

SENATE No. 776

By Mr. Locke, a petition (accompanied by bill, Senate, No. 776) of David H. Locke, Robert A. Hall and John F. Parker for legislation to provide that persons convicted of murder in the first degree shall suffer the punishment of death. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT PROVIDING THAT PERSONS CONVICTED OF MURDER IN THE FIRST DEGREE SHALL SUFFER THE PUNISHMENT OF DEATH.

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. Section 1 of chapter 265 of the General Laws, as
2 amended, is hereby further amended by striking out the first
3 sentence and inserting in place thereof the following: —
- 4 The unlawful killing of another person shall be murder in
5 the first degree if said unlawful killing was committed: —
- 6 (1) with deliberately premeditated malice aforethought and
7 the victim was killed while serving in the performance of his
8 duties as a police officer, firefighter or correctional officer; or
- 9 (2) with deliberately premeditated malice aforethought and
10 the victim was killed in the course of a kidnapping for ransom
11 of the victim, or attempted kidnapping for ransom of the vic-
12 tim; or
- 13 (3) with deliberately premeditated malice aforethought by
14 a person who had previously been convicted of the crime of
15 murder in the first degree, as defined hereunder; or
- 16 (4) with deliberately premeditated malice aforethought in
17 consideration of the receipt of money, services or thing of
18 value, promised by another to induce such killing; the giver or
19 promisor of such consideration as well as the actor is a prin-
20 cipal to such killing whether or not present at the consum-
21 mation of the act; or
- 22 (5) in connection with the commission of rape or an at-
23 tempt to commit rape; or

24 (6) with extreme atrocity or cruelty; or

25 (7) with deliberately premeditated malice aforethought and
26 the victim was killed in the course of the commission of a hi-
27 jacking or in the course of an attempted commission of a hi-
28 jacking of an airplane; or

29 (8) with deliberately premeditated malice aforethought and
30 the victim was killed in the course of the commission of a
31 breaking and entering into a dwelling; or

32 (9) with deliberately premeditated malice aforethought and
33 the victim was killed in the course of the commission of an
34 armed robbery.

1 SECTION 2. Section 2 of said chapter 265, as amended, is
2 hereby further amended by striking out the first two sentences
3 and inserting in place thereof the following sentences: —
4 Whoever is guilty of murder in the first degree shall suffer
5 the punishment of death or shall be punished by imprison-
6 ment in the state prison for life.

1 SECTION 3. Said chapter 265 is hereby further amended by
2 adding after section 2 the following new sections: —

3 *Section 2A.* At the conclusion of all cases of murder in the
4 first degree and after argument of counsel and proper charge
5 from the court, the jury shall retire to consider a verdict of
6 guilty or not guilty without consideration of punishment.
7 Where the jury returns a verdict of guilty, the court shall
8 resume the trial and conduct a pre-sentence hearing before
9 the jury at which time the only issue shall be the determina-
10 tion of punishment to be imposed. In such hearing, evidence
11 may be presented as to any matter that the court deems
12 relevant to sentence, and shall include matters relating to any
13 aggravating or mitigating circumstances, as authorized by
14 law and subject to the laws of evidence. The jury shall also
15 hear argument by the defendant or his counsel and the prose-
16 cuting attorney, as provided by law, regarding the punish-
17 ment to be imposed. The prosecuting attorney shall open and
18 the defendant shall conclude the argument to the jury. Upon
19 the conclusion of the evidence and arguments, the judge shall
20 give the jury appropriate instructions and the jury shall re-
21 tire to determine the punishment to be imposed. The jury

22 shall fix a sentence within the limits prescribed by law. The
23 judge shall impose the sentence fixed by the jury as provided
24 by law. If the jury cannot, within a reasonable time, agree
25 to the punishment, the judge shall impose sentence within the
26 limits of the law; provided, however, that the judge shall in
27 no instance impose the death penalty when the jury cannot
28 agree on the punishment. If the trial court is reversed on
29 appeal because of error only in the pre-sentence hearing, the
30 new trial which may be ordered shall apply only to the issue
31 of punishment.

32 *Section 2B.* In all cases of murder in the first degree, where
33 the jury finds the defendant guilty, the judge shall include
34 in his instructions to the jury for it to consider the pre-
35 sentencing hearing, any aggravating or mitigating circum-
36 stances, subject to the laws of evidence, and any of the follow-
37 ing which may be supported by the evidence: —

38 (1) Aggravating circumstances: —

39 (a) The murder was committed by a person under sentence
40 of imprisonment.

41 (b) The defendant was previously convicted of another
42 murder or of a felony involving the use or threat of violence
43 to the person.

44 (c) At the time the murder was committed the defendant
45 also committed another murder.

46 (d) The defendant knowingly created a great risk of death
47 to many persons.

48 (e) The murder was committed while the defendant was
49 engaged, or was an accomplice, in the commission of, or an
50 attempt to commit, or flight after committing or attempting
51 to commit any robbery, rape, burglary, kidnapping or air-
52 craft, hijacking.

53 (f) The murder was committed for the purpose of avoiding
54 or preventing a lawful arrest or affecting an escape from
55 lawful custody.

56 (g) The murder was committed for pecuniary gain.

57 (h) The murder was exceptionally heinous, atrocious, or
58 cruel.

59 (2) Mitigating circumstances: —

60 (a) The defendant has no significant history of prior

61 criminal activity.

62 (b) The murder was committed while the defendant was
63 under the influence of extreme mental or emotional disturb-
64 ance.

65 (c) The defendant was an accomplice in a murder com-
66 mitted by another person and his participation in the homi-
67 cidal act was relatively minor.

68 (d) The defendant acted under extreme duress or under the
69 substantial domination of another person.

70 (e) The capacity of the defendant to appreciate the crimi-
71 nality of his conduct or to conform his conduct to the require-
72 ments of law was substantially impaired.

73 (f) The youth of the defendant at the time of the crime.

74 *Section 2C.* In all cases of murder in the first degree, where
75 the death penalty is imposed, the judgment of conviction and
76 the sentence of death shall be subject to automatic review by
77 the Supreme Judicial Court within sixty days after certifica-
78 tion by the sentencing court of the entire record unless time
79 is extended an additional period not to exceed thirty days by
80 the Supreme Judicial Court for good cause shown. Such re-
81 view by the Supreme Judicial Court shall have priority over
82 all other cases, and shall be heard in accordance with rules
83 promulgated by said court. With regard to the sentence, the
84 court shall determine: —

85 (1) Whether the sentence of death was imposed under the
86 influence of passion, prejudice, or any other arbitrary factor,
87 and

88 (2) Whether the evidence supports the jury's finding of an
89 aggravating circumstance, as authorized by law, and

90 (3) Whether the sentence of death is excessive or dis-
91 proportionate to the penalty imposed in similar cases, con-
92 sidering both the crime and the defendant.

93 In addition to its authority regarding correction of errors,
94 the court, with regard to review of death sentences, shall be
95 authorized to: —

96 (1) Affirm the sentence of death; or

97 (2) Set the sentence aside and remand the case for re-
98 sentencing by the trial judge based on the record and argu-
99 ment of counsel.