

Substituted by the House, in part, on motion of Mr. Mofenson of Newton, for a Bill providing that persons convicted of murder in the first degree shall suffer the punishment of death (House, No. 7231). August 22.

**The Commonwealth of Massachusetts**

In the Year One Thousand Nine Hundred and Seventy-Three.

1 *Whereas*, There is pending before the General Court a bill  
2 printed as House, No. 7231, entitled "An Act providing that  
3 persons convicted of murder in the first degree shall suffer the  
4 punishment of death", a copy of which is submitted herewith;  
5 and

6 *Whereas*, If said House, No. 7231 is enacted into law, the laws  
7 of the commonwealth would provide that a person convicted of  
8 committing murder in the first degree would suffer the punish-  
9 ment of death, while a person convicted of committing murder in  
10 the second degree would suffer the punishment of life imprison-  
11 ment; and

12 *Whereas*, Section 1 of chapter 265 of the General Laws pro-  
13 vides that murder committed with deliberately premeditated  
14 malice aforethought, or with extreme atrocity or cruelty, or in  
15 the commission or attempted commission of a crime punishable  
16 with death or imprisonment for life, is murder in the first degree.  
17 Murder which does not appear to be in the first degree is murder  
18 in the second degree; and

19 *Whereas*, Said section 1 further provides that the degree of  
20 murder shall be found by the jury; and

21 *Whereas*, Grave doubt exists as to the constitutionality of said  
22 bill if enacted into law; therefore be it

23 *Ordered*, That the opinions of the Honorable the Justices of  
24 the Supreme Judicial Court be required by the House of Repre-  
25 sentatives upon the following important questions of law: —

26 1. Would the imposition and carrying out of the death penalty  
27 as authorized by House, No. 7231 constitute cruel and unusual  
28 punishment in violation of the Eighth and Fourteenth Amend-  
29 ments of the U.S. Constitution?

30 2. Would the imposition and carrying out of the death penalty  
 31 as authorized by said House, No. 7231 constitute cruel or un-  
 32 usual punishment in violation of Article XXVI of the Declaration  
 33 of Rights of the Massachusetts Constitution?

*The Constitution of the Commonwealth*

*in the Year One Thousand Nine Hundred and Seventy Three*

1. However, there is pending before the Senate a bill  
 2. printed as House No. 7231, entitled "An Act authorizing the  
 3. payment of money in the State of Massachusetts for the  
 4. punishment of death," a copy of which is attached hereto  
 5. and  
 6. However, it and House No. 7231 have not passed the  
 7. of the commonwealth would be a crime under the  
 8. committing murder in the first degree would be a  
 9. next of kin, while a person convicted of murder in the  
 10. the second degree would suffer the penalty of the  
 11. term;  
 12. However, Section 1 of Chapter 26A, as amended,  
 13. states that murder committed while the person is  
 14. under duress, or with a reasonable belief of death,  
 15. the commission or attempt of a crime, shall be  
 16. to the death or imprisonment for life, or both;  
 17. murder which does not meet the criteria of Section  
 18. in the second degree; and  
 19. However, said section 2 further provides that  
 20. murder shall be found by the jury;  
 21. However, it is noted that the  
 22. bill is entitled into law Chapter 26A, as amended,  
 23. Chapter 26A, Part 1, Section 1, which provides that  
 24. the sentence of death shall be imposed on the person  
 25. sentenced upon the following conditions:  
 26. 1. That the imposition and carrying out of the  
 27. as authorized by House No. 7231, shall not be  
 28. punishment in violation of the rights of the  
 29. of the Commonwealth.