

# HOUSE . . . . No. 1441.

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## Commonwealth of Massachusetts.

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EXECUTIVE DEPARTMENT, BOSTON, June 6, 1904.

*The Honorable Senate and House of Representatives :*

I return herewith with my objections thereto in writing an act entitled "An Act Relative to the Penalty for Murder in the Second Degree."

Three degrees of homicide have long been recognized in this Commonwealth. They are murder in the first degree, murder in the second degree, and manslaughter. Murder in the first degree is the taking of human life with deliberately premeditated malice aforethought, or with extreme atrocity, or cruelty, and the punishment for such a crime is death. Murder in the second degree involves a deliberate, intentional and unjustifiable taking of life, and for such the penalty is life imprisonment. It is but a shade removed from murder in the first degree. Manslaughter includes every unlawful homicide ranging from that of a negligent action without the remotest evil intent to that taking of life which approaches the very line of murder in the second degree.

This bill makes possible the infliction of a less penalty than life imprisonment for the crime of murder in the second degree.

No injustice or unnecessary hardship results from the present law. In those cases where there may be doubt whether the facts found conclusively establish the crime of murder in the second degree the jury may return a

verdict for manslaughter, and in the sentence the discretion of the court may be invoked.

Moreover, the pardoning power vested in the Governor and Council may be exercised whenever the extenuating circumstances are sufficient to warrant it. The fact that this power has been rarely exercised indicates how few have been the cases where a lesser penalty could have been safely inflicted, and how serious have been the offences for which men are now confined for life in our prisons.

The first purpose of the law is the protection of society. It tends to secure such protection to confine the law-breaker and the vicious where they cannot do harm: first, because society is thus relieved of the menace that they are to it when they are at liberty, and second, because their punishment serves as a warning to others and tends to deter them from similar infractions of the law.

To be effective as such a deterrent to others the penalties must fit the crimes for which they are imposed. The penalty of life imprisonment for murder in the second degree is not only justified but required for the protection of human life, unless all the precedents of the common law and of our previous statutory enactments have been founded in error.

Murder being the most terrible of crimes should be punished by the most terrible of penalties. This bill makes the penalty for the crime of murder in the second degree less than that for lighter crimes. For instance, the man who robs another under the circumstances stated in section seventeen, of chapter two hundred and seven, of the Revised Laws, must be punished by imprisonment for life. But under this law if he went further and killed his victim he might be punished merely for a term of years.

Believing, therefore, that this bill is dangerous to society, that it tends to diminish the deterrent effect of the law upon those criminally inclined, and that it will tend to make life less secure in this Commonwealth, I return it without my approval.

JOHN L. BATES.