



GOVERNOR TOM WOLF

MEMORANDUM

Pursuant to authority granted in Article IV, § 9 of the Constitution of Pennsylvania, I am today exercising my power as Governor to grant a temporary reprieve to inmate Terrence Williams. A death warrant for this case was signed on January 13, 2015 by my predecessor, acting pursuant to Section 4302 of the Pennsylvania Prisons and Parole Code. The execution was scheduled for March 4, 2015.

The reprieve announced today shall remain in effect until I have received and reviewed the forthcoming report of the Pennsylvania Task Force and Advisory Committee on Capital Punishment (established under Senate Resolution 6 of 2011), and any recommendations contained therein are satisfactorily addressed. In addition, it is my intention to grant a reprieve in each future instance in which an execution is scheduled, until this condition is met.

I take this action only after significant consideration and reflection. There is perhaps no more weighty a responsibility assigned to the Governor than his or her role as the final check in the capital punishment process. Given the gravity of this responsibility, and the significance of the action announced herein, I believe it necessary to outline the principles that have led me to this conclusion.

To be clear at the outset, this reprieve is in no way an expression of sympathy for the guilty on death row, all of whom have been convicted of committing heinous crimes, and all of whom must be held to account. The guilty deserve no compassion, and receive none from me. I have nothing but the deepest appreciation for the work of victim advocates, and sympathize and stand with all those who have suffered at the hands of those in our society who turn to violence.

In this case, there is no question that Terrence Williams committed a grievous act of violence. Williams was sentenced to death in 1986 for a murder he committed three months after his eighteenth birthday. In the years of appeals that have followed, there has been no contention that he is innocent of the crime of which he was convicted. The reprieve announced today does not question Williams' guilt. Rather, I take this action because the capital punishment system has significant and widely recognized defects.

There are currently 186 individuals on Pennsylvania's death row. Despite having the fifth largest death row in the nation, the death penalty has rarely been imposed in modern times. In the nearly forty years since the Pennsylvania General Assembly reinstated the death penalty, the Commonwealth has executed three people, all of whom voluntarily abandoned their right to further due process.

In that same period, Governors have signed 434 death warrants. All but the three noted above have subsequently been stayed by a court. One inmate has been scheduled for execution six times, each of



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which has been cancelled due to a state or federal appeal. Two inmates have remained on death row for more than three decades.

This unending cycle of death warrants and appeals diverts resources from the judicial system and forces the families and loved ones of victims to relive their tragedies each time a new round of warrants and appeals commences. The only certainty in the current system is that the process will be drawn out, expensive, and painful for all involved.

While the pace of the process frustrates some, the fail-safes of appellate review are essential in avoiding a catastrophic miscarriage of justice. Since reinstatement of the death penalty, 150 people have been exonerated from death row nationwide, including six men in Pennsylvania.¹ One of these men, Harold Wilson, twice had death warrants signed against him – meaning Pennsylvania came within days of executing an innocent man, and might well have done so but for judicial stays. A second man, Nicholas Yarris, was exonerated by newly available DNA evidence after serving twenty-one years on death row. Many more inmates have been resentenced to life in prison after reviewing courts found mitigating circumstances, or flaws in the penalty phases of their trials.

If the Commonwealth of Pennsylvania is going to take the irrevocable step of executing a human being, its capital sentencing system must be infallible. Pennsylvania's system is riddled with flaws, making it error prone, expensive, and anything but infallible.²

Numerous recent studies have called into question the accuracy, and fundamental fairness of Pennsylvania's capital sentencing system. These studies suggest that inherent biases affect the makeup of death row. While data is incomplete, there are strong indications that a person is more likely to be charged with a capital offense and sentenced to death if he is poor or of a minority racial group, and particularly where the victim of the crime was Caucasian.³

¹ See DEATH PENALTY INFORMATION CENTER, THE INNOCENCE LIST, <http://www.deathpenaltyinfo.org/innocence-list-those-freed-death-row?scid=6&did=110>.

² See PENNSYLVANIA SUPREME COURT COMMITTEE ON RACIAL AND GENDER BIAS IN THE JUSTICE SYSTEM, FINAL REPORT, (2003)(hereinafter FINAL REPORT).

³ See AMERICAN BAR ASSOCIATION, EVALUATING FAIRNESS AND ACCURACY IN STATE DEATH PENALTY SYSTEMS: THE PENNSYLVANIA DEATH PENALTY ASSESSMENT REPORT, 235 (2007) (hereinafter ABA REPORT). See also, Thomas J. Saylor, *Death-Penalty Stewardship and the Current State of Pennsylvania Capital Jurisprudence*, 23 WIDENER L.J. 1(2013) (Justice Saylor notes that anecdotal evidence “suggest[s] a serious problem in Pennsylvania” with appointed capital counsel); James M. Anderson & Paul Heaton, *How Much Difference Does the Lawyer Make? The Effect of Defense Counsel on Murder Case Outcomes*, 122 YALE L.J. 154 (2012); (TASK FORCE AND ADVISORY COMMITTEE ON SERVICES TO INDIGENT CRIMINAL DEFENDANTS, A CONSTITUTIONAL DEFAULT: SERVICES TO INDIGENT CRIMINAL DEFENDANTS IN PENNSYLVANIA (2011) (noting that “Pennsylvania [is] the only state that does



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In 2003, the Pennsylvania Supreme Court's Committee on Racial and Gender Bias in the Justice System issued an extensive Final Report, including a section examining the effects of racial and gender bias on the state's capital justice system.

The Committee reported "strong indications that Pennsylvania's capital system does not operate in an evenhanded manner."⁴ While Pennsylvania's minority population at the time was eleven percent, over two-thirds of the inmates on death row were minorities. The Committee noted multiple factors contributing to this disparity, including the inadequacy of public defender or appointed counsel services available to indigent capital defendants, racial bias in juror selection, and the lack of uniform standards to guide prosecutors in exercising discretion about whether to seek the death penalty in capital eligible cases.

Given its outsized contribution to the composition of death row, Philadelphia was selected for intensive study. The Committee found that even after controlling for the seriousness of offenses and other non-racial factors, African American defendants were sentenced to death at a significantly higher rate than similarly situated members of other racial groups. Researchers determined that one third of the African Americans on death row from Philadelphia would not have received the death penalty were they not African American. These statistics create a moral crisis for people of good will on all sides of this issue.

The Committee recommended a number of changes to address the disparities it identified. But it also noted that its efforts to understand the full scope of the problem were hampered by the lack of systematically collected data related to capital charging and sentencing in Pennsylvania.

In 1997, the legislature repealed a law that required the courts to vacate death sentences found to be "excessive or disproportionate to the penalty imposed in similar cases, considering both the circumstances of the crime and the character and record of the defendant."⁵ In order to facilitate its proportionality review, the Pennsylvania Supreme Court had required judges to submit forms with data about all cases resulting in first-degree murder convictions. These forms were compiled into a database by the Administrative Office of Pennsylvania Courts, and the database was used to analyze trends in sentencing.

When the provision was repealed, the tracking of the statistics ceased. Since that time Pennsylvania has had no comprehensive data collection system which would allow rigorous analysis of the effects of racial

not appropriate or provide for so much as a penny toward assisting the counties in complying with Gideon's mandate.")

⁴ See FINAL REPORT, at 201.

⁵ This statutory provision, previously codified at 42 Pa. C.S. § 9711 (h)(3), was repealed by the Act of June 25, 1997 (P.L. 293, No. 28), § 1.



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and gender bias on capital sentencing. While the figures from Philadelphia cited by the Supreme Court Committee cause concern, given the lack of data, we simply do not understand the scale of this problem.

More recently, in 2007, the American Bar Association (“ABA”) appointed a Pennsylvania Death Penalty Assessment Team to review the state’s compliance with ABA recommended best practices in capital charging, sentencing, and the appellate process.

Like the Supreme Court Committee, the Assessment Team found numerous areas of concern, including inadequate procedures to protect the innocent, failure to protect against poor defense lawyering, the lack of state funding for capital indigent defendants, significant capital juror confusion, a lack of statewide data to analyze proportionality in charging and sentencing, and numerous others. Ultimately, the Team concluded that “the Commonwealth of Pennsylvania fails to comply or only partially complies with the many of the ABA’s Recommendations and that many of these shortcomings are substantial.”⁶

Finally, administering the death penalty, with all the necessary legal appeals and safeguards as well as extra security and individual cells on death row, is extremely expensive. A recent analysis conducted by the Reading Eagle estimates that the capital justice apparatus has cost taxpayers at least \$315 million, but noted that this figure was very likely low.⁷ Other estimates have suggested the cost to be \$600 million or more. The Commonwealth has received very little, if any, benefit from this massive expenditure.

Recognizing the seriousness of these concerns, the Senate passed Resolution 6 in 2011, which authorized the creation of a bipartisan Pennsylvania Task Force and Advisory Committee on Capital Punishment.

The Task Force is co-chaired by Senators Leach and Greenleaf and composed of representatives from law enforcement, prosecutors, defense attorneys, family of victims, clergy, and legislators. Resolution 6 directs the Task Force to conduct a comprehensive study of the effectiveness of capital punishment in the Commonwealth, and to report findings and recommendations. In September 2012, the Task Force called on Governor Corbett to suspend executions, until it had the opportunity to conclude its study and report.

If we are to continue to administer the death penalty, we must take further steps to ensure that defendants have appropriate counsel at every stage of their prosecution, that the sentence is applied fairly and proportionally, and that we eliminate the risk of executing an innocent. Anything less fails to live up to the requirements of our Constitution, and the goal of equal justice for all towards which we must continually strive.

⁶ See ABA REPORT, at iii.

⁷ Nicole Brambilla, et al., *Capital Punishment in Pennsylvania: When Death Means Life*, READING EAGLE, Dec. 14, 2014, available at <http://readingeagle.com/news/article/capital-punishment-in-pennsylvania-when-death-means-life>.



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Given these principles, both my duty as Governor and my conscience require that I proceed with great caution, and with all relevant facts at hand. I also take very seriously my responsibility to the victims of violent crime. Ensuring that justice is served for victims and the families and friends who have endured so much is my first priority. With all this in mind, I look forward to carefully reviewing the report and recommendations of the Task Force and Advisory Committee on Capital Punishment, and to working with the General Assembly and representatives of victims to address concerns which it may raise.