

[Senate, October 2, 1985 — Substituted by amendment by the Senate (Lewis) as a new text of Senate Bill, No. 1479, further regulating imposing penalty of death.]

SENATE No. 2516

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-five.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 279 of the General Laws, as appearing
2 in the 1984 Official Edition, is hereby amended by striking out
3 section 68 and inserting in place thereof the following section:

4 —

5 Section 68. In all cases in which a sentence of death may be
6 imposed, the court shall submit to the jury special questions
7 concerning the issue of murder in the first degree. If the jury
8 determines beyond a reasonable doubt that the defendant is
9 guilty of murder in the first degree, the jury shall specify
10 whether the defendant is guilty of murder with deliberate
11 premeditation, murder with extreme atrocity or cruelty, or
12 murder in the commission or attempted commission of a crime
13 punishable by imprisonment for life, or two or more of these.
14 Upon a verdict of guilty or murder in the first degree with
15 deliberate premeditation, or murder in the first degree with
16 extreme atrocity or cruelty, or upon a plea of guilty of murder
17 in the first degree with such premeditation or such atrocity
18 or cruelty accepted by the court after examination of the
19 defendant in accordance with the provisions of section seven-
20 ty A, a presentence hearing shall be conducted, unless the com-
21 monwealth stipulates that none of the aggravating cir-
22 cumstances as defined in paragraph (a) of section sixty-nine
23 exists, before the jury before which the case was tried; pro-
24 vided, however, that if in the opinion of the judge presiding
25 at the presentence hearing, it is impossible or impracticable
26 for the trial jury to sit at the presentence hearing, a new jury
27 shall be impanelled to sit at the presentence hearing; and, pro-
28 vided further that in the case of acceptance of a plea of guil-

29 ty, a jury shall be impanelled to sit at the presentence hear-
30 ing. The selection of such jury shall be according to the laws
31 and rules governing the selection of a jury for the trial of a
32 capital case. During the presentence hearing, the only issue
33 shall be the determination of the punishment to be imposed.

34 During such hearing the jury shall hear all additional rele-
35 vant evidence presented by either the commonwealth or defen-
36 dant in mitigation of punishment regardless of its admissibility
37 under the rules governing the admission of evidence at
38 criminal trials. During such hearing, the jury shall also hear
39 such evidence in aggravation of punishment as is relevant to
40 any aggravating circumstance as defined in said paragraph
41 (a) of said section sixty-nine; provided, however, that only
42 such evidence in aggravation of punishment as the com-
43 monwealth has made known to the defendant prior to his trial
44 shall be admissible, and provided further, that said evidence
45 is otherwise admissible according to the rules governing the
46 admission of evidence at criminal trials. The jury shall also
47 hear arguments by the defendant or his counsel or both and
48 by the commonwealth regarding the punishment to be impos-
49 ed. The commonwealth and the defendant or his counsel shall
50 be allowed to make opening statements and closing arguments
51 at the presentence hearing. The order of such statements and
52 arguments and the order of presentation of evidence shall be
53 the same as at trial. Upon the conclusion of evidence and
54 arguments at the presentence hearing, the court shall instruct
55 the jury orally and shall provide to the jury in writing any
56 statutory aggravating circumstances and also any and all
57 statutory mitigating circumstances determined by the court
58 to be warranted by the evidence, for its deliberation. The judge
59 shall also instruct the jury to consider any other relevant
60 mitigating circumstance. The judge shall also instruct the jury
61 that they may not find that the penalty of death shall be im-
62 posed unless they shall first make a unanimous determination
63 of the existence of one or more statutory aggravating cir-
64 cumstances beyond a reasonable doubt, and also make a
65 unanimous determination that the aggravating circumstances
66 outweigh the statutory or other mitigating circumstances
67 which they may so determine to exist beyond a reasonable
68 doubt.

69 The jury shall then retire to determine whether one or more
70 statutory aggravating circumstances defined by said
71 paragraph (a) of said section sixty-nine or one or more of the
72 statutory mitigating circumstances including, but not limited
73 to, those defined by paragraph (b) of said section sixty-nine,
74 exist. The jury shall further determine whether any statutory
75 aggravating circumstance it finds outweighs any statutory or
76 other mitigating circumstances it finds to exist. The jury shall
77 be instructed that: (1) it may choose to find that the penalty
78 of death shall be imposed upon the defendant or (2) it may
79 choose not to find that the penalty of death shall be imposed
80 upon the defendant. The jury, if its unanimous verdict is
81 to impose the penalty of death, shall designate in writing, sign-
82 ed by the foreman of the jury the one or more statutory ag-
83 gravating circumstances which is unanimously found existed
84 beyond a reasonable doubt, and further, that the one or more
85 statutory aggravating circumstances it so unanimously found
86 outweighed any statutory or other mitigating circumstances
87 it also so found beyond a reasonable doubt. The process of
88 weighing said statutory aggravating circumstances and
89 statutory or other mitigating circumstances to determine the
90 sentence, shall not be a mere tallying of them but shall be a
91 process by which the statutory aggravating circumstances and
92 statutory or other mitigating circumstances relevant to
93 sentence are considered for the purpose of determining
94 whether the sentence, in view of all the relevant circumstances
95 in an individual case, shall be life imprisonment without
96 parole, or death.

97 After the jury has made its findings, the court shall set a
98 sentence in accordance with section twenty.

99 The declaration of a mistrial during the course of the
100 presentence hearing or any error in the presentence hearing
101 determined on final appeal or otherwise shall not affect the
102 validity of the conviction.

1 SECTION 1A. Subsection (a) of section 69 of said chapter 279,
2 as so appearing, is hereby amended by inserting after the word
3 "circumstances", in line 2, the words, referred to in sections
4 sixty-eight to seventy-one, inclusive.

1 SECTION 1B. Subsection (b) of said section 69 of said chapter

2 279, as appearing, is hereby amended by inserting after the
3 word "the", the second time it appears, in line 53, the word
4 "statutory", — and, by inserting after the word "cir-
5 cumstances", in line 54, the words: — , referred to in sections
6 sixty-eight to seventy-one, inclusive,.

1 SECTION 2. Section 70 of said chapter 279, as so appearing
2 is hereby amended by striking out the first sentence, and in-
3 serting in place thereof the following sentence: — Where, upon
4 a trial by jury, a person is convicted of a crime which is
5 punishable by death, or upon acceptance of a plea of guilty
6 as provided in section seventy A, a sentence of death shall not
7 be imposed unless findings in accordance with the provisions
8 of section sixty-eight are made.

1 SECTION 3. Said chapter 279, as so appearing, is hereby fur-
2 ther amended by inserting after section 70 the following sec-
3 tion: —

4 *Section 70A.* In all cases in which a sentence of death may
5 be imposed and in which the defendant notifies the court of
6 his intention to plead guilty, the court shall not accept such
7 plea until the commonwealth has made available to the court
8 all evidence upon which it had intended to introduce at trial
9 and the court has complied with other provisions of this
10 section.

11 The court, upon notification of the defendant's intentions to
12 plead guilty shall (a) advise the defendant of his constitutional
13 and statutory rights, including, but not limited to, the right to
14 trial by jury; (b) inquire of the defendant under oath as to all
15 facts and circumstances relative to the charge against the
16 defendant; (c) determine by inquiry of the defendant that the
17 plea of the defendant is voluntary and that he understands the
18 consequences if his plea is accepted by the court; (d) that the
19 defendant understands the nature of the charge against him;
20 and (e) make other inquiry deemed material and relevant.

21 Such plea of guilty shall not be accepted by the court unless
22 the court finds that the defendant: committed the crime of
23 which he is charged; that he understands his constitutional and
24 statutory rights and the nature of the charge against him; that
25 the plea of guilty was voluntarily made; and that the defen-

26 dant understands the consequences of his plea of guilty if such
27 plea is accepted by the court. Such findings of the court shall
28 be in writing.

1 SECTION 4. Said chapter 279 is hereby further amended by
2 striking out section 71 and inserting in place thereof the follow-
3 ing section: —

4 *Section 71.* In addition to review of the entire case pursuant
5 to section thirty-three E of chapter two hundred and seventy-
6 eight, the supreme judicial court shall review the sentence of
7 death imposed pursuant to sections sixty-eight to section
8 seventy, inclusive. If the supreme judicial court determines
9 that (1) the sentence of death was imposed under the influence
10 of passion, prejudice or any other arbitrary factor or (2) the
11 evidence does not support the jury's findings of any statutory
12 aggravating circumstances or (3) the evidence does not sup-
13 port the jury's finding that the finding of one or more statutory
14 aggravating circumstances outweigh the statutory or other
15 mitigating circumstances or (4) the sentence of death is ex-
16 cessive or disproportionate to the penalty imposed in other
17 similar cases of one or more jurisdictions legally authorized
18 to impose said penalty of death, with the greater weight of such
19 comparison to be given to similar Massachusetts cases in
20 which the death penalty will have been imposed, with due con-
21 sideration of both those cases in which a sentence of life im-
22 prisonment was imposed and those cases in which a sentence
23 of death was imposed, or in the event that the court determines
24 any or all of the four factors enumerated in this section exist,
25 the court shall (1) reverse the sentence of death and remand
26 for a new presentence hearing pursuant to section sixty-eight
27 of chapter two hundred and seventy-nine, or (2) reverse the
28 sentence of death and remand to the superior court depart-
29 ment of the trial court for sentence of imprisonment in the
30 state prison for life. The court shall also have the authority
31 to affirm the sentence of death.

The first part of the history is a general account of the state of the world in the year 1700. It is divided into three parts: the first part is a general account of the world in the year 1700; the second part is a general account of the world in the year 1700; and the third part is a general account of the world in the year 1700.

The second part of the history is a general account of the world in the year 1700. It is divided into three parts: the first part is a general account of the world in the year 1700; the second part is a general account of the world in the year 1700; and the third part is a general account of the world in the year 1700.

The third part of the history is a general account of the world in the year 1700. It is divided into three parts: the first part is a general account of the world in the year 1700; the second part is a general account of the world in the year 1700; and the third part is a general account of the world in the year 1700.

