

# SENATE . . . . . No. 233

By Mr. Tarr, a petition (accompanied by bill, Senate, No. 233) of Bruce E. Tarr and John A. Locke for legislation relative to the death penalty. Criminal Justice.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-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 appearing in the 1992 Official Edition, is hereby amended by  
3 striking out said section and inserting in place thereof the fol-  
4 lowing 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  
8 who had attained the age of eighteen years at the time of murder  
9 may suffer the punishment of death pursuant to the procedures set  
10 forth in sections sixty-eight to seventy-one, inclusive, of  
11 chapter 279. Whoever is guilty of murder in the second degree or  
12 whoever pleads guilty to murder in the second degree shall be  
13 punished by imprisonment in state prison for life. No person shall  
14 be eligible for parole under section 133A of chapter 127 while he  
15 is serving a life sentence for murder in the first degree, but if his  
16 sentence is committed therefrom by the governor and council  
17 under the provisions of section 152 of said chapter 127 he shall  
18 thereafter be subject to the provisions of law governing parole for  
19 persons sentenced for lesser offenses.

1 SECTION 2. Section 61 of Chapter 279 of the General Laws,  
2 as appearing in the 1992 Official Edition, is hereby further  
3 amended by striking out said section and inserting in place thereof  
4 the following section: —

5 Section 61. If a person convicted of a capital crime is, or if a  
6 person who pleads guilty to a capital crime is, found by the court  
7 to be insane, at the time when sentence is to be imposed, it may  
8 cause such person to be removed to one of the state hospitals for  
9 such term and under such limitations as it may order. If a person  
10 convicted of a capital crime or one who pleads guilty to a capital  
11 crime is, at the time when sentence is to be imposed, found by the  
12 court to be pregnant, the court shall not pass sentence upon her  
13 until it finds that she is no longer pregnant.

1 SECTION 3. Section 68 of Chapter 279 of the General Laws,  
2 as appearing in the 1992 Official Edition, is hereby further  
3 amended by striking out said section and inserting in place thereof  
4 the following section: —

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

30 either type of hearing, presented by either the Commonwealth or  
31 defendant in mitigation of punishment regardless of evidence  
32 admissibility under the rules of governing the admission of evi-  
33 dence at criminal trials. During such hearing, the jury shall also  
34 hear such evidence in aggravation of punishment as is relevant to  
35 the statutory aggravating circumstance or statutory aggravating  
36 circumstances as defined in said paragraph (a) of said section  
37 sixty-nine; provided, however, that only such evidence in aggra-  
38 vation of punishment as the Commonwealth has made known to  
39 the defendant prior to his trial shall be admissible, and provided  
40 further that said evidence is otherwise admissible according to the  
41 rules governing the admission of evidence at criminal trials. The  
42 jury shall also hear arguments by the defendant or his counsel or  
43 both and by the Commonwealth regarding the punishment to be  
44 imposed. The Commonwealth and the defendant or his counsel  
45 shall be allowed to make opening statements and closing argu-  
46 ments at the presentence hearing. The order of those statements  
47 and arguments and the order of presentation of evidence shall be  
48 the same as at trial. Upon the conclusion of evidence and argu-  
49 ments at the presentence hearing, the court shall instruct the jury  
50 orally and shall provide to the jury in writing the statutory aggra-  
51 vating circumstances or statutory aggravating circumstances as  
52 determined by the court to be warranted by the evidence and also  
53 any and all statutory mitigating circumstances or statutory miti-  
54 gating circumstances for its deliberation. The judge shall also  
55 instruct the jury to consider any other relevant mitigating circum-  
56 stance or mitigating circumstances. The judge shall also instruct  
57 the jury that they may not find that the penalty of death shall be  
58 imposed unless they shall first make a unanimous determination  
59 of the existence of one or more statutory aggravating circum-  
60 stances beyond a reasonable doubt, and make a unanimous deter-  
61 mination that the statutory aggravating circumstance or statutory  
62 aggravating circumstances outweigh the statutory or other miti-  
63 gating circumstance or statutory or other mitigating circumstances  
64 beyond a reasonable doubt.

1 SECTION 4. Section 70 of Chapter 279 of the General Laws,  
2 as appearing in the 1992 Official Edition, is hereby amended by  
3 striking the first sentence of said section and inserting in place

4 thereof the following new sentence: — Where, upon a trial by  
5 jury, a person is convicted of a crime which is punishable by  
6 death, or when an accused pleads guilty to a crime punishable by  
7 death, a sentence of death shall not be imposed unless findings in  
8 accordance with section 68 are made.

1 SECTION 5. Section 4 of Chapter 279 of the General Laws, as  
2 appearing in the 1992 Official Edition, is hereby amended by  
3 inserting in line two after the word “taken” and in line five after  
4 the word “death” the following: — or upon an accused having  
5 pled guilty to said crime.

1 SECTION 6. Section 57 of Chapter 279 of the General Laws,  
2 as appearing in the 1992 Official Edition, is hereby amended by  
3 striking out the first sentence and inserting in place thereof the  
4 following new sentence: —

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