
By Mr. Fleming, a petition of William D. Fleming for legislation to further regulate the punishment for murder in the first degree. The Judiciary.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Sixty-Four.

**AN ACT FURTHER REGULATING THE PUNISHMENT FOR MURDER IN
THE FIRST DEGREE.**

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

1 Chapter 265 of the General Laws is hereby amended by
2 striking out section 2, as most recently amended by section 12
3 of chapter 731 of the acts of 1956, and inserting in place there-
4 of the following two sections: —

5 *Section 2.* Whoever is guilty of murder in the first degree
6 shall be punished by imprisonment in the state prison for
7 life unless the death sentence is imposed therefor as pro-
8 vided in section two A. Whoever is guilty of murder in the
9 second degree shall be punished by imprisonment in the state
10 prison for life. No person shall be eligible for parole under
11 section one hundred and thirty-three A of chapter one hundred
12 and twenty-seven while he is serving a life sentence for mur-
13 der in the first degree; but if his sentence is commuted there-
14 from by the governor and council under the provisions of
15 section one hundred and fifty-two of said chapter, he shall
16 thereafter be subject to the provisions of law governing parole
17 for persons sentenced for lesser offences.

18 When the court and the district attorney consent, a de-
19 fendant indicted for murder in the first degree may plead guilty
20 to murder in the first degree with a sentence of life imprison-
21 ment, in which case the court shall so sentence him.

22 When a defendant has been found guilty after trial of mur-
23 der in the first degree, the court shall discharge the jury and

24 shall sentence the defendant to life imprisonment if it is satis-
25 fied that the defendant was under eighteen years of age at the
26 time of the commission of the crime and that the sentence of
27 death is not warranted because of substantial mitigating cir-
28 cumstances.

29 *Section 2A.* When a defendant has been found guilty after
30 trial of murder in the first degree, and such verdict has been
31 recorded upon the minutes, it shall not thereafter be subject
32 to jury reconsideration.

33 Unless the court sentences such defendant to life imprison-
34 ment, as provided in section two, it shall, as promptly as
35 practicable, conduct a proceeding to determine whether the
36 defendant should be sentenced to life imprisonment or to death.

37 Such proceeding shall be conducted before the court sitting
38 with jury that found the defendant guilty or the court may
39 for good cause discharge said jury and have a new jury im-
40 panelled for the purpose of determining sentence.

41 In such proceeding the defendant and the commonwealth
42 may present evidence relevant to the sentence, including, but
43 not limited to, the nature and circumstances of the crime, the
44 defendant's background and history, and any aggravating or
45 mitigating circumstances. Relevant evidence, not legally privi-
46 leged, shall be received regardless of its inadmissibility under
47 the rules of evidence. The court shall charge the jury on any
48 matters appropriate, including the law relative to the release on
49 parole of a person sentenced to life imprisonment.

50 If the jury reports unanimous agreement on the imposition
51 of the penalty of death, the court shall discharge the jury
52 and impose the sentence of death; if the jury reports unan-
53 imous agreement on the imposition of the penalty of life
54 imprisonment, the court shall discharge the jury and impose
55 the sentence of life imprisonment; and if, after the lapse of
56 such time as the court deems reasonable, the jury reports that
57 it is unable to agree, the court shall discharge the jury and
58 shall, in its discretion, either impanel a new jury to determine
59 the sentence or impose the sentence of life imprisonment.

60 On an appeal by the defendant from the judgment of death,
61 the supreme court, if it finds substantial error only in the

62 sentencing proceeding, may set aside the sentence of death and
 63 remand the case to the superior court, in which event the
 64 court shall impose the sentence of life imprisonment.

SENATE No. 181

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That

By the Committee of Jurisprudence

of the Senate, the following bill is reported with amendments

and the committee have the honor to recommend that the Senate do pass the same with amendments and report the same to the House of Representatives with amendments.

The committee also have the honor to recommend that the Senate do pass the following resolution and report the same to the House of Representatives with amendments.

Resolved, That the Senate do pass the following bill with amendments and report the same to the House of Representatives with amendments.

Resolved, That the Senate do pass the following resolution and report the same to the House of Representatives with amendments.

