

[Senate, April 25, 1978 — Substituted by amendment by the Senate (Backman), in part, for Senate Bill, printed as House, No. 820.]

The Commonwealth of Massachusetts

SENATE, April 25, 1978.

1 *Whereas*, There is pending before the General Court a bill  
 2 printed as House, No. 820, entitled "An Act to provide for  
 3 capital punishment", a copy of which is submitted herewith;  
 4 and

5 *Whereas*, The United States Supreme Court has held that  
 6 capital punishment is not violative of the eighth amendment  
 7 of the Constitution of the United States provided that such  
 8 punishment is determined by a presentence hearing similar  
 9 to that set forth in said House, No. 820; and

10 *Whereas*, The opinion of your Honorable Court in the case  
 11 of the Commonwealth v. Robert E. O'Neal indicated that  
 12 Article 26 of the Massachusetts Declaration of Rights may be  
 13 found to be more restrictive than the eighth amendment to the  
 14 Constitution of the United States; and

15 *Whereas*, Said decision involved only the question of pun-  
 16 ishment for rape-murder but the language and reasoning of  
 17 the court could be construed as being applicable to other mur-  
 18 ders; and

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

21 *Ordered*, That the opinions of the Honorable the Justices of  
 22 the Supreme Judicial Court be required by the Senate upon  
 23 the following important question of law: —

24 Is the death penalty constitutional for the crime of first  
 25 degree murder committed by a person already under a sen-  
 26 tence of life imprisonment, and for whom no further sentence  
 27 of life imprisonment can be effective?

