

clear requirement for pretrial notification that the death penalty will be sought and the potential uncertainties surrounding the degree of specificity required of the jury in giving its recommendation. While, perhaps, no single one of these problems (or the other matters discussed herein) are of sufficient concern to cause the bill to be vetoed, the cumulative effect is such that we can safely predict an extended period of uncertainty and litigation prior to the resolution of these questions by the Court of Appeals. This will not only affect the ability of the State to seek and obtain the death penalty in individual cases but may well effectively diminish or postpone the imposition and carrying out of the death sentence to a point where the sharp comments of Mr. Justice White in his concurring opinion in Furman v. Georgia, 408 U.S. 238, 311-12 (1972), could come back to haunt us:

"...[T]he death penalty could so seldom be imposed that it would cease to be a credible deterrent or measurably to contribute to any other end of punishment in the criminal justice system.....But when imposition of the penalty reaches a certain degree of infrequency, it would be very doubtful that any existing general need for retribution would be measurably satisfied. Nor could it be said with confidence that society's need for specific deterrence justifies death for so few when for so many in like circumstances life imprisonment or shorter prison terms are judged sufficient, or that community values are measurably reinforced by authorizing a penalty so rarely invoked."

For the foregoing reasons we suggest that you might want to give serious consideration to vetoing Senate Bill 106, albeit with the expectation that a statute patterned after it, which is both facially constitutional and more precise than the one now before you, can be considered and enacted at next year's session. Alternatively, should you determine to sign Senate Bill 106 into law notwithstanding the problems discussed herein, we would strongly urge that the General Assembly give prompt and serious consideration to the enactment of amendatory legislation at its next session.

Very truly yours,
Francis B. Burch
Attorney General

George A. Nilson
Deputy Attorney General

Clarence W. Sharp
Assistant Attorney General