

Dear Governor Mandel:

Senate Bill 106, as amended and passed by the General Assembly at the recently concluded session, provides generally for penalties for first degree murder, and creates a capital sentencing system applicable to certain specifically defined types of first degree murder. In connection with your review of this Bill you have requested our views as to the constitutionality of the Bill in its entirety, you have posed a number of specific questions concerning the procedures for imposition of the death penalty under the Bill, and you have solicited our general comments on any aspect of the Bill which might create significant problems in the application of its death penalty provisions. 1

Quite obviously, in considering the constitutionality of any capital punishment statute, we must apply the principles enunciated by the Supreme Court of the United States, primarily in its decisions in six cases decided on July 2, 1976. In these cases, the Supreme Court examined the statutes of six states imposing the death penalty for the crime of murder, to determine if the death penalty imposed under such statutes constituted cruel and unusual punishment in violation of the Eighth and Fourteenth Amendments to the United States Constitution. In these decisions, the Supreme Court found that the imposition of a sentence of death for the crime of first degree murder does not, under all circumstances, constitute a cruel and unusual punishment violative of the federal constitution. Following this conclusion, the Supreme Court examined the statutory capital sentencing procedures in each of the states in question, upholding those sentencing systems which avoided imposition of the death penalty in the arbitrary, capricious and random manner proscribed by Furman v. Georgia, 408 U. S. 238 (1972), and striking down those systems which did not suitably direct, limit and guide the sentencing body in an informed manner in imposition of the death sentence, both as to the particular offense as well as to the particular offender.

The capital sentencing statutes of Georgia, Texas and Florida, all of which established a bifurcated trial procedure in which guilt and punishment were separately determined and provided and expedited and automatic appellate review, were upheld in Gregg v. Georgia, 96 S. Ct. 2909 (1976); Jurek v. Texas, 96 S. Ct. 2950 (1976); and Proffitt v. Florida, 96 S. Ct. 2960 (1976). The death penalty statutes in each of these states limited imposition of the death penalty to those cases in which certain aggravating circumstances were shown and perhaps more significantly required the sentencing authority to consider the existence of mitigating circumstances. These procedures, while not constituting an absolute