

HOUSE No. 4216

By Mr. Robinson of Melrose, petition of Charles W. Mann and other members of the House relative to the death penalty. Criminal Justice.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Five.

AN ACT RELATIVE TO THE DEATH PENALTY.

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 2 of chapter 265 of the General Laws, as
2 most recently amended by chapter 554 of the Acts of 1982, is hereby
3 amended by striking out said section and inserting in place thereof
4 the following section:

5 *Section 2.* Whoever is found guilty of murder committed with
6 deliberately premeditated malice aforethought or with extreme
7 atrocity or cruelty or whoever pleads guilty to said crime, and who
8 had attained the age of eighteen years at the time of murder, may
9 suffer the punishment of death pursuant to the procedures set forth
10 in sections sixty-eight to seventy-one, inclusive, of chapter 279.
11 Whoever is guilty of murder in the second degree, or whoever
12 pleads guilty to murder in the second degree shall be punished by
13 imprisonment in state prison for life. No person shall be eligible for
14 parole under section 133A of chapter 127 while he is serving a life
15 sentence for murder in the first degree, but if his sentence is com-
16 muted therefrom by the governor and council under the provisions
17 of section 152 of said chapter 127 he shall thereafter be subject to
18 the provisions of law governing parole for persons sentenced for
19 lesser offenses.

1 SECTION 2. Section 61 of Chapter 279 of the General Laws is
2 hereby amended by striking out said section and inserting in place
3 thereof the following section:

4 *Section 61.* If a person convicted of a capital crime is, or if a

5 person who pled guilty to a capital crime is, found by the court to be
6 insane, it may cause such person to be imposed, found by the court
7 to be insane, it may cause such person to be removed to one of the
8 state hospitals for such term and under such limitations as it may
9 order. If a person convicted of a capital crime or one who pled
10 guilty to a capital crime is, at the time when sentence is to be
11 imposed, found by the court to be pregnant, the court shall not pass
12 sentence upon her until it finds that she is no longer pregnant.

1 SECTION 3. Section 68 of chapter 279 of the General Laws is
2 hereby amended by striking the first paragraph and inserting in
3 place thereof the following new paragraph.

4 In all cases in which a sentence of death may be imposed, the
5 court shall submit to the jury special questions concerning the issue
6 of murder in the first degree. If the jury determines beyond a
7 reasonable doubt that the defendant is guilty of murder in the first
8 degree, the jury shall specify whether the defendant is guilty of
9 murder with deliberate premeditation, murder with extreme atroc-
10 ity or cruelty, or murder in the commission or attempted commis-
11 sion of a crime punishable by imprisonment for life, or two or more
12 of these. Upon a verdict of guilty of murder in the first degree with
13 extreme atrocity or cruelty, a presentence hearing shall be conduct-
14 ed, unless the commonwealth stipulates that none of the aggravat-
15 ing circumstances as defined in paragraph (a) of section 69 exists,
16 before the jury before which the case was tried; provided, however,
17 that if in the opinion of the judge presiding at the presentence
18 hearing, it is impossible or impracticable for the trial jury to sit at the
19 presentence hearing, a new jury shall be impanelled to sit at the
20 presentence hearing. If one accused of murder in the first degree
21 pled guilty to the crime, and in so doing waived his constitutional
22 right to a jury trial for a capital case, he/she shall be entitled to a
23 presentence hearing. A jury shall be selected to preside in determin-
24 ing the type of murder that was committed and the punishment to
25 be imposed. During the presentence for one convicted of murder in
26 the first degree by a jury, the only issue to be determined shall be the
27 punishment to be imposed. The jury shall hear all additional rele-
28 vant evidence in either type of hearing, presented by either the
29 Commonwealth or defendant in mitigation of punishment regard-
30 less of its admissibility under the rules governing the admission of

1 evidence at criminal trials. During such hearing, the jury shall also
2 hear such evidence in aggravation of punishment as is relevant to
3 the statutory aggravating circumstances or statutory aggravating
4 circumstances as defined in said paragraph (a) of said section
5 sixty-nine; provided, however, that only such evidence in aggrava-
6 tion of punishment as the Commonwealth has made known to the
7 defendant prior to his trial shall be admissible, and provided further
8 that said evidence is otherwise admissible according to the rules
9 governing the admission of evidence at criminal trials. The jury
0 shall also hear arguments by the defendant or his counsel or both
1 and by the Commonwealth regarding the punishment to be
2 imposed. The Commonwealth and the defendant or his counsel
3 shall be allowed to make opening statements and closing arguments
4 at the presentence hearing. The order of those statements and
5 arguments and the order of presentation of evidence shall be the
6 same as at trial. Upon the conclusion of evidence and arguments at
7 the presentence hearing, the court shall instruct the jury orally and
8 shall provide to the jury in writing the statutory aggravating
9 circumstance or statutory aggravating circumstances as determined
0 by the court to be warranted by the evidence and also any and all
1 statutory mitigating circumstance or statutory mitigating circum-
2 stances for its deliberation. The judge shall also instruct the jury to
3 consider any other relevant mitigating circumstance or mitigating
4 circumstances. The judge shall also instruct the jury that they may
5 not find that the penalty of death shall be imposed unless they shall
6 first make a unanimous determination of the existance of one or
7 more statutory aggravating circumstances beyond a reasonable
8 doubt, and make a unanimous determination that the statutory
9 aggravating circumstance or statutory aggravating circumstances
0 outweigh the statutory or other mitigating circumstances or
1 statutory or other mitigating circumstances beyond a reasonable
2 doubt.

SECTION 4. Section 70 of Chapter 279 is hereby amended by striking the first sentence of said section and inserting in place thereof the following new sentence:

Where, upon a trial by jury, a person is convicted of a crime

5 which is punishable by death, or when an accused pleads guilty to a
6 crime punishable by death, a sentence of death shall not be imposed
7 unless findings in accordance with section 68 are made.

1 SECTION 5. Section 4 of chapter 279 of the General Laws, as
2 most recently amended by section 4 of chapter 554 of the Acts of
3 1982 is hereby amended by inserting in line two after the word
4 "taken" and in line six after the word "death" the following: "or
5 upon an accused having pled guilty to said crime".

1 SECTION 6. Section 57 of Chapter 279 is hereby amended by
2 striking out the first sentence and inserting in place thereof the
3 following new sentence:

4 *Section 57.* Immediately upon the pronouncing of the sentence
5 of death upon a person convicted of a capital crime, or upon one
6 who has pled guilty to a capital crime, and immediately upon the
7 revocation under section 4 of the stay of execution of such sentence,
8 the clerk shall make, sign and deliver to the sheriff of the county
9 where the conviction is had, or pleading was made, is had a warrant
10 under the seal of the court stating the conviction and sentence, and
11 that a stay of execution of the sentence has been granted under
12 section 4, and that such stay has been revoked under said section,
13 and shall at the same time transmit to the superintendent of the
14 state prison a certified copy of the warrant.