SENATE DOCKET, NO. 1545 FILED ON: 1/14/2009

SENATE . . . . . No. 1655

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act relative to the crime of murder..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. A. Definitions.

"Extreme Atrocity or Cruelty", includes, but is not limited to, indifference to or taking pleasure in the victim's suffering, consciousness and degree of suffering of the victim, extent of physical injuries to the victim, number of blows inflicted on the victim, manner and force with which the blows were delivered, the instrument employed, and disproportion between the means needed to cause death and those employed.

"Torture" the intentional infliction of extreme and prolonged physical pain for the purposes of revenge, extortion, persuasion, or for any sadistic purpose.

B. Murder is the killing of one human being by another without lawful justification or excuse, and unless the defendant acts upon sufficient provocation, upon a sudden quarrel, or in the heat of passion, by any of the following means:

(1) the defendant specifically intended to kill the victim;

(2) the defendant specifically intended to do the victim grievous bodily harm;

(3) in the commission of or attempt to commit a felony that is inherently dangerous to human life or is committed in a dangerous manner;

(4) the defendant recklessly created an unreasonable and substantial risk of death or great bodily injury under circumstances indicating extreme indifference to the value of human life.

C. Any murder that is committed:

(1) for the purpose of financial gain;

(2) for the purpose of obstructing the judicial system;

(3) by the use of explosives;

(4) by torture;

(5) in the commission of or attempt to commit one of the following felonies:

(i) arson;

(ii) rape;

(iii) trafficking narcotics;

(iv) armed burglary;

(v) armed robbery;

shall be punished by imprisonment in state prison for a term of life. No person shall be eligible for parole under section 133A of chapter 127 while he is serving a life sentence for murder, but if his sentence is commuted therefrom by the governor and council under the

provisions of section 152 of said chapter 127 he shall thereafter be subject to the provisions of law governing parole for persons sentenced for lesser offenses.

D. 1) All other murders shall be punished by imprisonment in state prison of not less than 20 years and not more than life. A sentence of life shall not be reduced to less than 20 years nor shall the person be eligible for probation, parole, furlough, work release or receive any deduction from his sentence for good conduct until having served 20 years.

2) The sentencing judge shall state the reasons, including any aggravating or mitigating circumstances, for the sentence imposed. The sentencing judge shall not be required to conduct an evidentiary hearing in determining aggravating or mitigating circumstances.

a) Aggravating circumstances shall include, but are not limited to,

i) The victim was especially vulnerable due to age or physical or mental disability.

ii) The murder was committed with extreme atrocity or cruelty.

iii) The defendant was a leader in the commission of an offense involving two or more criminal actors.

iv) The defendant committed the offense while on probation, on parole, or during escape.

v) The defendant has committed repeated offenses against the same victim.

b) Mitigating circumstances shall include, but are not limited to,

i) The defendant was a minor participant in the criminal conduct.

ii) The defendant was suffering from a mental or physical condition that significantly reduced the culpability of the defendant for the offense.

iii) The sentence was imposed in accordance with a jointly agreed recommendation.

iv) The age of the defendant at the time of the offense.

v) The victim was a provoker, but the provocation does not amount to a defense to murder.