Fisher, who is the prime sponsor of the bill in the Senate.

Thank you, Madam Speaker.

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

The following roll call was recorded:

YEAS–192

Adolph	Fajt	Manderino	Schuler
Allen	Fargo	Markosek	Scrimenti
Argall	Farmer	Marsico	Semmel
Armstrong	Feese	Masland	Serafini
Baker	Fichter	Mayernik	Shaner
Bard	Fleagle	McCall	Sheehan
Barley	Flick	McGeehan	Smith, B.
Battisto	Gamble	McGill	Smith, S. H.
Bebko-Jones	Gannon	Melio	Snyder, D. W.
Belardi	Geist	Merry	Staback
Belfanti	George	Michlovic	Stairs
Birmelin	Gigliotti	Micozzie	Steelman
Blaum	Gladeck	Mihalich	Steil
Boscola	Godshall	Miller	Stern
Boyes	Gordner	Mundy	Stetler
Brown	Gruitza	Nailor	Stish
Browne	Gruppo	Nickol	Strittmatter
Bunt	Habay	Nyce	Sturla
Butkovitz	Haluska	O'Brien	Surra
Buxton	Hanna	Olasz	Tangretti
Caltagirone	Harhart	Perzel	Taylor, E. Z.
Cappabianca	Hasay	Pesci	Taylor, J.
Carone	Hennessey	Petrarca	Thomas
Cawley	Herman	Petrone	Tigue
Chadwick	Hershey	Pettit	Travaglio
Civera	Hess	Phillips	Trello
Clark	Hutchinson	Piccola	Trich
Clymer	Itkin	Pistella	True
Cohen, L. I.	Jadlowiec	Pitts	Tulli
Cohen, M.	James	Platts	Vance
Colafella	Jarolin	Preston	Van Horne
Conti	Kaiser	Ramos	Veon
Cornell	Keller	Raymond	Vitali
Corpora	Kenney	Readshaw	Walko
Corrigan	King	Reber	Washington
Coy	Krebs	Rieger	Waugh
Curry	Kukovich	Roberts	Williams
Daley	LaGrotta	Robinson	Wogan
DeLuca	Laughlin	Roebuck	Wozniak
Dempsey	Lawless	Rohrer	Wright, D. R.
Dent	Lederer	Rooney	Wright, M. N.
Dermody	Leh	Rubley	Yewcic
DeWeese	Lescovitz	Rudy	Youngblood
DiGirolamo	Levdansky	Sainato	Zimmerman
Donatucci	Lloyd	Santoni	Zug
Druce	Lucyk	Sather	
Durham	Lynch	Saylor	Ryan,
Egolf	Maitland	Schroder	Speaker
Fairchild	Major		

NAYS–4

Bishop	Horsey	Oliver	Richardson

NOT VOTING–4

Carn	Colaizzo	Josephs	Kirkland

EXCUSED–3

Cowell	Evans	Reinard

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 pro tempore. 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. Richardson.

Mr. RICHARDSON. Yes, Madam Speaker. If we are on final passage, I would like to be recognized.

The SPEAKER pro tempore. We are on final passage. The gentleman is recognized.

Mr. RICHARDSON. Thank you very much.

Here is another bill.

SB 12 eliminates bail for those charged with capital offenses and, when imprisoned, the condition most likely to reasonably assure the safety of individuals and the community. It supposedly amends section 13, Article I, of the Pennsylvania Constitution, which is exactly the same as Article VIII of the United States Bill of Rights.

In effect, by voting for this bill the members of the General Assembly are saying that the Eighth Amendment to the United States Constitution does not apply in Pennsylvania. The Eighth Amendment provides that "excessive bail shall not be required." Even though the constitutional standard to determine when bail is excessive has not been clearly defined by the Supreme Court, they have held that bail set higher than an amount reasonably calculated to assure that the defendant will be present at trial is excessive. The court has never held that a defendant has a right to be released on bail no matter what the charge. So several States already prohibit release on bail in capital cases.

The point that I would like to make in opposition to SB 12. This is a democracy. We have the right to free speech and the right not to be detained without a trial. This bill goes beyond depriving murderers in capital cases of right to bail. Anyone determined by law enforcement to be dangerous to the community could be held without bail. If this bill was law during the sixties, then Dr. Martin Luther King, Jr., and many others that led or participated in the civil rights movement would have been locked up indefinitely prior to trial.

And, Madam Speaker, I am pointing this out because it amazes me that when you were talking about wanting to take on the responsibility of stopping those individual persons from being able to have a right to bail, we are saying here now in the Commonwealth of Pennsylvania that you should not even be considered. There may be all kinds of situations that occur, and I have been around a long time to know that for whatever reason, the kinds of matters that we are doing in terms of taking on these measures and these bills are only reactionary steps to dealing with issues and not practical realities that exist out there every single day.

I believe that this is another bill that will be challenged and found to be unconstitutional.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Philadelphia, Mr. Horsey, on final passage.

Mr. HORSEY. Madam Speaker, may I interrogate the maker of the bill?

The SPEAKER pro tempore. It is a Senate bill, sir.

Mr. HORSEY. May I interrogate the defender of the bill on the right side, Jeff Piccola?

The SPEAKER pro tempore. Do you wish to interrogate the chairman of the Judiciary Committee?

Mr. HORSEY. Yes, Mr. Piccola, because it came out of his committee. Thank you.

Well, Madam Speaker, can I just ask one question?

What is the intent of the bill? I mean, what is the purpose? When is the last time someone guilty of a heinous crime on bail, on bail, committed a crime? I need to know that. Thank you, Madam Speaker.

REMARKS SUBMITTED FOR THE RECORD

Mr. VEON submitted the following remarks for the Legislative Journal:

Mr. Speaker, I rise today in an effort to protect one of the cornerstones of the American justice system: the belief that a man is innocent until proven guilty. SB 12 amends the Pennsylvania Constitution and provides that any accused may be denied bail – his freedom – if it is believed that he MAY be a danger to the community or a person.

Bail is meant to ensure that the accused will appear for a future due-process hearing. Only in extreme cases when the punishment outweighs any possible bail, should bail be denied. Such is the case with capital offenses where the accused may lose his life. Bail is a regulatory matter which ensures that justice will be served at a later due-process hearing; it is not a means by which to punish. Benjamin Franklin said, "Anyone willing to give up freedom for security deserves neither freedom nor security."

Aside from the philosophical problem, this proposal invites abuse since any determination as to dangerousness is highly subjective and may not relate in any manner to the crime of which the person is accused. Denial of bail could easily be based on stereotypes relating to ethnicity, appearance, association, wealth or lack thereof, or any other subjective criteria unrelated to the present offense.

The courts, under SB 12, will be able to deny an innocent man his freedom based on reputation and prediction of certain actions at some point in the future. This court decision will be made in most instances by a district justice who has no legal training. I do not think that is a wise thing to do.

William Penn went to great effort to ensure that bail was a guarantee to all Pennsylvanians. As an innocent man who was denied bail and freedom by his English jailers for political reasons, Penn ensured that the original Pennsylvania Charter in 1682 contained a strong guarantee to bail except in capital cases where proof was evident.

Mr. Speaker, I want everyone to realize that anyone can be ACCUSED of a crime and one day any of us could be in a situation where our individual freedom depends upon the granting of bail. It is our right and the right of every Pennsylvanian that we are voting away by voting in favor of SB 12. We have already voted away our right to confront a witness face to face. What is next?

Mr. Speaker, SB 12 does not address the issue of crime. SB 12 does not prevent victimization; neither do many of the bills which we have addressed during this Special Session on Crime. We are kidding ourselves if we think we are making our communities safer for Pennsylvanians. To properly address the issue of crime and prevent victimization, we must look at the root

cause of crime and address issues such as economic development, job training, and education. We need to give people hope and the opportunity to succeed.

I, therefore, am strongly opposed to SB 12 and would encourage a negative vote.

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.

YEAS–177

Adolph	Fairchild	Lynch	Schroder
Allen	Fajt	Maitland	Schuler
Argall	Fargo	Major	Scrimenti
Armstrong	Farmer	Markosek	Semmel
Baker	Feese	Marsico	Serafini
Bard	Fichter	Masland	Shaner
Barley	Fleagle	Mayernik	Sheehan
Battisto	Flick	McCall	Smith, B.
Bebko-Jones	Gamble	McGeehan	Smith, S. H.
Belardi	Gannon	McGill	Snyder, D. W.
Belfanti	Geist	Merry	Staback
Birmelin	George	Michlovic	Stairs
Blaum	Gigliotti	Micozzie	Steelman
Boyes	Gladeck	Miller	Steil
Brown	Godshall	Mundy	Stern
Browne	Gordner	Nailor	Stetler
Bunt	Gruitza	Nickol	Stish
Butkovitz	Gruppo	Nyce	Strittmatter
Buxton	Habay	O'Brien	Sturla
Caltagirone	Haluska	Olasz	Surra
Carone	Hanna	Perzel	Tangretti
Cawley	Harhart	Pesci	Taylor, E. Z.
Chadwick	Hasay	Petrone	Taylor, J.
Civera	Hennessey	Pettit	Tigue
Clark	Herman	Phillips	Travaglio
Clymer	Hershey	Piccola	Trello
Cohen, L. I.	Hess	Pistella	Trich
Colafella	Hutchinson	Pitts	True
Colaizzo	Itkin	Platts	Tulli
Conti	Jadlowiec	Preston	Vance
Cornell	Jarolin	Ramos	Van Horne
Corpora	Kaiser	Raymond	Vitali
Corrigan	Keller	Readshaw	Walko
Coy	Kenney	Reber	Waugh
Daley	King	Rieger	Wogan
DeLuca	Krebs	Roberts	Wozniak
Dempsey	LaGrotta	Robinson	Wright, D. R.
Dent	Laughlin	Rohrer	Wright, M. N.
Dermody	Lawless	Rooney	Yewcic
DeWeese	Lederer	Rubley	Zimmerman
DiGirolamo	Leh	Rudy	Zug
Donatucci	Lescovitz	Sainato	
Druce	Levdansky	Santoni	Ryan,
Durham	Lloyd	Sather	Speaker
Egolf	Lucyk	Saylor	

NAYS–22

Bishop	Horsey	Melio	Thomas
Boscola	James	Mihalich	Veon
Cappabianca	Josephs	Oliver	Washington
Carn	Kirkland	Richardson	Williams
Cohen, M.	Kukovich	Roebuck	Youngblood
Curry	Manderino		

NOT VOTING–1

Petrarca

EXCUSED–3

Cowell Evans Reinard

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 pro tempore. There will be no further votes taken today.

HOUSE BILL INTRODUCED AND REFERRED

No. 107 By Representatives MICHLOVIC, CALTAGIRONE, MELIO, ROBINSON, FAJT, JOSEPHS, YOUNGBLOOD, PISTELLA, TRAVAGLIO, ROONEY and L. I. COHEN

An Act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, imposing civil liability on owners of firearms and prohibited offensive weapons who fail to notify police when such weapon is stolen or missing.

Referred to Committee on JUDICIARY, March 22, 1995.

SENATE BILLS FOR CONCURRENCE

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

SB 34, PN 91

Referred to Committee on JUDICIARY, March 22, 1995.

SB 50, PN 106

Referred to Committee on JUDICIARY, March 22, 1995.

SB 54, PN 63

Referred to Committee on JUDICIARY, March 22, 1995.

BILL REMOVED FROM TABLE

The SPEAKER pro tempore. The Chair recognizes the majority leader.

Mr. PERZEL. Madam Speaker, I move to have HB 103 removed from the table.

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

SB 4 By Senators FISHER, GREENLEAF, SHAFFER, BRIGHTBILL, MELLOW, ANDREZESKI, WAGNER, WENGER, CORMAN, TILGHMAN, PETERSON, BODACK, STEWART, STOUT, HOLL, ROBBINS, PUNT, RHOADES, ARMSTRONG, BELAN, PORTERFIELD, BELL, HART, SHUMAKER, HELFRICK, MADIGAN, MOWERY, MUSTO, LAVALLE, ULIANA, TOMLINSON, GERLACH, DELP, SCHWARTZ, KASUNIC and AFFLERBACH.

Prior Printer's Nos. 4, 68. Printer's No. 112.

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

Referred to JUDICIARY, Jan. 24, 1995
Reported as committed, Feb. 7, 1995
First consideration, Feb. 7, 1995
Second consideration, Feb. 8, 1995
Amended on third consideration, Feb. 13, 1995
Third consideration and final passage, Feb. 13, 1995 (44-5)
(Remarks see Senate Journal Page 46), Feb. 13, 1995

In the House

Referred to JUDICIARY, Feb. 14, 1995
Reported as committed, March 14, 1995
First consideration, March 14, 1995
Laid on the table, March 14, 1995
Removed from table, March 14, 1995
Re-referred to APPROPRIATIONS, March 14, 1995
Re-reported as committed, March 16, 1995
Second consideration, March 16, 1995
Third consideration, with amendments, April 18, 1995
Final passage, April 18, 1995 (177-23)
(Remarks see House Journal Page 235), April 18, 1995

In the Senate

Referred to RULES AND EXECUTIVE NOMINATIONS, April 19, 1995
Re-reported on concurrence, as committed, April 24, 1995
Senate concurred in House amendments, April 25, 1995 (45-5)
(Remarks see Senate Journal Page 137), April 25, 1995
Signed in Senate, April 25, 1995
Signed in House, April 26, 1995
Filed in the Office of the Secretary of the Commonwealth, April 26, 1995
Pamphlet Laws Resolution No. 2
Passed Session of 1995

SB 23 (Pr. No. 66) (Amended) (Rereported)

An Act amending the act of August 6, 1941 (P. L. 861, No. 323), entitled, as amended, "Pennsylvania Board of Probation and Parole Law," further providing for investigations and recommendations to the Board of Pardons and for grants of parole.

SB 50 (Pr. No. 67) (Amended) (Rereported)

An Act amending the act of July 16, 1968 (P. L. 351, No. 173), entitled, as amended, "Prisoner Pre-release Plan Law," further providing for release plan for prison inmates; and making editorial changes.

SENATE CONCURRENT RESOLUTION

RECESS ADJOURNMENT

Senator LOEPER offered the following resolution, which was read, considered and adopted:

In the Senate, February 13, 1995

RESOLVED, (the House of Representatives concurring), That when Special Session No. 1 adjourns this week it reconvene on Monday, February 27, 1995, unless sooner recalled by the President Pro Tempore of the Senate; and be it further

RESOLVED, That when Special Session No. 1 of the House of Representatives adjourns this week it reconvene on Monday, February 27, 1995, unless sooner recalled by the Speaker of the House of Representatives.

Ordered, That the Secretary of the Senate present the same to the House of Representatives for concurrence.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AMENDED

SB 4 (Pr. No. 4) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the powers of the Board of Pardons.

On the question,

Will the Senate agree to the bill on third consideration?

Senator BRIGHTBILL offered the following amendment No. A0858:

Amend Title, page 1, line 2, by inserting after "the" where it appears the first time: composition and

Amend Sec. 1 (Sec. 9), page 2, lines 8 and 9, by inserting brackets before and after "two-thirds or"

Amend Sec. 1 (Sec. 9), page 2, lines 9 and 10, by inserting brackets before and after "as is specified by law"

Amend Sec. 1 (Sec. 9), page 2, lines 12 through 14, by striking out "]; one shall be" in line 12, all of line 13 and "corrections expert," in line 14 and inserting: ; one]. One shall be a [member of the bar,] crime victim; one a [penologist,] corrections expert;

Amend Sec. 1 (Sec. 9), page 2, line 14, by striking out the brackets before and after "doctor of medicine,"

Amend Sec. 1 (Sec. 9), page 2, line 15, by inserting an underscored comma after "psychologist"

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman fro Lebanon, Brightbill.

Senator BRIGHTBILL. Mr. President, very simply, th would again permit a doctor of medicine to be a member this board.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman fro Allegheny, Senator Fisher.

Senator FISHER. Mr. President, I request temporary Capi leaves for Senator Robbins, Senator Loeper, and Senat Greenleaf.

The PRESIDENT. Senator Fisher requests Capitol leaves f Senator Robbins, Senator Loeper, and Senator Greenleaf. Wi out objection, those leaves will be granted.

The Chair recognizes the gentleman from Lackawan Senator Mellow.

Senator MELLOW. Mr. President, I request temporary Ca itol leaves for Senator Afflerbach, Senator Dawida, and Se tor O'Pake.

The PRESIDENT. Senator Mellow requests temporary Ca tol leaves for Senator Afflerbach, Senator Dawida, and Sena O'Pake. Without objection, those leaves will be granted.

And the question recurring,

Will the Senate agree to the amendment?

It was agreed to.

On the question,

Will the Senate agree to the bill on third consideration, amended?

Senator SCHWARTZ offered the following amendment N A0901:

Amend Sec. 1 (Sec. 9), page 2, lines 6 and 7, by insertin bracket before "the" in line 6 and after "three" in line 7 and inser immediately thereafter: five

Amend Sec. 1 (Sec. 9), page 2, line 10, by inserting brac before and after "three" and inserting immediately thereafter: fiv

Amend Sec. 1 (Sec. 9), page 2, line 13, by striking out the br ets before "member" and after "bar" and inserting immediately th after: , one a

Amend Sec. 1 (Sec. 9), page 2, line 14, by inserting a bra before "and" and after "third" and inserting immediately therea one

Amend Sec. 1 (Sec. 9), page 2, line 16, by inserting brac before and after the period after "behavior" and inserting immedi thereafter: and the fifth a citizen who shall serve as the chairper

On the question,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentlewo from Philadelphia, Senator Schwartz.

Senator SCHWARTZ. Mr. President, briefly, the bill we are dealing with, Senate Bill No. 4, would require un mous agreement and a unanimous vote to offer a pardo believe that is a pretty serious step that we would be tak and in consideration of that my amendment would change

membership slightly. It would address the two members who are not being changed by the bill, and they are the Lieutenant Governor and the Attorney General. What it would do is say that elected officials would not be able to serve, that instead those two people would be replaced by gubernatorial appointees, one of whom would be a member of the bar and the other would be a citizen chosen by the Governor.

My concern, Mr. President, and the reason for offering this amendment, is that, in fact, we are requiring this board to be quite deliberative. We are asking for them to put aside outside considerations to consider seriously both this offender and also public safety, and my concern here is that we not allow personal, individual political considerations to enter into these very serious deliberations of whether someone would continue to serve a life sentence or not. Obviously, it is not likely to happen very often, but we certainly want to be sure that someone is not, instead of looking at the facts and instead of looking at the individual situation, instead thinking how is this going to appear when I speak next week or how is this going to appear when I run for higher office?

Mr. President, let me make it absolutely clear that I am not in any way casting doubt on anyone who has already served on the Board of Pardons or currently serves on the Board of Pardons, in any way suggesting that they might not be looking at this so carefully, but I think the only way we can be absolutely sure that it does not happen in the future is to make sure that we do not have an elected official on the board, that we do not have a Lieutenant Governor or the Attorney General serving, but instead that we have a member of the bar, and again, it is of the Governor's choosing, and maybe even more importantly, that we also have an average citizen, someone who does have probably the concern of other people out there who are just like them, who are concerned about public safety, who will not have a particular perspective. Almost everyone else on the board has a particular perspective. The bill actually calls for a victim's advocate representative, and there are people who are coming with a particular viewpoint, and this way it would be someone who really would be coming only with the interest of protecting public safety and giving fair and just deliberations on this Board of Pardons.

Again, Mr. President, we are saying if we are going to call for a unanimous vote, we want to make sure that every person on this Board of Pardons really will do that within the context of the findings with which they are presented and the recommendations with which they are presented, and I think that it is something that the public would want us to be doing to make sure that, in fact, there are not these other outside considerations that might be made. I hope that I will have agreement from some of my other colleagues on this. I believe it is one that the public would be quite in favor of if they were voting on it today.

Thank you, Mr. President.

LEGISLATIVE LEAVES CANCELLED

The PRESIDENT. The Chair notes the presence on the floor of Senator Loeper and Senator Greenleaf, and their temporary Capitol leaves are cancelled.

And the question recurring,

Will the Senate agree to the amendment?

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Bell.

Senator BELL. Mr. President, I rise to oppose the proposal of the gentlewoman from Philadelphia, Senator Schwartz. What she is going to give us is a nameless, faceless board, a board that can take action in releasing murderers and lifers who maybe will move to New Jersey or Ohio. The Attorney General and the Lieutenant Governor are elected public officials. The people of Pennsylvania have expressed their approval that they serve in these high offices. Also, both probably will appear once again in front of the people for a vote. So this gives responsibility to a board.

Now, I am sorry the gentlewoman did not make a proposal to have an 80 percent approval. That I could support.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I rise in support of the amendment for a very simple, practical reason. I believe that you, Mr. President, campaigned on a platform that you would never vote to release anyone, so just given that fact of reality right now, but more importantly, I cannot see, after the last election and the horrible incident with Mr. McFadden, where any elected official would ever vote to pardon anybody. And if that is going to be the absolute end, and we are talking about making it unanimous, probably the more proper constitutional amendment is to abolish the Board of Pardons. And there are many people who are of conservative view, obviously our Governor said life means life, and I think in the end we are probably going to get to a point where we are going to rethink this, but to say that any elected official, after what happened last year, would ever vote to pardon anybody is just a non sequitur. And the amendment makes sense from that standpoint. If we are going to have a Board of Pardons, if we are going to spend the money to fund a Board of Pardons but, in reality, never pardon anybody, why are we kidding the public and wasting money even on a Board of Pardons?

The reality is that you do have an elected official who ultimately makes this decision, and that is the Governor, and this constitutional amendment makes it even more difficult by saying that vote has to be unanimous. So now you are going to get two elected officials, particularly one, the Attorney General, who always runs on law and order, who is going to say he is not going to let anybody out regardless of how exemplary.

In fact, if you look at the history, with the exception of Mr. McFadden and maybe two or three others, in all the years of Thornburgh and Casey, the overwhelming majority of pardons--and read some of those records--you will find were for people for whom we did not want to pay. They were people who were dying of cancer, people who were dying of AIDS, people who were crippled, whom we did not even want to keep in prison, in addition to having great, exemplary records and having served in jail for decades. It was an economic decision in the Casey administration. It was not a great merciful decision that was made by a liberal Democratic governor.

So let us face up to the fact: if we are never going to give a pardon, then why even have a Board of Pardons? At least this amendment makes some sense out of a system that maybe eventually will die down.

I will be the first to tell you that if we keep the lid on what is going on and we keep telling everyone, you know, right now we have a relatively calm situation in our prisons. If life means life forever, and I know that is a very popular thing to say today, but we have to rethink it. Either we are for some type of rehabilitation, either we believe in this or not, but to do this silly thing by saying, and not silly in the sense that we should have it be unanimous is silly, but by saying to ourselves that we really believe that someday, 5 years, 10 years, 20 years from now, some elected official is going to put his entire career on the line by gambling even on the most exemplary prisoner, after McFadden, is crazy. So either adopt the amendment or let us change the amendment to an amendment to the Constitution to just do away with the Board of Pardons and stop kidding ourselves and probably wasting millions of dollars by having the hearings and going through all the charades and doing all the expertise and then you will never get five votes, at least not during the first 4 years, and assuming reelection, the first 8 years, from just what you have said, Mr. President. So why not just abolish it? Either do something smart or do something at least that is economical.

I said it before, we are tough on crime these next couple of weeks, as we were the weeks before this and as we will be in the months in the future, but we are not being smart about crime, and the answer to the problem is not necessarily going to come with toughness. It requires a certain degree of intelligence. Let us not kid anybody. I support the amendment. I am glad that my colleague from Philadelphia offered it, and I think we all ought to really stop and sit back and think for a minute about what we are doing. Are we going to waste the taxpayers' money by having a Board of Pardons that never issues a pardon? That is just as dumb as anything else I have heard up here.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Fisher.

Senator FISHER. Mr. President, I join with the gentleman from Delaware, Senator Bell, and rise in opposition to the amendment of the gentlewoman from Philadelphia, Senator Schwartz.

Mr. President, what this amendment would do is take the two people off the Board of Pardons who currently are there by virtue of their election. First, the Lieutenant Governor, who clearly is a representative of the administration on that Board of Pardons, as well as representing the people, and who, pursuant to the Constitution, serves as the chairman of the Board of Pardons. Secondly, we would then be taking off the chief law enforcement officer of this Commonwealth and removing the Attorney General from the Board of Pardons. Mr. President, I think it is entirely appropriate that we keep these two top statewide elected officials on the Board of Pardons.

The bill which is before us, Mr. President, is a constitutional amendment. Senate Bill No. 4 is a constitutional amendment. We are going to have to approve it in two consecutive Sessions. The people of this Commonwealth are going to be given a chance to vote on it, but I believe that under this bill, in changing the requirement for a commutation for a life prisoner from the current majority vote to a unanimous vote, I believe we are doing the right thing. I believe if a person is convicted and sentenced to life only after the unanimous agreement by twelve jurors in their criminal case at the common pleas court level, it should require a unanimous vote to let that person have his sentence commuted from a life sentence to a minimum sentence.

Mr. President, I recognize that the change in this bill clearly was brought forward by the revelations that were brought before the people of Pennsylvania in the case of Reginald McFadden. But, Mr. President, I believe it is time, because so many people across Pennsylvania said to me, and I am sure to you and to many others, that they thought a life sentence in this Commonwealth meant a life sentence. Well, in fact, it does mean a life sentence, except in that case where the Board of Pardons acts. And I believe that with the approval of Senate Bill No. 4, and retaining the current makeup with the changes that are included in Senate Bill No. 4, that we will have a system that is not going to eliminate each and every commutation of a life sentence, but it is going to mean that only those people who have been properly rehabilitated, whether it be after a period of 18 years or 20 years or 23 years or 25 years, who all five members, including two statewide elected officials, agree on are good risks for society, that they will be the only ones who will have their sentence commuted.

Mr. President, I think it makes all the sense in the world to keep the Attorney General and the Lieutenant Governor on this Board of Pardons, and I would ask for a negative vote from the Members of the Senate.

Thank you, Mr. President.

And the question recurring,
Will the Senate agree to the amendment?

The yeas and nays were required by Senator SCHWARTZ and were as follows, viz:

YEAS—9

Andrezeski	Hughes	Schwartz	Wagner
Armstrong	Jones	Tartaglione	Williams
Fumo			

NAYS—40

Afflerbach	Greenleaf	Madigan	Salvatore
Baker	Hart	Mellow	Shaffer
Belan	Heckler	Mowery	Shumaker
Bell	Helfrick	Musto	Stapleton
Bodack	Holl	O'Pake	Stewart
Brightbill	Jubelirer	Peterson	Stout
Corman	Kasunic	Porterfield	Tilghman
Dawida	LaValle	Punt	Tomlinson
Delp	Lemmond	Rhoades	Uliana
Fisher	Loeper	Robbins	Wenger

Less than a majority of the Senators having voted "aye," the question was determined in the negative.

The PRESIDENT. Senate Bill No. 4 will go over in its order, as amended.

BILL OVER IN ORDER

SB 7 -- Without objection, the bill was passed over in its order at the request of Senator FISHER.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR NO. 2

THIRD CONSIDERATION CALENDAR

BILLS REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 5, SB 11, SB 23 and **SB 50** -- Without objection, the bills were passed over in their order at the request of Senator FISHER.

SPECIAL ORDER OF BUSINESS SUPPLEMENTAL CALENDAR NO. 1

THIRD CONSIDERATION CALENDAR

BILL ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 4 (Pr. No. 68) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—44

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Shumaker
Armstrong	Heckler	Musto	Stapleton
Baker	Helfrick	O'Pake	Stewart
Belan	Holl	Peterson	Stout
Bell	Jubelirer	Porterfield	Tartaglione
Brightbill	Kasunic	Punt	Tilghman
Corman	LaValle	Rhoades	Tomlinson
Dawida	Lemmond	Robbins	Uliana
Delp	Loeper	Salvatore	Wagner
Fisher	Madigan	Schwartz	Wenger

NAYS—5

Bodack	Hughes	Jones	Williams
Fumo			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

UNFINISHED BUSINESS PETITIONS AND REMONSTRANCES

The PRESIDENT. The Chair recognizes the gentleman from Blair, Senator Jubelirer.

The PRESIDENT pro tempore. Mr. President, I just want to make a few comments on Senate Bill No. 4 in the Special Session. This body has taken a significant step in dealing with the issue of the Board of Pardons. Mr. President, I voted for that bill today and I hope that as it moves on to the House of Representatives, if it is passed in the same way, that we will at least recognize that a significant step has been made.

The gentleman from Philadelphia, Senator Fumo, in his remarks on the amendment of the gentlewoman from Philadelphia, Senator Schwartz, I think truly identified some genuine concerns. The concern is, Mr. President, is this body prepared to do away with the Board of Pardons? By requiring unanimous consent of the five members of the Board of Pardons, potentially that does, indeed, exist. It would probably have been my druthers that we would not have given any one member veto power over the Board of Pardons. I would have preferred to have seen an 80 percent, a four out of five. Obviously, the will of this body was not ready for that, and I did not offer the amendment.

I frankly believe, Mr. President, that if we have an 80 percent membership of the Board of Pardons voting for a pardon after the required number of years, if we have the appropriate authorities dealing with the halfway house, with counseling, if we have a Governor who is prepared to be the backup and be very, very, careful in his review, then, frankly, I do not think we need a veto power in the Board of Pardons. If there is to be one, then, frankly, we should indeed move to the way Virginia did it and do away with all pardons. Mr. President, we did not do that.

I voted for the bill. I raised the issue. I hope it is at least reviewed in the House of Representatives. I recognize that the emotions of the consideration of what happened last year are here in this body today, but I hope that we do not overreact. Recognizing that in this Session I will continue to vote to strengthen various legislation dealing with crime and that this goes a long way, I still think as a deliberative body that it is important to review exactly what we are doing. I trust that the House of Representatives, as they get this, will do the very same.

Again, Mr. President, I felt compelled to make these comments in light of the fact that this body just made a significant step to change the way the Board of Pardons operates in the Commonwealth.

Thank you, Mr. President.

The PRESIDENT. The Chair recognizes the gentleman from Philadelphia, Senator Fumo.

Senator FUMO. Mr. President, I rise, in essence, to second the remarks made by the gentleman from Blair, Senator

COMMONWEALTH OF PENNSYLVANIA

LEGISLATIVE JOURNAL

TUESDAY, APRIL 18, 1995

FIRST SPECIAL SESSION OF 1995 No. 26

HOUSE OF REPRESENTATIVES

The House convened at 1:05 p.m., e.d.t.

THE SPEAKER (MATTHEW J. RYAN) PRESIDING

PRAYER

The SPEAKER. Without objection, the prayer from today's regular session will be printed in today's special session Journal.

REV. DR. EMLYN H. JONES, pastor of Stoverdale United Methodist Church, Hummelstown, Pennsylvania, offered the following prayer:

Please bow with me.

Eternal Father, Thou who has been with us from the very beginnings of our Commonwealth, we desire to begin this legislative session seeking Your will for our people and Your guidance for the members of this grand House.

Our people desire resolution of the awesome problems they must deal with daily. Our elderly seek to live their lives in safety and security. They have made significant contributions to the rebuilding of our society, and they now desire to simply live tranquilly in their retirement years. Help us to provide for their needs. Our youth feel the challenge of life and anticipate change for the better. O God, may we provide them with excellent educational opportunities, motivation to be the best and to excel in their chosen disciplines. Grant us wisdom to provide to them the necessary ingredients for successful living.

We must also address the current plague of violence and crime. Only You have adequate answers for youth gone astray and adults who refuse to obey our laws. Grant us, God of wisdom, fair solutions that will rescue our youngsters from deviant behaviors, provide for the general welfare of all our people, restore those who have become victims, and fairly discipline and rehabilitate those who rebel and prey upon their fellow citizens. May Your goodness and mercy guide our decisionmaking.

We are privileged to serve our people. May we do so with a sense of history and with the future always in mind.

We ask Your blessings upon our Governor, upon his Cabinet, upon our legislators and their leaders. Grant each of them Your divine presence.

Hear our prayer, O God. Amen.

PLEDGE OF ALLEGIANCE DISPENSED WITH

The SPEAKER. Without objection, the Pledge of Allegiance will be dispensed with.

JOURNAL APPROVAL POSTPONED

The SPEAKER. Without objection, the approval of the Journal of Tuesday, March 21, 1995, will be postponed until printed. The Chair hears no objection.

LEAVES OF ABSENCE

The SPEAKER. The leaves of absence granted in today's regular session will also be granted in the special session.

MASTER ROLL CALL

The SPEAKER. The master roll call taken in today's regular session will also be the master roll call for the special session.

CALENDAR

BILLS ON THIRD CONSIDERATION

The House proceeded to third consideration of **SB 4, PN 68**, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

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

Mr. **DERMODY** offered the following amendment No. **A1502**:

Amend Sec. 1 (Sec. 9), page 2, lines 16 and 17, by striking out ", with expertise in the prediction of violent behavior"

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

The SPEAKER. On the question of the adoption of the amendment, the Chair recognizes the gentleman, Mr. Dermody.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, SB 4 makes significant changes in the makeup of the Board of Pardons and how the board operates. According to SB 4, the Governor will be required to appoint a psychologist or a psychiatrist with expertise in the prediction of violent behavior. My amendment deletes the language "with expertise in the prediction of violent behavior." If you talk to any of the experts in this field, including the Board of Parole, they will tell you that it is virtually impossible to predict violent behavior.

This bill amends our Constitution. Our Constitution needs to remain an accurate and flexible document, and I submit to you that we are setting ourselves up for failure and the board up for failure if we require the Governor to appoint anybody with so-called expertise in the prediction of violent behavior.

So I would urge the members to please support this amendment.

The SPEAKER. On the question of the Dermody amendment, the Chair recognizes the gentleman, Mr. Piccola, from Dauphin.

Mr. PICCOLA. Thank you, Mr. Speaker.

The arguments in favor of amendment A1502 offered by the gentleman, Mr. Dermody, have merit, and I would urge the House concur in the amendment offered by the gentleman.

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

The following roll call was recorded:

YEAS–199

Adolph	Fajt	Maitland	Saylor
Allen	Fargo	Major	Schroder
Argall	Farmer	Manderino	Schuler
Armstrong	Feese	Markosek	Scrimenti
Baker	Fichter	Marsico	Semmel
Bard	Fleagle	Masland	Serafini
Barley	Flick	Mayernik	Shaner
Battisto	Gamble	McCall	Sheehan
Bebko-Jones	Gannon	McGeehan	Smith, B.
Belardi	Geist	McGill	Smith, S. H.
Belfanti	George	Melio	Snyder, D. W.
Birmelin	Gigliotti	Merry	Staback
Bishop	Gladeck	Michlovic	Stairs
Blaum	Godshall	Micozzie	Steelman
Boscola	Gordner	Mihalich	Steil
Boyes	Gruitza	Miller	Stern
Brown	Gruppo	Mundy	Stetler
Browne	Habay	Nailor	Stish
Bunt	Haluska	Nickol	Strittmatter
Butkovitz	Hanna	Nyce	Sturla
Buxton	Harhart	O'Brien	Surra
Caltagirone	Hasay	Olasz	Tangretti
Cappabianca	Hennessey	Oliver	Taylor, E. Z.
Carn	Herman	Perzel	Taylor, J.
Carone	Hershey	Pesci	Thomas
Cawley	Hess	Petrarca	Tigue
Chadwick	Horsey	Petrone	Travaglio
Civera	Hutchinson	Pettit	Trello
Clark	Itkin	Phillips	Trich
Clymer	Jadlowiec	Piccola	True
Cohen, L. I.	James	Pistella	Tulli
Colafella	Jarolin	Pitts	Vance
Colaizzo	Josephs	Platts	Van Horne
Conti	Kaiser	Preston	Veon
Cornell	Keller	Ramos	Vitali
Corpora	Kenney	Raymond	Walko
Corrigan	King	Readshaw	Washington
Coy	Kirkland	Reber	Waugh
Curry	Krebs	Richardson	Williams
Daley	Kukovich	Rieger	Wogan
DeLuca	LaGrotta	Roberts	Wozniak
Dempsey	Laughlin	Robinson	Wright, D. R.
Dent	Lawless	Roebuck	Wright, M. N.
Dermody	Lederer	Rohrer	Yewcic
DeWeese	Leh	Rooney	Youngblood
DiGirolamo	Lescovitz	Rubley	Zimmerman
Donatucci	Levdansky	Rudy	Zug
Druce	Lloyd	Sainato	
Durham	Lucyk	Santoni	Ryan, Speaker
Egolf	Lynch	Sather	
Fairchild			

NAYS–0

NOT VOTING–1

Cohen, M.

EXCUSED–3

Cowell Evans Reinard

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?

Mr. **DERMODY** offered the following amendment No. **A1503**:

Amend Sec. 1 (Sec. 9), page 2, line 8, by striking out the bracket before "two-"

Amend Sec. 1 (Sec. 9), page 2, line 9, by inserting a bracket before "or"

Amend Sec. 1 (Sec. 9), page 2, line 9, by striking out the bracket after "or"

Amend Sec. 1 (Sec. 9), page 2, line 9, by inserting a bracket after "majority"

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

The SPEAKER. On the question of the adoption of the amendment, the gentleman is recognized.

Mr. DERMODY. Thank you, Mr. Speaker.

Mr. Speaker, this amendment would require—

The SPEAKER. Will the gentleman yield.

The Chair at this time has asked the lady, Mrs. Vance, to temporarily preside.

THE SPEAKER PRO TEMPORE (PATRICIA H. VANCE) PRESIDING

The SPEAKER pro tempore. The gentleman, Mr. Dermody, may proceed.

Mr. DERMODY. Thank you, Madam Speaker.

Madam Speaker, this amendment would require that the members that the Governor recommends to the Senate be confirmed by a two-thirds vote of the Senate. Currently members of the Milk Marketing Board, the Pennsylvania Fish Commission, the Pennsylvania Game Commission, the Liquor Control Board, the Turnpike Commission are required to be confirmed by a two-thir

vote of the Senate, and I submit that the members of the Board of Pardons, with their significant responsibilities, deserve at least the same scrutiny as the members of the Fish and Game Commissions. They could literally be making life-and-death decisions, so I submit that a two-thirds vote makes sense in this case and would urge the members to vote for a two-thirds requirement in the Senate to approve the members of the Board of Pardons.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Dauphin County, Mr. Piccola.

Mr. PICCOLA. Thank you, Madam Speaker.

I rise to oppose the Dermody amendment. This amendment would change the present provisions of the Constitution which allow this General Assembly to determine whether a two-thirds majority or a simple majority would be sufficient to confirm a member of the Board of Pardons. That is presently in the Constitution.

The bill conforms the Constitution to the law as the General Assembly adopted it a number of years ago to make the Board of Pardons members confirmed by a simple majority. We have elected to do that, I believe in the Administrative Code. That is the present law. A majority of the Senate confirms a member of the Board of Pardons. Mr. Dermody would have us go to another way of doing business, whereby two-thirds of the Senate would have to confirm the Governor's appointment to the Board of Pardons. That, in my view and I believe in the view of the majority of the members of the General Assembly over the years, is not appropriate. We enacted a statute which made a simple majority sufficient for confirmation to the Board of Pardons. It has been that way for a number of years. There is no reason set forth in this bill or in the arguments by Mr. Dermody as to why we should change something that has worked very well over the years.

I also would submit that by requiring a two-thirds majority for confirmation, you would tempt a minority in the Senate to play games, political games, with these appointments, as oftentimes happens with judicial appointments which require a two-thirds majority.

We should leave this confirmation at a simple majority so that there is clear accountability with the Governor for making the appointment and the majority of the Senate for confirming that appointment. I would therefore urge the House to defeat the Dermody amendment.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Dermody, for the second time.

Mr. DERMODY. Madam Speaker, I would just like to point out to the members that if the system was working so well, we would not be here today making these proposed changes to the Board of Pardons, and I would suggest to you that it is important that the minority have a voice in who the members of the Board of Pardons be. They are going to make crucial decisions regarding release decisions, and yes, of life prisoners. Therefore, I suggest to you that it is important that we vote and we have the chance to vote today to change it, as we are going to vote to change many aspects of the Board of Pardons, to require a two-thirds vote in the Senate. Regardless of what the controlling party is, it is important that they have a voice, particularly in matters as serious as this.

So I would ask for your support.

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

The following roll call was recorded:

YEAS–100

Battisto	Donatucci	Manderino	Sainato
Bebko-Jones	Fajt	Markosek	Santoni
Belardi	Gamble	Mayernik	Scrimenti
Belfanti	George	McCall	Shaner
Bishop	Gigliotti	McGeehan	Staback
Blaum	Gordner	Melio	Steelman
Boscola	Gruitza	Michlovic	Stetler
Butkovitz	Haluska	Mihalich	Sturla
Buxton	Hanna	Mundy	Surra
Caltagirone	Horsey	Olasz	Tangretti
Cappabianca	Itkin	Oliver	Thomas
Carn	James	Pesci	Tigue
Carone	Jarolin	Petrarca	Travaglio
Cawley	Josephs	Petrone	Trello
Cohen, M.	Kaiser	Pistella	Trich
Colafella	Keller	Preston	Van Horne
Colaizzo	Kirkland	Ramos	Veon
Corpora	Krebs	Readshaw	Vitali
Corrigan	Kukovich	Richardson	Walko
Coy	LaGrotta	Rieger	Washington
Curry	Laughlin	Roberts	Williams
Daley	Lederer	Robinson	Wozniak
DeLuca	Lescovitz	Roebuck	Wright, D. R.
Dermody	Levdansky	Rooney	Yewcic
DeWeese	Lucyk	Rudy	Youngblood

NAYS–100

Adolph	Fargo	Maitland	Schuler
Allen	Farmer	Major	Semmel
Argall	Feese	Marsico	Serafini
Armstrong	Fichter	Masland	Sheehan
Baker	Fleagle	McGill	Smith, B.
Bard	Flick	Merry	Smith, S. H.
Barley	Gannon	Micozzie	Snyder, D. W.
Birmelin	Geist	Miller	Stairs
Boyes	Gladeck	Nailor	Steil
Brown	Godshall	Nickol	Stern
Browne	Gruppo	Nyce	Stish
Bunt	Habay	O'Brien	Strittmatter
Chadwick	Harhart	Perzel	Taylor, E. Z.
Civera	Hasay	Pettit	Taylor, J.
Clark	Hennessey	Phillips	True
Clymer	Herman	Piccola	Tulli
Cohen, L. I.	Hershey	Pitts	Vance
Conti	Hess	Platts	Waugh
Cornell	Hutchinson	Raymond	Wogan
Dempsey	Jadlowiec	Reber	Wright, M. N.
Dent	Kenney	Rohrer	Zimmerman
DiGirolamo	King	Rubley	Zug
Druce	Lawless	Sather	
Durham	Leh	Saylor	Ryan,
Egolf	Lloyd	Schroder	Speaker
Fairchild	Lynch		

NOT VOTING–0

EXCUSED–3

Cowell	Evans	Reinard

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

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

Mr. **HORSEY** offered the following amendment No. **A1516**:

Amend Sec. 1 (Sec. 9), page 2, line 14, by striking out the bracket before "MEMBER"

Amend Sec. 1 (Sec. 9), page 2, lines 14 and 15, by striking out "] CRIME VICTIM;"

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

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Horsey.

Mr. HORSEY. Thank you, Madam Speaker.

It is absolutely important, Madam Speaker, that we have a member of the bar on the Pardons Board. It is important because we need an objective member who is not a consigned or commissioned person with a task. For example, we have the Attorney General, who might have an inference or input in this process, but he or she has a specific task to complete. We need an objective person who represents no special interest and will be fair and able to look at this process in a fair and objective manner.

I would urge you to support my amendment, please.

The SPEAKER pro tempore. Does the gentleman, Mr. Piccola, seek recognition? The gentleman may proceed.

Mr. PICCOLA. Thank you, Madam Speaker.

This amendment will change this bill in a very significant way. Presently the Constitution provides that one member of the Board of Pardons be a member of the bar; that is, a lawyer. There is already constitutionally one member of the bar on the Board of Pardons, that being the Attorney General, who must be a member of the bar. It was therefore thought by the sponsors of this bill and the Committee on Judiciary that reported it out that we could very well eliminate the one slot reserved for a member of the bar and substitute in his or her place a crime victim.

We recently enacted a statute providing for a victim advocate before the Parole Board, because the decisions that are made by the Parole Board oftentimes have great impact on victims, and we felt that there should be someone there advocating on behalf of the victim. Likewise, the Board of Pardons makes decisions and makes recommendations to the Governor that deal with the victims of crime because of the people that perpetrated those crimes upon that victim. It is therefore entirely appropriate, in fact it is very appropriate, that one of the members of the Board of Pardons be a crime victim so that the perspective of a crime victim be present on that board when the discussions and the recommendations regarding release and recommendations regarding pardons and commutations be made.

This is a very, very poorly thought out amendment because it eliminates the crime victim and reinstates the lawyer. I do not think it is necessary. In fact, I think it is counterproductive to the kind of reform we are trying to accomplish with this bill.

I urge the amendment's defeat.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Horsey, from Philadelphia for the second time.

Mr. HORSEY. Madam Speaker, what is poorly thought out is the idea of removing the member of the bar in place of the crime victim as opposed to adding an additional slot and that person being the crime victim. Why is it necessary to remove a member of the bar as opposed to extending the Pardons Board by just going ahead and adding the crime victim?

I am not opposed to a crime victim being a member of the boa and that person should be a member of the board, but not at expense of a member of the bar. Thank you, Madam Speaker.

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

The following roll call was recorded:

YEAS–36

Barley	Colaizzo	Laughlin	Rieger
Belardi	Curry	Lucyk	Roberts
Bishop	Dermody	Mayernik	Robinson
Caltagirone	DeWeese	Mihalich	Scrimenti
Carn	Horsey	Oliver	Staback
Carone	James	Perzel	Surra
Cawley	Jarolin	Pesci	Trich
Cohen, M.	Josephs	Petrone	Williams
Colafella	LaGrotta	Richardson	Youngblood

NAYS–161

Adolph	Feese	Major	Semmel
Allen	Fichter	Manderino	Serafini
Argall	Fleagle	Markosek	Shaner
Armstrong	Flick	Marsico	Sheehan
Baker	Gamble	Masland	Smith, B.
Bard	Gannon	McCall	Smith, S. H.
Battisto	Geist	McGeehan	Snyder, D. W.
Bebko-Jones	George	McGill	Stairs
Belfanti	Gigliotti	Melio	Steelman
Birmelin	Gladeck	Merry	Steil
Blaum	Godshall	Michlovic	Stern
Boscola	Gordner	Micozzie	Stetler
Boyes	Gruitza	Miller	Stish
Brown	Gruppo	Mundy	Strittmatter
Browne	Habay	Nailor	Sturla
Butkovitz	Haluska	Nickol	Tangretti
Buxton	Hanna	Nyce	Taylor, E. Z.
Cappabianca	Harhart	O'Brien	Taylor, J.
Chadwick	Hasay	Olasz	Thomas
Civera	Hennessey	Pettit	Tigue
Clark	Herman	Phillips	Travaglio
Clymer	Hershey	Piccola	Trello
Cohen, L. I.	Hess	Pistella	True
Conti	Hutchinson	Pitts	Tulli
Cornell	Itkin	Platts	Vance
Corpora	Jadlowiec	Preston	Van Horne
Corrigan	Kaiser	Ramos	Veon
Coy	Keller	Raymond	Vitali
Daley	Kenney	Readshaw	Walko
DeLuca	King	Reber	Waugh
Dempsey	Kirkland	Roebuck	Wogan
Dent	Krebs	Rohrer	Wozniak
DiGirolamo	Kukovich	Rooney	Wright, D. R.
Donatucci	Lawless	Rubley	Wright, M. N.
Druce	Lederer	Rudy	Yewcic
Durham	Leh	Sainato	Zimmerman
Egolf	Lescovitz	Santoni	Zug
Fairchild	Levdansky	Sather	
Fajt	Lloyd	Saylor	Ryan,
Fargo	Lynch	Schroder	Speaker
Farmer	Maitland	Schuler	

NOT VOTING–3

Bunt	Petrarca	Washington

EXCUSED–3

Cowell Evans Reinard

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

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

Ms. **JOSEPHS** offered the following amendment No. **A1529**:

Amend Sec. 1 (Sec. 9), page 2, line 15, by inserting after "VICTIM"
or crime victim's advocate
Amend Bill, page 2, by inserting after line 19
Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election occurring at least three months after the proposed constitutional amendment is passed by the General Assembly which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania.

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

The SPEAKER pro tempore. The Chair recognizes the lady from Philadelphia, Ms. Josephs.

Ms. JOSEPHS. Thank you, Madam Speaker.

This is very simple. It allows the Governor to appoint, besides a victim as a member of the board, not besides, but in the alternative, he may appoint a crime victim's advocate. I think that just gives the executive officer a little bit more flexibility.

I would appreciate a "yes" vote. Thank you, Madam Speaker.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Dauphin, Mr. Piccola.

Mr. PICCOLA. Thank you, Madam Speaker.

I would urge the defeat of the Josephs amendment.

I feel quite strongly that a crime victim should sit on the Board of Pardons.

I am not quite sure what a crime victim advocate is. In fact, I could make a strong argument that all of us are crime victim advocates because of what we do on behalf of the victims of crime.

I think it broadens it, as the lady indicates, but I think it broadens it to the extreme, and I believe quite strongly – and I hope the House agrees – that a crime victim should sit on the Board of Pardons. Only the crime victim has that unique perspective to know what it is like to be truly the victim of crime. A crime victim advocate, whatever that term means, unless they have actually been the victim, certainly does not have that perspective.

I urge that the amendment be defeated.

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

The following roll call was recorded:

YEAS–51

Battisto	Donatucci	Mihalich	Steelman
Bebko-Jones	Horsey	Mundy	Stetler
Belfanti	Itkin	Oliver	Sturla
Bishop	James	Pesci	Tangretti
Boscola	Jarolin	Pistella	Thomas
Butkovitz	Josephs	Preston	Tigue
Buxton	Keller	Ramos	Trich
Caltagirone	Kirkland	Richardson	Veon
Cappabianca	Kukovich	Rieger	Vitali
Carn	Lederer	Roberts	Washington
Cohen, M.	Lucyk	Robinson	Williams
Corpora	Manderino	Roebuck	Youngblood
Curry	McGeehan	Staback	

NAYS–148

Adolph	Fajt	Lynch	Saylor
Allen	Fargo	Maitland	Schroder
Argall	Farmer	Major	Schuler
Armstrong	Feese	Markosek	Scrimenti
Baker	Fichter	Marsico	Semmel
Bard	Fleagle	Masland	Serafini
Barley	Flick	Mayernik	Shaner
Belardi	Gamble	McCall	Sheehan
Birmelin	Geist	McGill	Smith, B.
Blaum	George	Melio	Smith, S. H.
Boyes	Gigliotti	Merry	Snyder, D. W.
Brown	Gladeck	Michlovic	Stairs
Browne	Godshall	Micozzie	Steil
Bunt	Gordner	Miller	Stern
Carone	Gruitza	Nailor	Stish
Cawley	Gruppo	Nickol	Strittmatter
Chadwick	Habay	Nyce	Surra
Civera	Haluska	O'Brien	Taylor, E. Z.
Clark	Hanna	Olasz	Taylor, J.
Clymer	Harhart	Perzel	Travaglio
Cohen, L. I.	Hasay	Petrarca	Trello
Colafella	Hennessey	Petrone	True
Colaizzo	Herman	Pettit	Tulli
Conti	Hershey	Phillips	Vance
Cornell	Hess	Piccola	Van Horne
Corrigan	Hutchinson	Pitts	Walko
Coy	Jadlowiec	Platts	Waugh
Daley	Kaiser	Raymond	Wogan
DeLuca	Kenney	Readshaw	Wozniak
Dempsey	King	Reber	Wright, D. R.
Dent	Krebs	Rohrer	Wright, M. N.
Dermody	LaGrotta	Rooney	Yewcic
DeWeese	Laughlin	Rubley	Zimmerman
DiGirolamo	Lawless	Rudy	Zug
Druce	Leh	Sainato	
Durham	Lescovitz	Santoni	Ryan,
Egolf	Levdansky	Sather	Speaker
Fairchild	Lloyd		

NOT VOTING–1

Gannon

EXCUSED–3

Cowell Evans Reinard

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

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

Mr. **COHEN** offered the following amendment No. **A1587**:

Amend Sec. 1 (Sec. 9), page 2, lines 6 and 7, by inserting brackets before and after "the Lieutenant Governor" and inserting immediately thereafter

a retired justice or judge of an appellate court of Pennsylvania

Amend Bill, page 2, by inserting after line 19

Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election occurring at least three months after the proposed constitutional amendment is passed by the General Assembly which meets the requirements of and is in conformance with section 1 of Article XI of the Constitution of Pennsylvania.

On the question,

Will the House agree to the amendment?

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Cohen, on the amendment.

Mr. COHEN. Thank you, Madam Speaker.

Madam Speaker, all of you should have received at your desks a copy of the survey the Democratic research staff did about who is on the Board of Pardons in the other States.

Now, 13 States do not have a Board of Pardons, leaving 37 States left. Of the 37 States with a Board of Pardons, only in Pennsylvania and Delaware is the Lieutenant Governor on the Board of Pardons. Now, why, aside from Pennsylvania, is Delaware the only State of 37 States with Pardons Boards to have a Lieutenant Governor on the Board of Pardons? I would assume that the answer is that the other States believe, as I do, that the Lieutenant Governor inherently has no expertise in these questions.

Let us look at the biography of Mark Schweiker. Does he hav any background in the criminal justice system? No. Did Mark Sing have any background in the criminal justice system? No. D Bill Scranton have any background in the criminal justice system No. Did Ernie Kline have any background in the criminal justic system? No. Did Mark Cohen? No.

But the question is, if we are trying to make people have relevan experience on the Pardons Board – and that is the thrust of what th bill is – there is no reason why the Lieutenant Governor, who has n relevant experience, should be on the board. The Lieutenan Governor has a very, very small staff. He has no base of knowledg he has no base of staff expertise in this. He is totally at the mercy o the Pension Board, unlike the Attorney General, in terms of makin these decisions, and he really has other things to do.

Increasingly, the Lieutenant Governor of Pennsylvania is give broad assignments by the Governor. Each administration brings u news that the Lieutenant Governor is going to be a really full partne in government. The Lieutenant Governor has plenty of other thing to do besides the Pardons Board, and the Lieutenant Governor has n expertise on the Pardons Board.

We saw in the last election how the Lieutenant Governor' decision to recommend the pardoning of Reginald McFadden hur him. Mark Schweiker is going to be under the same kinds o constraints. Any future Lieutenant Governor is under the same kind of constraints. There is no real purpose in giving a person a position he has no inherent ability to do just so he can be politically attacke in some future campaign for failure to do a job that he wa unqualified to do.

I think the whole thrust of this bill is to put people who have some qualifications by experience in the decisionmaking process The Lieutenant Governor has no expertise, has no inherent experience in this process. The Lieutenant Governor has plenty o other things to occupy his time and therefore cannot give this job th attention it deserves. I would recommend that he be taken off th board.

Now, I am recommending that there be a retired judge or justice of an appellate court appointed. It would be the Governor's call as to who is appointed. The advantage of having a retired judge or justice make the decision is these people have very extensive paper trails Anybody who has served on the courts has the opportunity to vote on numerous questions of criminal justice, and the Governor, with an extensive paper trail, can easily discern this person's judicial philosophy and make a decision as to who, of all the people who are qualified – at any given time there are easily 25 or more who are qualified – who best represents the Governor's philosophy.

I think this is an amendment that goes in the direction of putting competent people in jobs they can do well and taking away from jobs people who have no particular expertise or competence in this area.

I therefore urge support of this amendment.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Dauphin County, Mr. Piccola.

Mr. PICCOLA. Thank you, Madam Speaker.

The gentleman, Mr. Cohen, is suggesting that the Lieutenant Governor be removed from the Board of Pardons because he has no relevant experience in criminal justice. Well, I would submit, Madam Speaker, that I disagree with that assertion.

The Lieutenant Governor has the same relevant experience that Mr. Cohen has, that I have, that every one of you have. He was elected by the people of Pennsylvania. That is the relevant experience that the Lieutenant Governor brings to the Board of Pardons. He is

by virtue of the Constitution, chairman of the Board of Pardons. I submit he brings more relevant experience than some old retired justice of our appellate courts. A retired judge or justice of our appellate courts is probably over the age of 70 because he hit the mandatory retirement age. I do not know what relevant experience that is. Whatever his paper trail might be may or may not even be relevant when the man or woman hits the age of 70 and serves on the Board of Pardons for a period of 6 years.

This amendment is wrong. The Lieutenant Governor does have relevant experience. He is accountable to the people of Pennsylvania. A retired judge of the appellate courts of this State is accountable to no one.

We should defeat this amendment resoundingly.

The SPEAKER pro tempore. The Chair recognizes the gentleman, Mr. Cohen, for the second time.

Mr. COHEN. Thank you, Madam Speaker.

It has been pointed out to me that the front-runner for the Republican nomination is 71, so people in their seventies have a great ability which is widely known by large numbers of people.

In addition, the most likely people to be victims of crime are elderly people. So beyond the fact that the judge is likely to have an extensive record of experience in the criminal justice system, he is likely to be a member of the age group that is most likely to be victimized by crime. The average Lieutenant Governor in recent years has been in his forties or fifties. People in their forties and fifties are much less likely to be victimized by crime. But the real reason is, who has any competence, who has any experience in this job? Lieutenant Governors, including Mark Schweiker, have no such experience.

I would urge the support of this amendment.

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

The following roll call was recorded:

YEAS–75

Battisto	Dermody	Lescovitz	Shaner
Bebko-Jones	DeWeese	Levdansky	Staback
Belardi	Gigliotti	Lucyk	Steelman
Belfanti	Gordner	Manderino	Stetler
Bishop	Gruitza	Markosek	Sturla
Boscola	Haluska	McCall	Surra
Butkovitz	Hanna	Olasz	Tangretti
Caltagirone	Horsey	Oliver	Thomas
Cappabianca	Itkin	Pesci	Travaglio
Carn	James	Petrarca	Trello
Carone	Jarolin	Pistella	Trich
Cawley	Josephs	Ramos	Van Horne
Cohen, M.	Kaiser	Richardson	Vitali
Colafella	Kirkland	Rieger	Walko
Colaizzo	Krebs	Robinson	Washington
Corpora	Kukovich	Roebuck	Williams
Curry	LaGrotta	Rooney	Wright, D. R.
Daley	Laughlin	Sainato	Youngblood
DeLuca	Lawless	Santoni	

NAYS–124

Adolph	Fargo	Masland	Schroder
Allen	Farmer	Mayernik	Schuler
Argall	Feese	McGeehan	Scrimenti
Armstrong	Fichter	McGill	Semmel
Baker	Fleagle	Melio	Serafini
Bard	Flick	Merry	Sheehan
Barley	Gamble	Michlovic	Smith, B.
Birmelin	Gannon	Micozzie	Smith, S. H.
Blaum	Geist	Miller	Snyder, D. W.
Boyes	George	Mundy	Stairs
Brown	Gladeck	Nailor	Steil
Browne	Godshall	Nickol	Stern
Bunt	Gruppo	Nyce	Stish
Buxton	Habay	O'Brien	Strittmatter
Chadwick	Harhart	Perzel	Taylor, E. Z.
Civera	Hasay	Petrone	Taylor, J.
Clark	Hennessey	Pettit	Tigue
Clymer	Herman	Phillips	True
Cohen, L. I.	Hershey	Piccola	Tulli
Conti	Hess	Pitts	Vance
Cornell	Hutchinson	Platts	Veon
Corrigan	Jadlowiec	Preston	Waugh
Coy	Keller	Raymond	Wogan
Dempsey	Kenney	Readshaw	Wozniak
Dent	King	Reber	Wright, M. N.
DiGirolamo	Lederer	Roberts	Yewcic
Donatucci	Leh	Rohrer	Zimmerman
Druce	Lloyd	Rubley	Zug
Durham	Lynch	Rudy	
Egolf	Maitland	Sather	Ryan,
Fairchild	Major	Saylor	Speaker
Fajt	Marsico		

NOT VOTING–1

Mihalich

EXCUSED–3

Cowell Evans Reinard

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

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

Mr. **COHEN** offered the following amendment No. **A1589**:

Amend Sec. 1 (Sec. 9), page 1, line 16, by striking out "unanimous"
Amend Sec. 1 (Sec. 9), page 1, line 16, by inserting after "of"
at least four-fifths of the members of
Amend Bill, page 2, by inserting after line 19
Section 2. (a) Upon the first passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment.

(b) Upon the second passage by the General Assembly of this proposed constitutional amendment, the Secretary of the Commonwealth shall proceed immediately to comply with the advertising requirements of section 1 of Article XI of the Constitution of Pennsylvania and shall transmit the required advertisements to two newspapers in every county in which such newspapers are published in sufficient time after passage of this proposed constitutional amendment. The Secretary of the Commonwealth shall submit this proposed constitutional amendment to the qualified electors of this Commonwealth at the first primary, general or municipal election occurring at least three months after the proposed constitutional amendment is passed by the General Assembly which meets the requirements of and is

in conformance with section 1 of Article XI of the Constitution of Pennsylvania.

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

The SPEAKER pro tempore. On that question, the Chair recognizes Mr. Cohen from Philadelphia.

Mr. COHEN. Thank you.

Madam Speaker, this constitutional amendment, as it now stands, for the first time requires a unanimous vote of the Board of Pardons in order to pardon somebody who has been convicted of murder.

The problem with requiring a unanimous vote, which we have never required before, is that it sets up a right and does not provide any kind of meaningful remedy to achieve that right. Obviously, with two statewide officials on the board who are going to be very interested in the next election, it is highly unlikely that either the Lieutenant Governor or the Attorney General will at any time vote for any pardon for such a person, and therefore, no pardons will be granted.

Now, that may be a good thing, and if it was the desire of the gentleman, Mr. Piccola, to see that no pardon should be granted for somebody convicted of an especially heinous crime, there would be no legal problem with putting that into law and saying, if you are convicted of murder, there is absolutely no pardon, but Mr. Piccola and others have chosen not to do that. This law says that there shall be pardons. However, it sets up a bureaucratic process which, by the composition of the board, virtually guarantees that no such pardon could occur.

This is the kind of situation that the Federal courts have an awful lot of fun with at our expense, is they determine that there are really rights of people. Nobody is required, for instance, to get a patronage job; nobody has the right to a job that is not a civil service job, but once somebody has a job, the Federal courts have created a right not to be fired for good cause. Nobody has a right for PHEAA (Pennsylvania Higher Education Assistance Agency) grants, for instance, but once we in the State legislature create PHEAA grants, we cannot take them away without good cause, and there are numerous other programs that we are not required to provide benefits, we are not required to provide opportunities, but once we do provide those benefits, once we do provide those opportunities, we have to do them in a real way that actually works.

This amendment requiring unanimous consent will not actually work, and all this amendment is going to do is create huge amounts of litigation, and sooner or later some Federal court is likely to throw it out, and then it is not clear, and it will be up to them to decide what we have.

Throughout the vast majority of our history in Pennsylvania, there were four members on the Pardons Board, and it required a three-fourths vote. When a fifth member of the Pardons Board was created the last time the system was changed in the 1960's, the number of people to grant a pardon remained at three while the number of the board increased to five. So therefore, 30 years ago the percentage required went down from 75 percent to 60 percent. I would suggest that moving it to 80 percent would move us in line with the traditional figure that is needed, would guarantee that somebody could vote "no" and somebody else could still be pardoned.

The fact that unanimous consent is required and the fact that you have elected officials who are interested in running for statewide office and who fear attack ads means that we have basically set up right without any real remedy to the right. It is not in our interest engage in something that has no real meaning.

Therefore, I urge support of this amendment, which will raise t amount of votes needed on the Pardons Board from 60 percent nc to 80 percent. Thank you.

The SPEAKER pro tempore. On the question, the Ch recognizes the gentleman from Dauphin County, Mr. Piccola.

Mr. PICCOLA. Thank you, Madam Speaker.

First of all, the arguments advanced by the gentleman in supp of his amendment are without foundation.

There is no right, constitutional or otherwise, Federal or State, a pardon, nor is there a right to a recommendation for a pard because that is all we are really talking about here.

The pardon power is strictly discretionary with the Governor a can be exercised only when a discretionary recommendation is ma by the Board of Pardons. That is the only way it can happen. It do not have to happen, and there is no constitutional or other kind right to obtain a pardon or a recommendation for a pardon. So for t gentleman to claim this is going to tie up cases in court is simp fallacious. There is no right upon which any litigation could be base

Secondly, the gentleman indicates that we are precluding peop who are simply convicted of murder from getting a pardon. Thi about that, Madam Speaker. We are not talking about people w have simply been convicted of murder or a heinous crime. We a talking about people who, by a unanimous jury of 12 of their pee have not only been convicted of this crime but have been sentenc either to death because of their acts or, by a unanimous verdict their peers, have been sentenced to life in prison. It took a unanimo verdict by a jury to convict and to sentence, and therefore it seer entirely appropriate that in those cases where death or life in pris was the sentence, that a unanimous verdict of the Board of Pardo be required to make that recommendation for pardon to t Governor.

This amendment is contrary to the intent of this bill. It is contr to what I believe are the good senses of the people of Pennsylvan and the amendment should be defeated.

The SPEAKER pro tempore. On the amendment, the Ch recognizes the gentleman from Philadelphia, Mr. Richardson.

Mr. RICHARDSON. Thank you very much, Madam Speake

Madam Speaker, I rise to support the Cohen amendment.

It always amazes me to hear the gentleman on the other side the aisle talk about what is constitutionally correct and what is n constitutionally correct. Common sense prevails.

If you are talking about a unanimous vote of a board that is set for the purpose of being able to be discretionary and also allowed opportunity to be able to make decisions intelligently, you would want to make sure that everybody is automatically locked into same thought. But as you would have it, it would be another way take people's minds, turn them around, and try to convince everybo that for whatever reason, no matter whether or not they are mitigating circumstances or not, that we would in fact make sure t they would never get a pardon.

Well, there are mitigating circumstances in every situation none. In fact, we have some situations in this Commonwealth wh age prevailed and illness prevailed and pardons were given to th individuals for them to go home and die in peace. There have be cases where other individuals, for an example, because of the nat of the situation, that they found out later on that those individuals fact did not commit the crime and had to present a pardon for th

individuals so that they could be able to go home because there was a mistake made by that so-called unanimous jury that you just got finished talking about because they had erroneous information.

But what always amazes me is that there is never any room for doubt; there is never any room for maneuverability to allow a person an opportunity to in fact be given that opportunity to be considered fairly. So what you have designed here is an opportunity to create a kangaroo pardon board that only does what you tell them to do, that is swayed and directed by those who would be the operatives to allow them to go on and do what they do. But Mr. Cohen, in his wisdom, came up with a suggestion that said, perhaps maybe four-fifths of the members as opposed to unanimous may be a way in which to go since you do not agree with three. Therefore, it would not allow the people who are presently sitting on the board to be allowed automatically to feel that every time there is a situation that comes up where there may be a shadow of a doubt, where there may be a question— Thirty or forty years inside an institution. We know; we have one of the toughest States in the United States, this Commonwealth, when it deals with the death penalty, and life means life in Pennsylvania. So it does not change. So every single time it amazes me to hear the gentleman raise the points that he does without any other consideration.

I just wanted to say that we do not condone murder, but we also know that there are situations that have existed in this Commonwealth that have resulted in individuals having a right to be pardoned, and certainly the way the Pardons Board is set up now, that will never ever happen, and I believe this will be challenged in court once this passes, and then you will agree later on that you all made a mistake again.

The SPEAKER pro tempore. The Chair recognizes the gentleman from Philadelphia, Mr. Cohen, for the second time.

Mr. COHEN. Thank you, Madam Speaker.

Madam Speaker, Mr. Piccola and I have areas of agreement and areas of disagreement on the constitutionality of this law. We both agree that there is no inherent right to pardon, and the State legislature, if we wanted to, could totally abolish the right to pardon. Now, we could say nobody convicted of any crime or nobody convicted of any crime whatsoever has the right to be pardoned. We could do that; I do not challenge we could do that. If we did it, there would be no legal problem at either the State or the Federal levels.

The question is, can we set up the system like we are setting up in this bill, where we say there is a right to be considered for a pardon by setting up the structure in which people can be considered for a pardon; then we put elected officials on the board who are very likely to never vote for anybody to be pardoned. And so then, eventually, over time what will happen is, if Mr. Piccola's goal works, will be that there will be a whole series of votes and 2, 3, 4, 5 years will go by and nobody at all will be pardoned, and then people will say, this system is rigged and this system violates due process of law, and if a Federal court determines that a system requiring a unanimous vote and having two elected officials on the board violates due process of law, then the whole thing will be thrown out and it will be up to the Federal court to provide a remedy.

I think this is a real problem. I think this amendment is a real solution. I urge your support.

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

The following roll call was recorded:

YEAS–51

Bebko-Jones	Dermody	Markosek	Roebuck
Bishop	DeWeese	Melio	Shaner
Boscola	Haluska	Mihalich	Steelman
Caltagirone	Horsey	Nickol	Stetler
Cappabianca	Itkin	Oliver	Sturla
Carn	James	Pesci	Tangretti
Cawley	Jarolin	Petrarca	Thomas
Cohen, M.	Josephs	Pistella	Tigue
Colafella	Kirkland	Ramos	Trello
Colaizzo	Kukovich	Richardson	Washington
Corpora	Laughlin	Rieger	Williams
Curry	Levdansky	Roberts	Youngblood
Daley	Manderino	Robinson	

NAYS–147

Adolph	Fargo	Lynch	Schroder
Allen	Farmer	Maitland	Schuler
Argall	Feese	Major	Scrimenti
Armstrong	Fichter	Marsico	Semmel
Baker	Fleagle	Masland	Serafini
Bard	Flick	Mayernik	Sheehan
Barley	Gamble	McCall	Smith, B.
Battisto	Gannon	McGeehan	Smith, S. H.
Belardi	Geist	McGill	Snyder, D. W.
Belfanti	George	Merry	Staback
Birmelin	Gigliotti	Michlovic	Steil
Blaum	Gladeck	Micozzie	Stern
Boyes	Godshall	Miller	Stish
Brown	Gordner	Mundy	Strittmatter
Browne	Gruitza	Nailor	Surra
Bunt	Habay	Nyce	Taylor, E. Z.
Butkovitz	Hanna	O'Brien	Taylor, J.
Buxton	Harhart	Olasz	Travaglio
Carone	Hasay	Perzel	Trich
Chadwick	Hennessey	Petrone	True
Civera	Herman	Pettit	Tulli
Clark	Hershey	Phillips	Vance
Clymer	Hess	Piccola	Van Horne
Cohen, L. I.	Hutchinson	Pitts	Veon
Conti	Jadlowiec	Platts	Vitali
Cornell	Kaiser	Preston	Walko
Corrigan	Keller	Raymond	Waugh
Coy	Kenney	Readshaw	Wogan
DeLuca	King	Reber	Wozniak
Dempsey	Krebs	Rohrer	Wright, D. R.
Dent	LaGrotta	Rooney	Wright, M. N.
DiGirolamo	Lawless	Rubley	Yewcic
Donatucci	Lederer	Rudy	Zimmerman
Druce	Leh	Sainato	Zug
Durham	Lescovitz	Santoni	
Egolf	Lloyd	Sather	Ryan,
Fairchild	Lucyk	Saylor	Speaker
Fajt			

NOT VOTING–2

Gruppo	Stairs

EXCUSED–3

Cowell	Evans	Reinard

Less than the majority having voted in the affirmative, the question was determined in the negative and the amendment was not agreed to.

On the question recurring,

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

Bill as amended was agreed to.

The SPEAKER pro tempore. 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. Richardson.

Mr. RICHARDSON. I was not compelled earlier to speak on this until I heard the remarks made by the gentleman on the other side of the aisle, and I felt that it was important that at least for the record, since we will never win any of these votes, that it should be at least shared with the public in terms of how we can best describe some of these issues.

SB 4 changes the composition of the Board of Pardons and adds the requirement that in cases of life imprisonment or a death sentence, a pardon cannot be granted without the unanimous recommendation of the board. This bill can best be characterized as a reactionary and ineffective response to the McFadden case that caused Mark Singel to lose his lead in the Governor's race here in Pennsylvania. Politically motivated by his own gubernatorial aspirations, Attorney General Ernie Preate, the only one of five board members to oppose the McFadden recommendation, led the call for a constitutional amendment requiring unanimous commutation decisions.

It is important to note out three things. The bill does nothing to address the problem illustrated by the McFadden case which arose after the board made its recommendation. Reginald McFadden left prison without going through a prerelease program and was unsupervised while on probation. The bill does not provide for additional resources for parole officers, nor does it provide for funding for expansion and upgrading of prerelease programs.

Number two, it is clear that Senator Fisher stated that the purpose of his bill is to "clarify that a life sentence in this state means life in prison...." That comment appeals to the public belief that convicted murderers are routinely set free after serving a short sentence, while in fact without this political grandstanding and the danger created by needlessly amending the State Constitution, Pennsylvania is one of the toughest States in the Nation, where life in prison means exactly that. Only 8 pardons out of the 2,614 lifers in prison last year were granted by the Governor during his last term in office. Those pardons were granted for good cause, such as advanced age, severe illness, or evidence indicating that the prisoner was wrongly convicted. I noticed without question that there was no mention of that after we made the comment. It never is when you tell the truth.

Number three is the actual effect of the SB 4 provision requiring a unanimous recommendation would be to eliminate the possibility of receiving a pardon. Two board members, the Attorney General and the Lieutenant Governor, are politicians who may not risk consequences faced by Lieutenant Governor Singel, at the time, during the last election. And considering political motivation, the prime sponsor's stated purpose, and the actual effect of the bill, the bill analysis should simply state that SB 4 does away with the Board of Pardons, period, and should be termed as in fact a "kangaroo board" for all people in the Commonwealth of Pennsylvania to go before, because there never will be any justice.

On the question recurring,

Shall the bill pass finally?

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

YEAS–177

Adolph	Fajt	Maitland	Schroder
Allen	Fargo	Major	Schuler
Argall	Farmer	Markosek	Scrimenti
Armstrong	Feese	Marsico	Semmel
Baker	Fichter	Masland	Serafini
Bard	Fleagle	Mayernik	Shaner
Barley	Flick	McCall	Sheehan
Battisto	Gamble	McGeehan	Smith, B.
Bebko-Jones	Gannon	McGill	Smith, S. H.
Belardi	Geist	Melio	Snyder, D. W.
Belfanti	George	Merry	Staback
Birmelin	Gigliotti	Michlovic	Stairs
Blaum	Gladeck	Micozzie	Steelman
Boyes	Godshall	Miller	Steil
Brown	Gordner	Mundy	Stern
Browne	Gruitza	Nailor	Stetler
Bunt	Gruppo	Nickol	Stish
Butkovitz	Habay	Nyce	Strittmatter
Buxton	Haluska	O'Brien	Sturla
Caltagirone	Hanna	Olasz	Surra
Cappabianca	Harhart	Perzel	Tangretti
Carone	Hasay	Pesci	Taylor, E. Z.
Cawley	Hennessey	Petrarca	Taylor, J.
Chadwick	Herman	Petrone	Tigue
Civera	Hershey	Pettit	Trello
Clark	Hess	Phillips	Trich
Clymer	Hutchinson	Piccola	True
Cohen, L. I.	Jadlowiec	Pistella	Tulli
Colafella	Jarolin	Pitts	Vance
Colaizzo	Josephs	Platts	Van Horne
Conti	Kaiser	Preston	Vitali
Cornell	Keller	Raymond	Walko
Corrigan	Kenney	Readshaw	Waugh
Coy	King	Reber	Wogan
Daley	Krebs	Rieger	Wozniak
DeLuca	LaGrotta	Roberts	Wright, D. R.
Dempsey	Laughlin	Robinson	Wright, M. N.
Dent	Lawless	Rohrer	Yewcic
Dermody	Lederer	Rooney	Youngblood
DiGirolamo	Leh	Rubley	Zimmerman
Donatucci	Lescovitz	Rudy	Zug
Druce	Levdansky	Sainato	
Durham	Lloyd	Santoni	Ryan,
Egolf	Lucyk	Sather	Speaker
Fairchild	Lynch	Saylor	

NAYS–23

Bishop	DeWeese	Manderino	Thomas
Boscola	Horsey	Mihalich	Travaglio
Carn	Itkin	Oliver	Veon
Cohen, M.	James	Ramos	Washington
Corpora	Kirkland	Richardson	Williams
Curry	Kukovich	Roebuck	

NOT VOTING–0

EXCUSED–3

Cowell	Evans	Reinard

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 House proceeded to third consideration of **SB 12, PN 12**, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for bail.

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

Mr. **VEON** offered the following amendment No. **A1515**:

Amend Sec. 1 (Sec. 14), page 1, line 11, by inserting after "unless"
the prisoner is charged with an offense which is graded as a felony of the first degree and

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

AMENDMENT WITHDRAWN

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman from Beaver, Mr. Veon.

Mr. VEON. Thank you, Madam Speaker.

I am withdrawing that amendment.

The SPEAKER pro tempore. Thank you very much.

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

Mr. **FEESE** offered the following amendment No. **A1576**:

Amend Sec. 1 (Sec. 14), page 1, lines 10 and 11, by striking out "for which the maximum sentence is death or life imprisonment" and inserting
or for offenses for which the maximum sentence is life imprisonment

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

The SPEAKER pro tempore. On that question, the Chair recognizes the gentleman, Mr. Feese.

Mr. FEESE. Thank you, Madam Speaker.

Madam Speaker, the intent of the Senate bill is to make certain offenses not bailable.

Under the Constitution as it exists now, capital offenses – that is, offenses for which the death penalty may be imposed – are not bailable. The intent of the Senate bill was to include within that category of offenses offenses for which life imprisonment could be imposed; that is, first-degree murder, when there are no aggravating circumstances, or second-degree murder, which we commonly refer to as "felony murder."

The bill, however, as it is drafted does not achieve that purpose, so this amendment is merely to clarify that that is in fact the purpose, and it is agreed to by Senator Fisher, who is the prime sponsor of the bill in the Senate.

Thank you, Madam Speaker.

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

The following roll call was recorded:

YEAS–192

Adolph	Fajt	Manderino	Schuler
Allen	Fargo	Markosek	Scrimenti
Argall	Farmer	Marsico	Semmel
Armstrong	Feese	Masland	Serafini
Baker	Fichter	Mayernik	Shaner
Bard	Fleagle	McCall	Sheehan
Barley	Flick	McGeehan	Smith, B.
Battisto	Gamble	McGill	Smith, S. H.
Bebko-Jones	Gannon	Melio	Snyder, D. W.
Belardi	Geist	Merry	Staback
Belfanti	George	Michlovic	Stairs
Birmelin	Gigliotti	Micozzie	Steelman
Blaum	Gladeck	Mihalich	Steil
Boscola	Godshall	Miller	Stern
Boyes	Gordner	Mundy	Stetler
Brown	Gruitza	Nailor	Stish
Browne	Gruppo	Nickol	Strittmatter
Bunt	Habay	Nyce	Sturla
Butkovitz	Haluska	O'Brien	Surra
Buxton	Hanna	Olasz	Tangretti
Caltagirone	Harhart	Perzel	Taylor, E. Z.
Cappabianca	Hasay	Pesci	Taylor, J.
Carone	Hennessey	Petrarca	Thomas
Cawley	Herman	Petrone	Tigue
Chadwick	Hershey	Pettit	Travaglio
Civera	Hess	Phillips	Trello
Clark	Hutchinson	Piccola	Trich
Clymer	Itkin	Pistella	True
Cohen, L. I.	Jadlowiec	Pitts	Tulli
Cohen, M.	James	Platts	Vance
Colafella	Jarolin	Preston	Van Horne
Conti	Kaiser	Ramos	Veon
Cornell	Keller	Raymond	Vitali
Corpora	Kenney	Readshaw	Walko
Corrigan	King	Reber	Washington
Coy	Krebs	Rieger	Waugh
Curry	Kukovich	Roberts	Williams
Daley	LaGrotta	Robinson	Wogan
DeLuca	Laughlin	Roebuck	Wozniak
Dempsey	Lawless	Rohrer	Wright, D. R.
Dent	Lederer	Rooney	Wright, M. N.
Dermody	Leh	Rubley	Yewcic
DeWeese	Lescovitz	Rudy	Youngblood
DiGirolamo	Levdansky	Sainato	Zimmerman
Donatucci	Lloyd	Santoni	Zug
Druce	Lucyk	Sather	
Durham	Lynch	Saylor	Ryan,
Egolf	Maitland	Schroder	Speaker
Fairchild	Major		

NAYS–4

Bishop	Horsey	Oliver	Richardson

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

TUESDAY, APRIL 25, 1995

1995 FIRST SPECIAL SESSION No. 27

SENATE

TUESDAY, April 25, 1995

The Senate met at 4:29 p.m., Eastern Daylight Saving Time.

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the Chair.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Special Session of April 24, 1995.

The Clerk proceeded to read the Journal of the preceding Special Session, when, on motion of Senator FISHER, further reading was dispensed with and the Journal was approved.

LEGISLATIVE LEAVES

The PRESIDENT. The following leaves granted in today's Regular Session will also be granted in the Special Session:

Temporary Capitol leaves for Senator Jones, Senator Dawida, Senator Bodack, Senator Andrezeski, Senator Corman, Senator Robbins, Senator Afflerbach, and Senator Porterfield; and legislative leave for Senator Williams.

HOUSE MESSAGE

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Weekly adjournment.

REPORTS FROM COMMITTEE

Senator GREENLEAF, from the Committee on Judiciary, reported the following bills:

SB 75 (Pr. No. 97)

An Act conferring police powers on Federal law enforcement officers in certain circumstances.

HB 5 (Pr. No. 142) (Amended)

An Act amending the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, further providing for the powers and duties of the Board of Pardons.

HB 6 (Pr. No. 143) (Amended)

An Act amending the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, further providing for investigations and recommendations to the Board of Pardons.

HB 24 (Pr. No. 144) (Amended)

An Act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for a mandatory minimum penalty for delivery of contraband to certain confined persons; and imposing a penalty for possession of a controlled substance by an inmate.

CALENDAR

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 4 (Pr. No. 112) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for the composition and powers of the Board of Pardons.

Senator FISHER. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 4.

On the question,
Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentleman from Allegheny, Senator Fisher.

Senator FISHER. Mr. President, on that motion, I would urge that the Members of the Senate do concur in House amendments to Senate Bill No. 4, and while discussing Senate Bill No. 4, I would urge similarly on the next bill on the Calendar that the Senate also concur in House amendments to Senate Bill No. 12.

But in talking about concurrence in the amendments to both of these bills, I think it is important for us to recognize that at this stage in our Special Session the Senate and the House, working collectively in a bipartisan fashion with the Ridge administration, have made what I believe is unprecedented progress in meeting the goals of the Special Session. With the hopeful passage today on concurrence of the two constitutional amendments which are before us and, hopefully, with the passage of House Bill No. 19, the record of both the House and

Senate will be that as of the passage of these two constitutional amendments there will have been 11 bills that will have been signed into law as acts and there will have been 3 constitutional amendments which will have been given final approval by both Chambers.

One of those constitutional amendments is Senate Bill No. 11, a constitutional amendment sponsored by the gentleman from Montgomery, Senator Greenleaf, which was passed for the second consecutive Session by this General Assembly, and it will appear on the ballot this fall. With the passage of Senate Bill No. 4 and the hopeful passage of Senate Bill No. 12, we will then have had two additional constitutional amendments which will have been passed the first time and will be in a position to be considered by the next General Assembly in the next Session.

Mr. President, I think the progress that we have made has not only been an outstanding example of bipartisan cooperation between the Chambers, but the progress that we have made has made a significant change in State law, particularly as it applies to juvenile crime as well as adult crime. There are more bills to be considered in the Special Session. There are about five or six additional bills that were part of the initial phase, as well as perhaps another dozen bills which will be considered in a second phase. But all in all, I think all of us can be proud, the Legislature and the Ridge administration combined, that we have taken historic steps in less than 100 days in this administration to pass some laws which I believe will make the Commonwealth of Pennsylvania a safer place in which to live.

So with that, Mr. President, I would, once again, ask that the Senate do concur in House amendments to Senate Bill No. 4.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator FISHER and were as follows, viz:

YEAS—45

Afflerbach	Greenleaf	Mellow	Shaffer
Andrezeski	Hart	Mowery	Shumaker
Armstrong	Heckler	Musto	Stapleton
Baker	Helfrick	O'Pake	Stewart
Belan	Holl	Peterson	Stout
Bell	Jubelirer	Porterfield	Tartaglione
Brightbill	Kasunic	Punt	Tilghman
Corman	LaValle	Rhoades	Tomlinson
Dawida	Lemmond	Robbins	Uliana
Delp	Loeper	Salvatore	Wagner
Fisher	Madigan	Schwartz	Wenger
Gerlach			

NAYS—5

Bodack	Hughes	Jones	Williams
Fumo			

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

LEGISLATIVE LEAVES

The PRESIDENT. The Chair recognizes the gentleman fro Lackawanna, Senator Mellow.

Senator MELLOW. Mr. President, I request temporary Ca itol leaves for Senator Fumo and Senator Hughes.

The PRESIDENT. Senator Mellow requests temporary Cap tol leaves for Senator Fumo and Senator Hughes. Witho objection, those leaves will be granted.

CONSIDERATION OF CALENDAR RESUMED

BILL ON CONCURRENCE IN HOUSE AMENDMENTS

SENATE CONCURS IN HOUSE AMENDMENTS

SB 12 (Pr. No. 113) -- The Senate proceeded to conside ation of the bill, entitled:

A Joint Resolution proposing an amendment to the Constituti of the Commonwealth of Pennsylvania, further providing for bail.

Senator FISHER. Mr. President, I move that the Senate c concur in the amendments made by the House to Senate Bi No. 12.

On the question,
Will the Senate agree to the motion?

The yeas and nays were required by Senator FISHER a were as follows, viz:

YEAS—44

Afflerbach	Fisher	Loeper	Salvatore
Andrezeski	Gerlach	Madigan	Shaffer
Armstrong	Greenleaf	Mellow	Shumaker
Baker	Hart	Mowery	Stapleton
Belan	Heckler	Musto	Stewart
Bell	Helfrick	O'Pake	Stout
Bodack	Holl	Peterson	Tilghman
Brightbill	Jubelirer	Porterfield	Tomlinson
Corman	Kasunic	Punt	Uliana
Dawida	LaValle	Rhoades	Wagner
Delp	Lemmond	Robbins	Wenger

NAYS—6

Fumo	Jones	Tartaglione	Williams
Hughes	Schwartz		

A constitutional majority of all the Senators having vo "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the Ho of Representatives accordingly.

SPECIAL ORDER OF BUSINESS GUESTS OF SENATOR CLARENCE D. BELL PRESENTED TO THE SENATE

The PRESIDENT. The Chair recognizes the gentleman f Delaware, Senator Bell.

Senator BELL. Mr. President, we have in the gallery an er group of visitors from southeastern Delaware County.

SB 11 By Senators GREENLEAF, FISHER, O'PAKE, HECKLER, GERLACH, TOMLINSON, ULIANA, DELP, BELL, HOLL, JUBELIRER, LOEPER, SHAFFER, CORMAN, MELLOW, BODACK, MUSTO, ARMSTRONG, BRIGHTBILL, BAKER, ROBBINS, LAVALLE, STEWART, HELFRICK, LEMMOND, SALVATORE, TILGHMAN, MADIGAN, WENGER, PUNT, MOWERY, PETERSON, ANDREZESKI, BELAN, SHUMAKER, RHOADES, STOUT, SCHWARTZ, PORTERFIELD, STAPLETON, WAGNER, KASUNIC, TARTAGLIONE, DAWIDA, AFFLERBACH and JONES.

Prior Printer's Nos. 11, 49. Printer's No. 65.

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for rights of accused in criminal prosecutions.

Referred to JUDICIARY, Jan. 24, 1995
Reported as committed, Feb. 7, 1995
First consideration, Feb. 7, 1995
Second consideration, Feb. 8, 1995
Re-referred to APPROPRIATIONS, Feb. 8, 1995
Re-reported as amended, Feb. 13, 1995
Third consideration and final passage, Feb. 14, 1995 (49-1)
(Remarks see Senate Journal Page 57), Feb. 14, 1995
In the House
Referred to JUDICIARY, Feb. 14, 1995
Reported as committed, March 7, 1995
First consideration, March 7, 1995
Laid on the table, March 7, 1995
Removed from table, March 7, 1995
Re-referred to APPROPRIATIONS, March 7, 1995
Re-reported as committed, March 8, 1995
Second consideration, March 8, 1995
Third consideration and final passage, March 13, 1995 (187-9)
(Remarks see House Journal Page 213), March 13, 1995
Signed in Senate, March 14, 1995
Signed in House, March 15, 1995
Filed in the Office of the Secretary of the Commonwealth, March 15, 1995
Pamphlet Laws Resolution No. 1
Passed Sessions of 1994 and 1995
Approved by the electorate, Nov. 7, 1995
(1,176,652 - 400,727)

COMMONWEALTH OF PENNSYLVANIA

Legislative Journal

TUESDAY, FEBRUARY 14, 1995

1995 FIRST SPECIAL SESSION No. 10

SENATE

TUESDAY, February 14, 1995

The Senate met at 2:55 p.m., Eastern Standard Time.

The PRESIDENT (Lieutenant Governor Mark S. Schweiker) in the Chair.

JOURNAL APPROVED

The PRESIDENT. A quorum of the Senate being present, the Clerk will read the Journal of the preceding Special Session of February 13, 1995.

The Clerk proceeded to read the Journal of the preceding Special Session, when, on motion of Senator LOEPER, further reading was dispensed with and the Journal was approved.

LEGISLATIVE LEAVES

The PRESIDENT. The following leaves requested in today's Regular Session will also be granted in the Special Session:

Temporary Capitol leaves for Senator Corman and Senator Belan; and legislative leaves for Senator Jones, Senator Williams, Senator Dawida, and Senator Fumo.

HOUSE MESSAGE

HOUSE CONCURS IN SENATE CONCURRENT RESOLUTION

The Clerk of the House of Representatives informed the Senate that the House has concurred in resolution from the Senate, entitled:

Recess adjournment.

CALENDAR

THIRD CONSIDERATION CALENDAR

BILL REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 5 -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

BILL REREPORTED FROM COMMITTEE AS AMENDED ON THIRD CONSIDERATION AND FINAL PASSAGE

SB 11 (Pr. No. 65) -- The Senate proceeded to consideration of the bill, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for rights of accused in criminal prosecutions.

Considered the third time and agreed to,

And the amendments made thereto having been printed as required by the Constitution,

On the question,

Shall the bill pass finally?

The PRESIDENT. The Chair recognizes the gentleman from Berks, Senator O'Pake.

Senator O'PAKE. Mr. President, unlike some of the things we have been doing in this so-called crime package, this bill, I think, will make a substantial impact in deterring one of the most vicious crimes known today, the crime of child abuse. One of the problems in successfully prosecuting a defendant for abusing or molesting a child is the requirement, according to our State Supreme Court, that the victim be brought into court and that he be examined directly, face to face, by the defense counsel. For a child victim who has already gone through the trauma of the sexual abuse incident, to come back and have to relive that in a courtroom setting and be subjected to the wiles of a crafty defense lawyer is probably the second worst thing that that child has to go through in his or her life.

This, Mr. President, makes it clear, if the voters approve, that the Constitution of Pennsylvania does not require a face-to-face confrontation in court, but, rather, with the sophisticated video equipment of today, that an out-of-court video deposition can substitute for that face-to-face confrontation. I was always puzzled by that Supreme Court decision and I think it was wrong. However, it is the Supreme Court. This should make it clear even to the Supreme Court of Pennsylvania that we do not want to make it more difficult to convict child abusers, that the same requirement in the U.S. Constitution is adequate to protect defendants in Pennsylvania's Constitution.

Therefore, I commend the gentleman from Montgomery, Senator Greenleaf. I hope that we will approve it. I hope the House will take steps to quickly ratify this so it can go on the ballot and make it a little easier for justice to be done and for prosecutors to get a conviction when the heinous crime of child abuse has been committed. I urge its support.

The PRESIDENT. The Chair recognizes the gentleman from Montgomery, Senator Greenleaf.

Senator GREENLEAF. Mr. President, I rise in support of this legislation. This is something that both I and my col-

leagues have been working on for over a decade. We originally passed this bill as a piece of legislation, as a law, and it was enacted and permitted. It was originally an idea that was proposed by the American Bar Association, and as the gentleman from Berks, Senator O'Pake, indicated, it would level the playing field to allow young child abuse victims to testify, if the court decides that is an appropriate action to take. If, psychologically, that child would not be able to testify in open court, and, of course, there are many people, even adults, who have difficulty doing that, it would allow that child to testify in a separate room through closed circuit TV or through a video deposition, but it would still allow the defense to cross-examine the child and still have the opportunity to confront that child, but it would not necessarily have to be in an open courtroom, subject to the judge's determination.

Of course, if this amendment is passed, it would be a constitutional amendment. The original statute that we adopted was found to be constitutional under the United States Constitution, and the Supreme Court ruling has said it is appropriate. Many other States, I think there are something like 25 other States or more now, allow this procedure, but our Pennsylvania Supreme Court did not follow the United States Supreme Court or the United States Constitution and interpreted this law under the Pennsylvania Constitution. It is now necessary for us to clarify our Constitution to make sure that the phrase "confront your accusers," as the phrase is used in the United States Constitution, is the same as what we say in our Constitution, the Pennsylvania Constitution, which says "face to face." They are the same, and I think what this bill purely does is to clarify our Constitution, the Pennsylvania Constitution, by saying that "face to face" and "confront" are the same things, thereby allowing this procedure to go ahead.

We passed this constitutional amendment last Session. This would be the second time for this proposal to pass. Once it does, then it would be placed on the ballot. It looks as if it will be on the ballot in the fall and, if approved by the voters of this Commonwealth, then we will have the opportunity to pass legislation to implement this. And it would follow pretty much what I just outlined, what the provisions of that bill would be, very similar to what we passed over 10 years ago. I think that it would go a long way to enabling young children who have been victims to act as witnesses and to have successful prosecutions, and I would urge my colleagues' support for this proposal.

And the question recurring,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEAS—49

Afflerbach	Greenleaf	Madigan	Shaffer
Andrezeski	Hart	Mellow	Shumaker
Armstrong	Heckler	Mowery	Stapleton
Baker	Helfrick	Musto	Stewart
Belan	Holl	O'Pake	Stout
Bell	Hughes	Peterson	Tartaglione
Bodack	Jones	Porterfield	Tilghman
Brightbill	Jubelirer	Punt	Tomlinson
Corman	Kasunic	Rhoades	Uliana
Dawida	LaValle	Robbins	Wagner
Delp	Lemmond	Salvatore	Wenger
Fisher	Loeper	Schwartz	Williams
Gerlach			

NAYS—1

Fumo

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate present said bill to the House of Representatives for concurrence.

BILLS REREPORTED FROM COMMITTEE AS AMENDED OVER IN ORDER

SB 23 and **SB 50** -- Without objection, the bills were passed over in their order at the request of Senator LOEPER.

BILL OVER IN ORDER

SB 7 -- Without objection, the bill was passed over in its order at the request of Senator LOEPER.

RECESS

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Loeper.

Senator LOEPER. Mr. President, I request at this time that the Special Session stand in recess.

For the information of the Members, there will be no more votes today, either in Special Session or Regular Session, but I would ask that the Special Session, at this time, stand in recess pending potential bill action in the House.

The PRESIDENT. The Senate will stand in recess.

AFTER RECESS

The PRESIDENT. The time for recess having expired, the Senate will come to order.

ADJOURNMENT

Senator HECKLER. Mr. President, I move that the Special Session do now adjourn until Monday, February 27, 1995, after the conclusion of the Regular Session, unless sooner recalled by the President pro tempore.

The motion was agreed to.

The Special Session of the Senate adjourned at 6:25 p.m., Eastern Standard Time.

This place is so fast-paced; we move at a frantic pace. Unfortunately, it is common for us to let pass those things that are most important. Paul's memory is one of those things. I encourage all of you, those who knew Paul and those of you who are learning of him for the first time, to be mindful of his wonderful gifts.

Paul was a master of compromise. He brought all parties to the table, letting each know that they had significant value and would be heard. He accepted assignments without hesitation, no matter how difficult. In fact, because of his wonderful skills, the most difficult tasks were always reserved for Paul.

My bill could not have been developed and written without Paul's guidance and good judgment. I believe we all should emulate his respect for the wisdom of others and his extraordinary patience in dealing with those wise ones who were just a tad full of themselves.

Paul was a gift to us. I know I speak on behalf of the chairmen of the Republican and Democrat members of the committee in expressing my thanks to Paul for crafting a bill which will be an essential tool to law enforcement in solving serious crimes.

I would also like to take this time to acknowledge the special contribution of many individuals in fashioning this legislation. I would like to recognize Ed Hussie from our legal staff, Gary Tennis from the Philadelphia district attorney's office—

The SPEAKER. The gentleman will yield.

Mr. O'Brien, we are on final passage.

Mr. O'BRIEN. Yes; I am getting to it. I am just acknowledging everybody that— All right. Thank you, Mr. Speaker. I will make it brief.

The purpose of this law is threefold: detection, which will give us the opportunity to match unknown suspect cases against known convicted offenders; identifying missing persons who were victims of natural disasters and unidentifiable bodies. There is the deterrent factor that is also inherent in this legislation, because the convicted offender will know that every time a sexual offense is committed, his DNA sample will be run through the data bank.

There is also an important exclusion in effect in the bill that we alluded to earlier. A suspect will either be included or excluded by his checking with the statewide data bank.

The scope and the category of offenders are only the most serious offenders – sex offenders, murderers, and felony stalkers.

It is important also to reemphasize that this legislation, hopefully, will enable law enforcement officials to apprehend an offender after his 1st or 2d subsequent offense rather than his 15th or 20th subsequent offense, and I ask for your support. 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.

YEAS–196

Adolph	Egolf	Lucyk	Santoni
Allen	Fairchild	Lynch	Sather
Argall	Fajt	Maitland	Saylor
Armstrong	Fargo	Major	Schroder
Baker	Farmer	Manderino	Schuler
Bard	Feese	Markosek	Scrimenti
Barley	Fichter	Marsico	Semmel
Battisto	Fleagle	Masland	Serafini
Bebko-Jones	Flick	Mayernik	Shaner
Belardi	Gamble	McCall	Sheehan
Belfanti	Gannon	McGeehan	Smith, B.
Birmelin	Geist	McGill	Smith, S. H.
Bishop	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Nailor	Stish
Buxton	Haluska	Nickol	Strittmatter
Caltagirone	Hanna	O'Brien	Sturla
Cappabianca	Harhart	Olasz	Surra
Carn	Hasay	Oliver	Tangretti
Carone	Hennessey	Perzel	Taylor, E. Z.
Cawley	Herman	Pesci	Taylor, J.
Chadwick	Hershey	Petrone	Thomas
Civera	Hess	Pettit	Tigue
Clark	Horsey	Phillips	Trello
Clymer	Hutchinson	Piccola	Trich
Cohen, L. I.	Itkin	Pistella	True
Cohen, M.	Jadlowiec	Pitts	Tulli
Colafella	James	Platts	Vance
Colaizzo	Jarolin	Preston	Van Horne
Conti	Josephs	Ramos	Veon
Cornell	Kaiser	Raymond	Vitali
Corpora	Keller	Readshaw	Walko
Corrigan	Kenney	Reber	Waugh
Cowell	King	Reinard	Wogan
Curry	Kirkland	Richardson	Wozniak
Daley	Krebs	Rieger	Wright, D. R.
DeLuca	Kukovich	Roberts	Wright, M. N.
Dempsey	LaGrotta	Robinson	Yewcic
Dent	Laughlin	Roebuck	Youngblood
Dermody	Lawless	Rohrer	Zimmerman
DeWeese	Lederer	Rooney	Zug
DiGirolamo	Leh	Rubley	
Donatucci	Lescovitz	Rudy	Ryan,
Druce	Levdansky	Sainato	Speaker
Durham	Lloyd		

NAYS–0

NOT VOTING–0

EXCUSED–7

Coy	Nyce	Travaglio	Williams
Evans	Petrarca	Washington	

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.

* * *

The House proceeded to third consideration of **SB 11, PN 65**, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania, further providing for rights of accused in criminal prosecutions.

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, Mr. Itkin.

Mr. ITKIN. Thank you, Mr. Speaker.

Passage of SB 11 today will make it clear once and for all that the legislature wants to take advantage of existing technology and allow children to testify through videotape or closed-circuit television. But the bill's language leaves a few questions unanswered, so I would like to get the legislature's intent on the record.

SB 11 does not define the word "child," which, as we all know, is a slippery term. Should a 13-year-old be shielded from an abuser in court the same as a 5-year-old? The Constitution and this proposed amendment do not say. This means that the legislature has a responsibility to define the term.

We do not have to adopt any existing statute, retrofitting it to accommodate the constitutional language. Instead, we must adopt age parameters which best meet the purposes of the constitutional amendment.

Also, this proposed amendment does not address the question of oath-taking. Current practice allows children who do not understand the concept of oaths to at least demonstrate an understanding of the difference between truth and falsehood.

I have been told that under SB 11, this practice can continue. However, if a stronger definition is needed to bolster the constitutional amendment, then the General Assembly can do that in the future.

I am pleased that we are on the verge of sending this important bill to the Pennsylvania voters for final approval, and I urge my colleagues to vote in its favor.

I just felt that these few points needed to be made so that the people of Pennsylvania understand that ultimately we will address, the legislature will address, these two matters that I mentioned today, and consequently, I would like to reiterate my strong support for the bill and hope that we will have this passed by the people of Pennsylvania.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the gentleman from Berks, Mr. Leh.

Mr. LEH. Thank you, Mr. Speaker.

May I comment?

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

Mr. LEH. Thank you, Mr. Speaker.

And I ask the House's indulgence just a little bit. I apologize. I have a lousy head cold. I am filled up with chemicals, and maybe that is why this does not quite make sense to me today.

Last session I did support this bill. However, it was not without its reservation. And I am just going to state, because the bill is simply enabling legislation, I only want to state that I am opposing it on principle only. Our Constitution, Article I, section 9, states very plainly, for good reason, that the accused must be faced by the accuser.

I think our forefathers were far wiser in wisdom and understanding than we are and there was a reason for that, and therefore, today I am going to vote in the negative on SB 11. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the gentleman.

The Chair recognizes the lady from Montgomery, Mrs. Cohen.

Mrs. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I rise today to speak in favor of this matter. We did vote in favor of it last year, the House did, and the Senate has done so last year and again this year. In order to have a constitutional amendment, we have to pass it in two separate sessions.

The importance of this matter is that the objections that were raised by the previous speakers can be dealt with in the specific legislation and the statute that we pass later, but we cannot do that until we have the constitutional amendment.

There have been instances where murders have been committed, where children have been abused, but because they are frightened and intimidated and are afraid to confront the people who have committed acts of violence against them, cases have been lost. Murderers have been walking the streets because child witnesses cower at having to confront them. There are so many safeguards that can be made in the law. The safeguards will be there for defendants and for prosecutors, but most important of all, for the children who are affected.

I urge my fellow Representatives to vote in favor of this. Thank you, Mr. Speaker.

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

Mr. VITALI. Thank you, Mr. Speaker.

I rise in opposition to SB 11. I think that the reasons against this bill need to be discussed, because what we are doing is taking a very serious step in eroding the constitutional provision to confront your witnesses face to face.

And I agree with the gentleman who said that our Founding Fathers in 1790 put those provisions in for very good reasons. Sure, it is important not to subject a child victim or a rape victim to unnecessary trauma, but I would submit to you that it is even more important that we insure that an innocent person is not wrongly convicted. I think that has to be paramount in our criminal justice system. I think we forget when we deal with these Crimes Code bills that last word, "justice." That is the key word here.

The reasons for this right to confront witnesses are numerous, but basically it is simply more difficult to lie when you are meeting the person about whom you are lying face to face. Additionally, when you are dealing with child witnesses, and I have dealt with them in my courtroom work, children are very suggestible, and many times it is only skillful cross-examination that reveals that suggestibility.

We have heard in the media after a spate of child molestation cases that many – and especially in domestic-relations-type cases – have turned out to be unfounded. I would submit to you that this right to cross-examine face to face is a tool in preventing any of us here from being subject to wrong accusations, and believe me, in this day and age, any of us can be subject to those type accusations.

I do not think that simply videotaping and broadcasting in the courtroom is adequate, and for a number of reasons. I think the whole demeanor of the courtroom, just as the solemnity and the ornamentation and the other procedures of this room keep us serious, impresses upon the witnesses who are new to this that this is a situation, especially children, where it is important to tell the truth.

I think, Mr. Speaker, that we are really going beyond the day-to-day bills that we pass when we make the Crimes Code tougher, when we are talking about changing the Constitution. I think it is very serious business, and I think that one adage that is basic to our legal system applies here, and that is, it is better to let 10 guilty people go free than to convict one innocent man, and I think that is what we will do, you are going to open the floodgates to that, if you pass SB 11. Thank you.

The SPEAKER. The Chair recognizes the lady from Montgomery, Mrs. Cohen.

Mrs. COHEN. Thank you, Mr. Speaker.

Mr. Speaker, I can assure the last speaker, I think that all 203 of us have been sworn and do swear to uphold the Constitution of the Commonwealth of Pennsylvania as well as the United States, and because we do that, this bill in no way would affect our upholding those two Constitutions.

What we are aiming to do is to bring Pennsylvania into at least the 20th century. The Commonwealth of Pennsylvania is only one of very few States which disallows child videotaping. The important thing is that the law that will be drafted after we have approved the enabling legislation will indeed provide for all of the safeguards that our Constitutions worry about; that is, a judge will make an independent determination that the child will simply be too traumatized if he had to actually confront the defendant.

The defense counsel will be present. There will be opportunity to cross-examine the child. All of the safeguards will be there. The defendant will be able to watch the testimony and be in constant electronic communication with his attorney. All of the safeguards that our laws provide now will be present when the videotaping is allowed so that there need not be any worry on behalf of defendants. All of their rights will be protected.

I urge my fellow members to vote in favor of SB 11. Thank you, Mr. Speaker.

The SPEAKER. The Chair thanks the lady.

Does the gentleman, Mr. Vitali, desire recognition for the second time on the subject?

Mr. VITALI. Just very briefly.

Two points, Mr. Speaker, one which I neglected to cover last time, and the second in response to Representative Cohen.

I think that in response to Representative Cohen with regard to potential safeguards in bills that may be enacted pursuant to this, I think that is pure speculation as to what may or may not, what safeguards may or may not, be in that legislation.

The political reality is that on this floor, we do not vote against Crimes Code bills no matter how ridiculous they might be. I do not subscribe to the theory that those bills in fact will be safeguarding those rights.

I think the second point that I neglected to make and the reason we need that face-to-face viewing, it goes to the essence of our jury system. The jury's prime function is to assess credibility. It has to look at a witness to assess whether that witness is telling the truth or not.

When you do that via videotape, when you do it through the lens of a camera, you are losing something essential. You are taking power away from the jury to see that person sitting just a few feet away from them, and you are preventing the jury from making that crucial assessment as to credibility. I think you lose that with this video presentation.

So as difficult as it may be upon victims of crimes, I think it is something that simply needs to be done in order to protect the other 60,000 people in your district whom you represent. I think you have to think of them. You have to think of people who potentially in your district can be falsely accused, and SB 11 takes something away from the rights of everyone in your district.

I therefore urge a "no" vote. Thank you.

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.

YEAS–187

Adolph	Druce	Lloyd	Sainato
Allen	Durham	Lucyk	Santoni
Argall	Egolf	Lynch	Sather
Armstrong	Fairchild	Maitland	Saylor
Baker	Fajt	Major	Schroder
Bard	Fargo	Manderino	Schuler
Barley	Farmer	Markosek	Scrimenti
Battisto	Feese	Marsico	Semmel
Bebko-Jones	Fichter	Masland	Serafini
Belardi	Fleagle	Mayernik	Shaner
Belfanti	Flick	McCall	Sheehan
Birmelin	Gamble	McGeehan	Smith, B.
Bishop	Gannon	McGill	Smith, S. H.
Blaum	Geist	Melio	Snyder, D. W.
Boscola	George	Merry	Staback
Boyes	Gigliotti	Michlovic	Stairs
Brown	Gladeck	Micozzie	Steelman
Browne	Godshall	Miller	Steil
Bunt	Gordner	Mundy	Stern
Butkovitz	Gruitza	Nailor	Stetler
Buxton	Gruppo	Nickol	Stish
Caltagirone	Habay	O'Brien	Strittmatter
Cappabianca	Haluska	Olasz	Sturla
Carn	Hanna	Oliver	Surra
Carone	Harhart	Perzel	Tangretti
Cawley	Hasay	Pesci	Taylor, E. Z.
Chadwick	Hennessey	Petrone	Taylor, J.
Civera	Herman	Pettit	Tigue
Clark	Hershey	Phillips	Trello
Clymer	Hess	Piccola	Trich
Cohen, L. I.	Hutchinson	Pistella	True
Cohen, M.	Itkin	Pitts	Tulli
Colafella	Jadlowiec	Platts	Vance
Colaizzo	James	Preston	Van Horne
Conti	Jarolin	Ramos	Walko
Cornell	Kaiser	Raymond	Waugh
Corpora	Keller	Readshaw	Wogan
Corrigan	Kenney	Reber	Wozniak
Cowell	King	Reinard	Wright, D. R.
Curry	Kirkland	Richardson	Wright, M. N.
Daley	Krebs	Rieger	Yewcic
DeLuca	Kukovich	Roberts	Youngblood
Dempsey	LaGrotta	Robinson	Zimmerman
Dent	Lawless	Roebuck	Zug
Dermody	Lederer	Rooney	
DeWeese	Lescovitz	Rubley	Ryan,
DiGirolamo	Levdansky	Rudy	Speaker
Donatucci			

NAYS–9

Horsey	Leh	Rohrer	Veon
Josephs	Mihalich	Thomas	Vitali
Laughlin			

NOT VOTING–0

EXCUSED–7

Coy	Nyce	Travaglio	Williams
Evans	Petrarca	Washington	

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 without amendment.

BILL ON CONCURRENCE IN SENATE AMENDMENTS

The House proceeded to consideration of concurrence in Senate amendments to **HB 14, PN 112**, entitled:

An Act creating the Office of Victim Advocate.

On the question,
Will the House concur in Senate amendments?

The SPEAKER. The Chair has been requested to ask the gentleman, Mr. Piccola, to briefly explain the amendments inserted by the Senate.

Mr. PICCOLA. Thank you, Mr. Speaker.

The Senate made some very minor changes to the bill.

First, it moved the definition of "family" from page 4 to the definition section on page 2. It made some editorial changes with respect to gender references. It also made a change on page 2, changing "advice and consent" to simply the consent of the Senate. And finally, on page 3, it again made an editorial change referencing the board, and when the advocate would continue to remain on the board, they would remain "in office" rather than on the board.

The SPEAKER. The Chair thanks the gentleman.

On the question recurring,
Will the House concur in Senate amendments?

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

YEAS–196

Adolph	Egolf	Lucyk	Santoni
Allen	Fairchild	Lynch	Sather
Argall	Fajt	Maitland	Saylor
Armstrong	Fargo	Major	Schroder
Baker	Farmer	Manderino	Schuler
Bard	Feese	Markosek	Scrimenti
Barley	Fichter	Marsico	Semmel
Battisto	Fleagle	Masland	Serafini
Bebko-Jones	Flick	Mayernik	Shaner
Belardi	Gamble	McCall	Sheehan
Belfanti	Gannon	McGeehan	Smith, B.
Birmelin	Geist	McGill	Smith, S. H.
Bishop	George	Melio	Snyder, D. W.
Blaum	Gigliotti	Merry	Staback
Boscola	Gladeck	Michlovic	Stairs
Boyes	Godshall	Micozzie	Steelman
Brown	Gordner	Mihalich	Steil
Browne	Gruitza	Miller	Stern
Bunt	Gruppo	Mundy	Stetler
Butkovitz	Habay	Nailor	Stish
Buxton	Haluska	Nickol	Strittmatter
Caltagirone	Hanna	O'Brien	Sturla
Cappabianca	Harhart	Olasz	Surra
Carn	Hasay	Oliver	Tangretti
Carone	Hennessey	Perzel	Taylor, E. Z.
Cawley	Herman	Pesci	Taylor, J.
Chadwick	Hershey	Petrone	Thomas
Civera	Hess	Pettit	Tigue
Clark	Horsey	Phillips	Trello
Clymer	Hutchinson	Piccola	Trich
Cohen, L. I.	Itkin	Pistella	True
Cohen, M.	Jadlowiec	Pitts	Tulli
Colafella	James	Platts	Vance
Colaizzo	Jarolin	Preston	Van Ho
Conti	Josephs	Ramos	Veon
Cornell	Kaiser	Raymond	Vitali
Corpora	Keller	Readshaw	Walko
Corrigan	Kenney	Reber	Waugh
Cowell	King	Reinard	Wogan
Curry	Kirkland	Richardson	Woznial
Daley	Krebs	Rieger	Wright,
DeLuca	Kukovich	Roberts	Wright,
Dempsey	LaGrotta	Robinson	Yewcic
Dent	Laughlin	Roebuck	Youngb
Dermody	Lawless	Rohrer	Zimmer
DeWeese	Lederer	Rooney	Zug
DiGirolamo	Leh	Rubley	
Donatucci	Lescovitz	Rudy	Ryan,
Druce	Levdansky	Sainato	Speak
Durham	Lloyd		

NAYS–0

NOT VOTING–0

EXCUSED–7

Coy	Nyce	Travaglio	William
Evans	Petrarca	Washington	

The majority required by the Constitution having vot affirmative, the question was determined in the affirmativ amendments were concurred in.

Ordered, That the clerk inform the Senate accordingly.

BILL SIGNED BY SPEAKER

Bill numbered and entitled as follows having been pre presentation to the Governor, and the same being correct was publicly read as follows:

HB 14, PN 112

An Act creating the Office of Victim Advocate.

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

ADJOURNMENT

The SPEAKER. Does the majority leader or minority le any further business in special session? Are there any furth of committee in special session? Announcements or corr the record in special session? The Chair hears none.

The Chair recognizes the gentleman from Allegheny, M

Mr. WALKO. Mr. Speaker, I move that the special s now adjourn until Tuesday, March 14, 1995, at 11:05 a. unless sooner recalled by the Speaker.

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

Motion was agreed to, and at 4:15 p.m., e.s.t., th adjourned.

Article	Section	G.A. PN No.	P.L. CITE	Joint Res. No	Year
1	6		hb272	2	1970
1	27		hb958	4	1970
1	28		hb1648	5	1970
1	6	104		1	1971
1	6		hb93	1	1971
1	10		sb 438	7	1971
1	27		hb31	3	1971
1	27	32		3	1971
1	27	54		3	1971
1	28		hb14	2	1971
1	28	15		2	1971
1	28	53		2	1971
1	10	445		7	1972
8	1	3109		3	1972
8	1	1776		3	1972
8	1	1		3	1972
8	1		hb1	3	1972
8	17		hb4	1	1972
8	17	5		1	1972
8	2		hb3	8	1971
8	2		hb3	3	1973
8	2	1099		8	1971
8	2	634		8	1971
8	2	8		1	1973
8	2	3		1	1973
1	10		sb 117	2	1973
1	10	492		2	1973
1	10	117		2	1973
4 & 5	4-8,9 & 5-13		sb1409	2	1974
4 & 5	4-8,9 & 5-13	1388		2	1974
4 & 5	4-8,9 & 5-13	2170		2	1974
4 & 5	4-8,9 & 5-13	2060		2	1974
4 & 5	4-8,9 & 5-13	2009		2	1974
4 & 5	4-8,9 & 5-13	1742		2	1974
8	17		hb1762	2	1975
8	17	2256		2	1975
4 & 5	4-8,9 & 5-13		sb22	1	1975
4 & 5	4-8,9 & 5-13	22		1	1975
4	17	1521		3	1976
4	17		hb84	4	1978
4	17		hb1	3	1978
4	17	94		4	1978
5	3		hb13	1	1978
5	3	3365		1	1978
5	3	2409		1	1978
5	3	1661		1	1978
5	3		sb3	1	1979
5	3	3		1	1979
2	17		sb888	1	1980
2	17	1373		1	1980

2	17	1015		1	1980
8	11,26		hb62	2	1980
8	11,26	3655		2	1980
8	11,26	3486		2	1980
8	11,26	459		2	1980
8	11,26	64		2	1980
2	17		sb3	1	1981
2	17	3		1	1981
8	11,26		sb3	2	1981
8	11,26	3		2	1981
1	9		sb 496	1	1982
1	9	503		1	1982
1	9		sb 299	2	1984
1	9	503		2	1984
1	9	321		2	1984
7	14		hb 902	3	1984
7	14	3332		3	1984
7	14	2058		3	1984
7	14	1964		3	1984
7	14	3280		3	1984
7	14	1026		3	1984
7	14		hb 240	1	1985
7	14	257		1	1985
8	2		hb 14	1	1988
8	2		hb1	1	1989
5	16,18,24		sb1000	1	1992
5	16,18,24	2413		1	1992
5	16,18,24	2222		1	1992
5	16,18,24	2103		1	1992
5	16,18,24	2057		1	1992
5	16,18,24	2040		1	1992
5	16,18,24	1094		1	1992
5	16,18,24		hb1	1	1993
5	16,18,24	2		1	1993
1	14		sb 12	3	1995
1	14	113		3	1995
1	14	12		3	1995
4	9		sb 4	2	1995
1	6		sb 752	1	1996
1	6	2065		1	1996
1	6	789		1	1996
7	14		hb 1865	2	1996
7	14	2287		2	1996
8	2		sb 284	3	1996
8	2	2205		3	1996
8	2	2045		3	1996
8	2	1998		3	1996
8	2	1450		3	1996
8	2	291		3	1996
4	9		sb 156	2	1997
4	9	224		2	1997
4	9	112		2	1997 not approved

4	9	68		2	1997
4	9	4		2	1997
7	14		hb 171	3	1997
7	14	2015		3	1997
7	14	754		3	1997
7	14	187		3	1997
8	2		sb 65	1	1997
8	2	310		1	1997
1	6		sb 555	2	1998
1	6	1988		2	1998
1	6	585		2	1998
1	14		hb1520	1	1998
1	14	3470		1	1998
1	14	1842		1	1998
2	17		hb 114	3	1998
2	17	3694		3	1998
2	17	3644		3	1998
2	17	1919		3	1998
2	17	1478		3	1998
2	17	123		3	1998
2	17		sb 231	1	2000
2	17	2191		1	2000
2	17	241		1	2000
1	9		sb 211	1	2002
1	9	93		1	2002
1	9		sb 55	1	2003
1	9	49		1	2003

SB 3 By Senators EARLY and SCHAEFER.

Printer's No. 3.

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania by providing for additional judges for the Superior Court, changing certain provisions relating to initial terms, and further providing for the president judge of the Superior Court.

Referred to CONSTITUTIONAL CHANGES AND FEDERAL RELATIONS, Jan. 16, 1979
Reported as committed, Feb. 6, 1979
First consideration, Feb. 6, 1979
Second consideration, Feb. 13, 1979
Re-referred to APPROPRIATIONS, Feb. 20, 1979
Re-reported as committed, March 5, 1979
Third consideration and final passage, March 12, 1979 (47-0)
(Remarks see Senate Journal Page 284), March 12, 1979
In the House
Referred to RULES, March 19, 1979
Reported as committed, March 19, 1979
First consideration, March 19, 1979
Second consideration, March 20, 1979
Third consideration and final passage, March 26, 1979 (107-89)
Signed in Senate, March 27, 1979
Signed in House, March 27, 1979
Filed in the Office of the Secretary of the Commonwealth, March 27, 1979
Pamphlet Laws Resolution No. 1
Passed Sessions of 1978 and 1979
Approved by the Electorate, Nov. 6, 1979 (793,474 - 703,736)