

HOUSE No. 2219

The Commonwealth of Massachusetts

PRESENTED BY:

Bradley H. Jones, Jr.

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act establishing the death penalty in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>	<i>1/20/2011</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>	<i>1/27/2011</i>
<i>Geoff Diehl</i>	<i>7th Plymouth</i>	<i>2/2/2011</i>
<i>F. Jay Barrows</i>	<i>1st Bristol</i>	<i>2/2/2011</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>	<i>2/2/2011</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>	<i>2/3/2011</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>	<i>2/3/2011</i>
<i>Richard Bastien</i>	<i>2nd Worcester</i>	<i>2/3/2011</i>
<i>Sheila C. Harrington</i>	<i>1st Middlesex</i>	<i>2/4/2011</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>	<i>2/4/2011</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>2/4/2011</i>
<i>Steven S. Howitt</i>	<i>4th Bristol</i>	<i>2/4/2011</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>	<i>2/4/2011</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>	<i>1/21/2011</i>
<i>Viriato Manuel deMacedo</i>	<i>1st Plymouth</i>	<i>2/1/2011</i>

HOUSE No. 2219

By Mr. Jones of North Reading, a petition (accompanied by bill, House, No. 2219) of Bradley H. Jones, Jr., and others relative to the death penalty in the Commonwealth. The Judiciary.

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Eleven
—————

An Act establishing the death penalty in the Commonwealth.

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. The General Laws, as appearing in the 2008 Official Edition are hereby
2 amended by inserting after chapter 279, the following chapter:—

3 CHAPTER 279A.

4 CAPITAL MURDER AND PUNISHMENT.

5 Section 1. For the purposes of this chapter, the following words shall have the following
6 meanings:—

7 “An act of political terrorism” means an act committed by the defendant for the purpose
8 of attacking the government of the United States, or any political subdivision thereof.

9 “Capital-case qualified” shall have the same meaning as is set forth in section 8A of
10 chapter 211D.

11 “Death qualified jury” is one from which prospective jurors have been excluded for cause
12 in light of their inability to set aside their views about the death penalty that would prevent or
13 substantially impair the performance of their duties as jurors in accordance with their instructions
14 and their oath. A “death-qualified” jury also shall not include any other prospective jurors who
15 fail to meet any other prevailing standards for “death qualification” that are defined by the
16 United States Supreme Court.

17 “Gratuitous and depraved manner” means that the defendant inflicted pain in addition to
18 that which necessarily accompanied the act of killing itself, or the particular method of killing
19 was chosen by the defendant for the purpose of inflicting such pain.

20 “Human evidence” means statements made by individuals, including but not limited to
21 eyewitness testimony, statements made by a defendant while in police custody, and statements
22 made by co-defendants or informants.

23 “Mentally incompetent to be executed” means that due to a mental disease or defect, a
24 defendant, who is convicted of capital murder and sentenced to death, is presently unaware that
25 he or she is to be punished for the crime of capital murder, or that he or she is unaware that the
26 impending punishment for that crime is death.

27 “Mentally retarded” means that the defendant satisfies the definition of “mental
28 retardation” as promulgated by either the American Psychiatric Association or the American
29 Association on Mental Retardation. A defendant who satisfies any other definition of “mental
30 retardation” that is established by the United States Supreme Court also shall be considered
31 “mentally retarded.”

32 “Scientific physical or other associative evidence” means evidence that connects the
33 defendant to either the location of the crime scene, the murder weapon, or the victim’s body, and
34 that strongly corroborates the defendant’s guilt of capital murder. Physical or other associative
35 evidence includes any tangible image, object, or item that can be independently examined for the
36 purpose of obtaining useful investigative information, or for rendering an interpretation relevant
37 to a fact at issue in the particular capital murder case. Such physical or other associative evidence
38 that may be capable of providing conclusive associations of suspects, victims, crime scenes, or
39 the implements of crime, may include, but are not limited to DNA, photographs, video and
40 audiotapes, fingerprints, and certain impression evidence such as footwear impressions, tire
41 impressions, tool marks, firearms-related impressions, and other physical pattern matches. In
42 addition to these categories, other categories of scientific evidence may also satisfy, either now
43 or in the future, the requirement of conclusive physical or other associative evidence.

44 “Torture” means the infliction of extreme physical or psychological pain against a victim
45 whom the defendant knew was conscious.

46 Section 2. Murder in the first degree is capital murder when:

47 (A). The defendant committed the murder through:

48 (1) The defendant’s own conduct;

49 (2) The conduct of another person acting under the defendant’s direction or control; or

50 (3) The conduct of another person pursuant to an agreement between that person and the
51 defendant to commit the murder; and

52 (B). The defendant committed the murder with deliberately premeditated malice
53 aforethought with respect to the victim's death; and

54 (C). The defendant was at least 18 years old at the time that the defendant either:

55 (1) Engaged in the conduct that caused the victim's death;

56 (2) Directed or controlled another person to commit the murder; or

57 (3) Entered into an agreement with another person for that person to commit the murder;

58 and

59 (D). One or more of the following additional elements is present:

60 (1) The defendant committed the murder as an act of political terrorism;

61 (2) The defendant committed the murder for the purpose of influencing, impeding,
62 obstructing, hampering, delaying, harming, punishing, or otherwise interfering with a criminal
63 investigation, grand jury proceeding, trial, or other criminal proceeding of any kind, including a
64 possible future proceeding, or in retaliation for the victim's role in the investigation or
65 adjudication of a prior criminal case, including the implementation of the defendant's sentence,
66 against:

67 (a) A victim whom the defendant knew or believed to have played an official role within
68 the criminal justice system, such as a police officer, parole or probation officer, judge, juror,
69 court official, prosecutor, criminal defense attorney, expert witness or employee of a correctional
70 institution; or

71 (b) A victim whom the defendant knew or believed to have been (i) a witness to a crime
72 committed on a prior occasion, or (ii) an immediate family member of such a witness, including
73 but not limited to a husband, wife, father, mother, daughter, son, brother, sister, stepparent,
74 stepchild, grandparent, or grandchild.

75 (3) The defendant intentionally tortured the victim, for a prolonged period of time and in
76 a gratuitous and depraved manner, during or immediately prior to the murder;

77 (4) The defendant committed murder in the first degree against two or more victims, and
78 each of the murders satisfied elements (A) through (C) herein;

79 (5) The defendant has a previous conviction for murder in the first degree or the closest
80 equivalent, as defined by the law of the relevant jurisdiction, and the previous murder also
81 satisfied elements (A) through (C) herein;

82 (6) At the time that the defendant engaged in the conduct described in element (A) herein,
83 the defendant was subject to a sentence of imprisonment for life, without the possibility of
84 parole, as the result of a previous conviction for murder in the commonwealth or elsewhere in
85 the United States.

86 (E). The punishment for capital murder shall be imprisonment for life without the
87 possibility of parole or the death penalty.

88 Section 3. (A). It shall be an affirmative defense to capital murder that the defendant is
89 mentally retarded. This affirmative defense may be raised by the defendant before the
90 commencement of the trial, in which case the determination of mental retardation will be made
91 by the superior court; or during the verdict stage of the trial, in which case the fact-finder will

92 make the determination of mental retardation. Nothing in this section shall prevent the defendant
93 from raising the issue of possible mental retardation as a mitigating circumstance at the
94 sentencing stage of the trial.

95 (B). If a defendant intends to rely upon the affirmative defense of mental retardation at
96 trial, whether or not there was pretrial litigation on the matter, he shall, within the time provided
97 for the filing of pretrial motions by rule 13 of the rules of criminal procedure or at such later time
98 as the judge may allow, notify the district attorney in writing of such intention. The defendant
99 shall file a copy of the notice with the superior court clerk. The superior court may for good
100 cause shown allow late filing of the notice, grant additional time to the parties to prepare for trial,
101 or make such other order as may be appropriate. The notice shall state: (a) whether the defendant
102 intends to offer testimony of expert witnesses on the issue of mental retardation; and (b) the
103 names and addresses of expert witnesses whom the defendant expects to call. Such expert
104 witnesses, whether appointed or retained by the defendant, shall have access to any available
105 psychiatric or psychological report previously submitted to the court with respect to the mental
106 condition of the defendant, including, if applicable, any reports regarding the defendant's
107 competency to stand trial or the defendant's criminal responsibility.

108 (C). For the purposes of adjudicating the affirmative defense of mental retardation, a
109 defendant indicted for capital murder shall be presumed not to be mentally retarded.

110 (1) If the defendant makes a pretrial motion alleging mental retardation, it shall be the
111 defendant's burden to rebut that presumption and to establish, by a preponderance of the
112 evidence, that he is mentally retarded.

113 (2) If the defendant raises the issue of mental retardation in his defense at the capital
114 murder trial, whether or not there was pretrial litigation on the matter, the defendant shall have
115 the burden to produce some evidence tending to show that he is mentally retarded. Where the
116 defendant produces such evidence, which fairly puts mental retardation in issue, then the
117 commonwealth, must prove, beyond a reasonable doubt, that the defendant is not mentally
118 retarded.

119 (3) If the defendant raises the issue of possible mental retardation as a mitigating
120 circumstance at the sentencing stage of the trial, no presumption regarding mental retardation
121 shall apply.

122 (D). At a reasonable time prior to the commencement of the trial of a defendant indicted
123 for capital murder, the defendant may, upon a written motion alleging probable cause to believe
124 the defendant is mentally retarded, apply for an order directing that a mental retardation hearing
125 be conducted prior to trial. If, upon review of the defendant's motion and any response thereto,
126 the superior court finds probable cause to believe the defendant is mentally retarded, the court
127 shall promptly conduct a hearing without a jury to determine whether the defendant is mentally
128 retarded. In the event the court finds, after the hearing, that the defendant is not mentally
129 retarded, the court must, prior to commencement of trial, enter an order so stating, but nothing in
130 this section shall preclude a defendant from presenting evidence of mental retardation at the
131 guilt-innocence or the sentencing stages of the trial. If the court finds that probable cause is
132 lacking to support the allegation that the defendant is mentally retarded, the court shall dismiss
133 the matter without a hearing.

134 (E). If the court determines that probable cause exists to believe that the defendant is
135 mentally retarded, the court shall hold a hearing to inquire into the defendant's alleged mental
136 retardation and shall give immediate notice of the inquiry to the district attorney and to the
137 defendant's counsel. The defendant shall have the right to present evidence and cross-examine
138 any witnesses at the hearing. The court may appoint one or more psychiatrists or psychologists to
139 examine the defendant. The court shall issue any ruling in the matter no later than 30 days from
140 the date the hearing on the matter concludes.

141 (F). If the court appoints a psychiatrist or psychologist to examine the defendant, the
142 court shall inform the psychiatrist or psychologist of the location of the defendant and of the
143 purpose of the examination. The examiner shall have access to any available psychiatric or
144 psychological report previously submitted to the court with respect to the mental condition of the
145 defendant, including, if applicable, any reports regarding the defendant's competency to stand
146 trial or the defendant's criminal responsibility. The examiner also shall have access to any
147 available current mental health and medical records of the defendant.

148 (G). If the court appoints a psychiatrist or psychologist to examine the defendant, the
149 examiner shall conduct a thorough examination of the defendant and shall submit a report to the
150 court within 30 days of the examiner's appointment. The report shall contain the examiner's
151 findings as to whether or not the defendant is mentally retarded and the facts, in reasonable
152 detail, upon which the findings are based.

153 (H). In the event the court finds, after the hearing, that the defendant is mentally retarded,
154 the court must, prior to commencement of trial, enter an order so stating. The commonwealth
155 may appeal such an order as of right without seeking leave. Upon entering such an order the

156 court must afford the commonwealth a reasonable period of time, which shall not be less than ten
157 days, to determine whether to take an appeal from the order finding that the defendant is
158 mentally retarded. The taking of an appeal by the commonwealth stays the effectiveness of the
159 court's order and any order setting a date for trial. If an appeal is taken, it shall be entered
160 directly on the docket of the supreme judicial court. No costs or attorney's fees shall be assessed
161 against the commonwealth in connection with an interlocutory appeal of an order which finds
162 that the defendant is mentally retarded unless the defendant prevails and the supreme judicial
163 court determines that the appeal was frivolous. Unless the order is reversed on an appeal, the
164 capital portion of the murder indictment shall be dismissed, the indictment charging first-degree
165 murder shall remain, and the jury shall not be death-qualified.

166 Section 4. (A). The district attorneys shall develop a uniform set of protocols for the
167 exercise of prosecutorial discretion in potential capital murder cases in the commonwealth.
168 These protocols shall address both the substantive factors that should influence this exercise of
169 prosecutorial discretion, and the procedures that should be followed in connection with this
170 exercise of prosecutorial discretion.

171 (B). The attorney general, pursuant to section 27 of chapter 12, shall review all exercises
172 of prosecutorial discretion by district attorneys in potential capital murder cases, and shall take
173 appropriate actions to ensure the consistent application of the death penalty throughout the
174 commonwealth. The attorney general shall develop a set of protocols for this review, which will
175 address both the substantive factors that should influence this review and the procedures that
176 should be followed in connection with this review.

177 Section 5. (A). An indigent defendant indicted for capital murder shall be provided with
178 at least two court appointed defense attorneys to represent him at trial. A non-indigent defendant
179 indicted for capital murder who can afford only one privately retained defense attorney shall be
180 provided with a second, court appointed defense attorney to represent him at trial. Both of the
181 defense attorneys at the trial of a capital murder case, whether such attorneys are appointed or
182 privately retained, shall be required to be certified as capital-case qualified, unless the superior
183 court allows the defendant's request for a waiver of certification on the ground, or the court
184 determines as a matter of discretion, that such waiver is consistent with the need for high quality
185 defense representation at trial in the particular capital murder case. An expedited certification
186 procedure shall be established so that a defense attorney who meets the standards for certification
187 as capital-case qualified, but who is not yet so certified, may obtain certification in order to
188 represent the defendant in a particular capital murder case.

189 (B). A defendant indicted for capital murder may waive his constitutional right to
190 counsel, and represent himself. If, after a hearing, the trial judge permits a defendant to waive his
191 constitutional right to counsel, the court shall appoint at least two attorneys to serve as standby
192 counsel. All such standby counsel shall be required to be certified as capital-case qualified,
193 unless the trial judge approves the appointment of a non-certified standby counsel on the ground
194 that such appointment is consistent with the need for high-quality performance as standby
195 counsel during trial in the particular capital murder case.

196 (C). An indigent defendant who is convicted of capital murder and sentenced to death,
197 shall be provided with an appointed defense attorney to represent him at all post-trial
198 proceedings, including the direct appeal as well as any state or federal post conviction
199 proceedings. This appointed defense attorney, for post trial proceedings, shall not be one of the

200 same attorneys who represented the defendant at his capital murder trial, unless a single justice
201 of the supreme judicial court approves the defendant's request for waiver of this requirement on
202 the ground that such waiver is consistent with the need for high-quality defense representation in
203 post-trial proceedings in the particular capital murder case.

204 (D). Any defense attorney who represents, in a post-trial proceeding, a defendant who has
205 been convicted of capital murder and sentenced to death, whether such defense attorney is
206 appointed or privately retained, shall be required to be certified as capital-case qualified, unless a
207 single justice of the supreme judicial court approves the defendant's request for a waiver of
208 certification on the ground, or the single justice determines as a matter of discretion, that the
209 particular defense attorney meets the standards for certification, and that such waiver is
210 consistent with the need for high-quality defense representation in post-trial proceedings in the
211 particular capital murder case.

212 Section 6. (A)(1). Before the trial of a defendant indicted for capital murder, the superior
213 court shall examine carefully the aggravating circumstances that were identified by the
214 commonwealth as a basis for the capital murder indictment, and the court may dismiss the capital
215 portion of the murder indictment if such aggravating circumstances are not supported by legally
216 sufficient evidence.

217 (2). In the event that the capital portion of the murder indictment is dismissed, the
218 commonwealth may appeal that decision as of right without seeking leave. Upon entering such
219 an order, the court must afford the commonwealth a reasonable period of time, which shall not
220 be less than ten days, to determine whether to take an appeal from the order dismissing the
221 capital portion of the murder indictment. The taking of an appeal by the commonwealth stays the

222 effectiveness of the court's order and any order setting a date for trial. If an appeal is taken, it
223 shall be entered directly on the docket of the supreme judicial court. No costs or attorney's fees
224 shall be assessed against the commonwealth in connection with an interlocutory appeal of an
225 order allowing a motion to dismiss the capital portion of the murder indictment unless the
226 defendant prevails and the supreme judicial court determines that the appeal was frivolous.

227 (3). In the event that the capital portion of the murder indictment is dismissed or such a
228 dismissal is affirmed on appeal, the indictment charging first-degree murder shall remain, and
229 the jury shall not be death-qualified.

230 (B). At a trial for capital murder, the trial judge shall impanel a jury that is death-
231 qualified unless the defendant elects, prior to jury selection in the guilty-innocence stage of the
232 trial, to impanel a new jury for the sentencing phase of the trial pursuant to section 7 of this
233 chapter. The death-qualified jury shall sit for both the verdict and the sentencing stages of the
234 trial, unless the defendant elects to choose a second jury for the sentencing stage. If the defendant
235 elects to have a new jury impaneled for the sentencing stage, that jury shall also be death-
236 qualified. It shall be within the discretion of the trial judge to impanel a second jury for the
237 sentencing stage before the start of the guilt-innocence stage. Should a second jury be so
238 impaneled, the trial judge shall take whatever steps necessary, including sequestration, to ensure
239 that the second jury remains impartial throughout the guilt-innocence stage.

240 (D). In the event that the defendant waives his right to a jury trial at either the guilt-
241 innocence or the sentencing stage of a capital murder trial, any reference in this chapter to the
242 word jury should be understood to mean the superior court acting as a fact-finder.

243 (E). If the commonwealth's capital murder indictment requires proof of prior criminal
244 activity as described in sections 2(D)(5) or (6) of this chapter, the evidence shall be introduced in
245 two phases of the guilt-innocence stage. In the first phase, the jury shall be presented with
246 evidence relevant to the proof of sections 2(A), 2(B), 2(C) and 2(D)(1), (2), (3), or (4), and the
247 jury shall not be presented with evidence relating to prior crimes. Upon the conclusion of the
248 commonwealth's evidence relevant to the first phase, and any defense thereto, the parties shall be
249 permitted to present an argument to the jury, the trial judge will provide the jury with appropriate
250 instructions, and the jury will be asked to deliberate and make findings on sections 2(A), 2(B)
251 2(C) and 2(D)(1), (2), (3), or (4). If the jury finds that the commonwealth has established beyond
252 a reasonable doubt the existence of sections 2(A), 2(B), and 2(C), the second phase of the guilt-
253 innocence stage of trial shall commence with the presentation of evidence relevant to sections
254 2(D) (5) or (6), and any defense thereto, followed by argument, instructions, and deliberations. If
255 the jury finds that the commonwealth has failed to carry its burden of proof as to sections 2(A),
256 2(B), or 2(C), the capital murder portion of the murder indictment shall be dismissed, and the
257 indictment charging first-degree murder shall remain.

258 Section 7. If, at the end of the guilt-innocence stage of the trial, the defendant is
259 convicted of capital murder, the defendant shall have the right to request the selection of a new
260 jury for the sentencing stage. If the defendant exercises this right, then the defendant will be
261 deemed to have waived the issue of residual or lingering doubt about guilt, and the trial judge
262 shall prohibit the defendant from raising or arguing that issue during the sentencing stage. The
263 defendant may exercise this right prior to jury selection in the guilty-innocence stage of the trial,
264 but the exercise of that right shall be binding on the defendant once the empanelment process
265 begins.

266 Section 8. (A). At the guilt-innocence stage of the capital murder trial, and again at the
267 sentencing stage, unless the issue of residual or lingering doubt is waived by the defendant, the
268 jury may, if requested by the defense, be instructed about the following known limitations of
269 human evidence, to the extent that such human evidence has been introduced in the particular
270 case: (1) eyewitness testimony, even from a confident eyewitness, may be unreliable, especially
271 in connection with extremely emotional events such as a murder, and should therefore be
272 evaluated with great care; (2) crossracial eyewitness identifications are often particularly
273 unreliable; (3) statements made by a defendant while in police custody are not always inherently
274 reliable, and should therefore be evaluated with care; (4) ideally, statements made by the
275 defendant while in police custody should be contemporaneously audio- or video-recorded in their
276 entirety, and the lack of such a recording should be considered when evaluating the reliability of
277 such a statement; and (5) statements made by codefendants or informants, especially when the
278 codefendant or informant receives or hopes to receive any benefit from the commonwealth, may
279 be unreliable, and should therefore be evaluated with great care.

280 (B). Whether to give an instruction in any of the categories listed in section 8(A) of this
281 chapter, and the particular wording of any such instruction, shall lie within the discretion of the
282 trial judge.

283 Section 9. (A). The sentencing stage of the capital murder trial shall be for the
284 presentation and consideration of mitigating evidence. The commonwealth shall not relitigate the
285 existence of aggravating factors proved at the trial or otherwise present evidence, except, subject
286 to the rules governing admission of evidence in the trial of a criminal action, in rebuttal of the
287 defendant's evidence. Subject to the rules governing the admission of evidence in the trial of a
288 criminal action, the defendant may present any evidence relevant to mitigation, and the

289 defendant shall not be precluded from introducing reliable hearsay evidence that is not otherwise
290 precluded.

291 (B). At the beginning of the sentencing stage, where a new death-qualified jury has been
292 selected, the prosecution shall be permitted to present otherwise admissible evidence to the new
293 jury to the extent reasonably necessary to inform the new jury about the nature and
294 circumstances of the crime, including each of the elements set forth in sections 2(A) through
295 2(D) of this chapter that were found by the original jury at the guilt-innocence stage, and to allow
296 the new jury to determine the appropriate weight to be given to these facts in deciding the
297 sentence. The new jury shall be instructed that each of the elements of capital murder that were
298 found by the original jury at the guilt-innocence stage shall be deemed established beyond a
299 reasonable doubt for purposes of the sentencing stage, but that any additional facts elicited by the
300 prosecution at the sentencing stage that are not essential to the verdict of guilty of capital murder
301 shall not be deemed established beyond a reasonable doubt. The new jury shall not be instructed
302 or informed on the issue of whether or not the defendant contested guilt during the guilt-
303 innocence stage.

304 (C). Notwithstanding section 3(p) of chapter 258B, only after the jury determines that the
305 defendant should be sentenced to death, may a representative or representatives of the victim's
306 family and friends present a statement regarding the impact of the crime on the family and
307 friends. The impact statement shall be given in the presence of the defendant.

308 Section 10. (A). At the sentencing stage of the capital murder trial, as a prerequisite to the
309 imposition of the death penalty, and unless the issue of residual or lingering doubt has been
310 waived by the defendant pursuant to section (7)(A) of this chapter, the jury shall be required to

311 find that there is “no doubt” about the defendant’s guilt of capital murder. In connection with this
312 requirement, the jury shall be instructed that, even after finding the defendant guilty of capital
313 murder beyond a reasonable doubt, it is possible that one or more jurors may still harbor a
314 residual or lingering doubt about the defendant’s guilt, and that the existence of such doubt,
315 whether held individually or collectively, is sufficient to preclude the imposition of the death
316 penalty.

317 (B). At the sentencing stage of the capital murder trial, as a prerequisite to the imposition
318 of the death penalty, and regardless of whether or not the defendant has waived the issue of
319 residual or lingering doubt, the jury is required to find that there is conclusive scientific physical
320 or other associative evidence reaching a high level of scientific certainty.

321 (C). The jury may not direct the imposition of a sentence of death unless it unanimously
322 finds beyond a reasonable doubt that the aggravating factor or factors substantially outweigh the
323 mitigating factor or factors established, if any, and unanimously determines that the penalty of
324 death should be imposed. Any member or members of the jury who find a mitigating factor to
325 exist may consider such a factor regardless of the number of jurors who concur that the factor
326 exists.

327 (D). If the court determines during the sentencing stage of the capital murder trial,
328 because of a reasonable lapse of time or otherwise, that the deliberating jury is deadlocked as to
329 the imposition of a death sentence, and it is apparent to the court that further instruction and
330 deliberations would not assist in the return of a verdict, the court shall dismiss the jury, and
331 impose a sentence of imprisonment for life without the possibility of parole.

332 (E). When the jury has unanimously determined the defendant's sentence it must be
333 recorded on the docket and read to the jury, and the jurors must be collectively asked whether
334 such is their sentence. Even though no juror makes any declaration in the negative, the jury must,
335 if either party makes such an application, be polled and each juror separately asked whether the
336 sentence announced by the foreman is in all respects his or her sentence. If, upon either the
337 collective or the separate inquiry, any juror answers in the negative, the court must refuse to
338 accept the sentence and must direct the jury to resume its deliberation. If no disagreement is
339 expressed, the jury must be discharged from the case.

340 Section 11. (A). There is hereby established, as an independent commission in the
341 judicial branch of the commonwealth, an independent scientific review advisory committee,
342 hereinafter referred to as the advisory committee. The advisory committee shall consist of five
343 members who shall be appointed by a majority vote of the supreme judicial court from a list of
344 eight nominees submitted by the governor. Each such nominee shall be a recognized expert in
345 the evaluation of forensic evidence. Advisory committee members shall each serve a term of
346 three years, and the chief justice of the supreme judicial court shall designate one member as
347 chairman. The advisory committee shall initiate a formal process to ensure the independent
348 scientific review of physical or other associative evidence, as defined in section 10(B) of this
349 chapter, in every capital murder case in which a sentence of death is imposed.

350 (B). The advisory committee shall have the responsibility for drafting, adopting, and
351 updating general policies relating to independent scientific review, establishing criteria for
352 independent scientific review in particular cases, selecting independent forensic-science experts
353 to conduct case-specific independent scientific review, and monitoring the ongoing effectiveness
354 of independent scientific review. If the state police crime laboratory or the Boston police crime

355 laboratory employs any appointed member of the advisory committee, that employee shall not
356 participate in any independent scientific review or independent scientific review panel selection
357 in any capital murder case with which the employee's laboratory had any involvement.

358 (C). The advisory committee shall consider policies to require that all crime laboratories,
359 medical-examiner offices, and forensic-service providers who are involved in any death-eligible
360 homicide investigation or homicide trial in the commonwealth must be accredited by the
361 appropriate accrediting organization, if available. The advisory committee shall also promulgate
362 rules or regulations with respect to the qualifications of individuals who work for crime
363 laboratories, medical-examiner offices, and forensic-service providers in connection with any
364 death-eligible homicide investigation or homicide trial in the commonwealth. With respect to
365 any rule or regulation that relates to the accreditation of medical-examiner offices, and the
366 certification of individuals who work for such offices, the advisory committee shall work in
367 coordination with members of the commission on medicolegal investigation as constituted under
368 section 184 of chapter 6.

369 (D). Notwithstanding the above, counsel for a defendant indicted for capital murder shall
370 not be prohibited from utilizing any person, otherwise qualified, as an expert in connection with
371 the investigation, hearing, or trial of a criminal case.

372 (E). At the conclusion of any capital murder trial where the defendant is convicted and
373 sentenced to death, the advisory committee shall appoint an independent scientific review panel
374 hereinafter referred to as the panel. The panel shall consist of not less than three and not more
375 than five members. The panel shall include independent members from each forensic-science
376 sub-discipline relevant to the particular case. Members of the panel shall be selected from among

377 recognized experts not employed by the commonwealth's or city crime laboratories. The panel
378 may be comprised of independent experts employed by federal or state laboratories outside the
379 commonwealth, academics, or other suitable experts.

380 (F). The panel shall conduct a thorough review of the collection, handling, evaluation,
381 analysis, preservation, and interpretation of, and testimony and all other matters relating to,
382 physical or other associative evidence in the particular case. This review shall be conducted
383 pursuant to the policies, rules, and regulations adopted by, and using the review criteria
384 established by, the advisory committee. This review shall, at a minimum, address the following
385 questions: (1) whether the integrity of the evidence was sufficient to allow for consideration of
386 subsequent procedures; (2) whether the appropriate guidelines and standards of practice were
387 followed for the crime scene and autopsy procedures; the recognition, documentation, recovery,
388 packaging, and preservation of the evidence; the examination and comparison of evidence; the
389 interpretation and reporting of results; and the reconstruction by experts relying on other
390 examinations and reports; (3) whether any new research or novel science played a role, and if so,
391 was it appropriately documented and provided for review under the relevant legal standard; and
392 (4) whether the retrospective independent scientific review process, using contemporary
393 standards, revealed any specific scientific or technical issues requiring additional information, or
394 suggesting that errors may have been made. At the conclusion of its review, the panel shall issue
395 a written report that contains, at a minimum, the panel's answers to each of the four questions
396 listed above. A copy of the panel's report shall be provided, in a timely fashion, to the trial judge,
397 the district attorney who prosecuted the defendant or his successor, the defense attorneys, the
398 attorney general, and to the supreme judicial court.

399 Section 12. (A). After the trial of a defendant convicted of capital murder and sentenced
400 to death, the trial judge may exercise the authority granted by rule 25(b)(2) of the rules of
401 criminal procedure to set aside the verdict of guilt of capital murder and the corresponding death
402 sentence, and direct the entry of a verdict of guilt of first-degree murder, whenever the trial judge
403 finds the death sentence to be inappropriate on any basis in fact or law, including the trial
404 judge's disagreement with the exercise of capital sentencing discretion by the jury.

405 (B). All cases in which the death sentence is imposed shall be subject to mandatory
406 appellate review by the supreme judicial court. The defendant may not waive such appellate
407 review. As part of this mandatory appellate review, in addition to the review of any legal issues
408 properly raised, the supreme judicial court shall exercise the substantive review authority granted
409 by section 33E of chapter 278 to set aside the verdict of guilt of capital murder and the
410 corresponding death sentence, or direct the entry of a verdict of guilt of first-degree murder,
411 whenever the supreme judicial court finds that the verdict was against the law or the weight of
412 the evidence, or because of newly discovered evidence, or for any other reason that justice may
413 require. The supreme judicial court shall exercise this substantive review authority, and set aside
414 the death sentence, whenever it determines that the death sentence is inappropriate on any basis
415 in fact or law, including the court's disagreement with the exercise of capital sentencing
416 discretion by the jury.

417 Section 13. (A). Immediately upon the pronouncing of the sentence of death upon a
418 person convicted of capital murder, the execution of that death sentence shall automatically be
419 stayed pending mandatory appellate review by the supreme judicial court under section 33E of
420 chapter 278, and under section 12(B) of this chapter. Unless otherwise ordered by the supreme
421 judicial court, where the court has affirmed the conviction of capital murder and the sentence of

422 death, the stay shall remain in effect only until the supreme judicial court issues its rescript,
423 pursuant to section 8 of chapter 211, whereupon the stay shall be automatically revoked.

424 (B). Immediately upon the pronouncing of the sentence of death upon a person convicted
425 of capital murder, and immediately upon the revocation of the stay of execution of such a
426 sentence under section 4 of chapter 279, section 13(A) or section 17(D) of this chapter, the clerk
427 shall make, sign, and deliver to the sheriff of the county where the conviction is had a warrant
428 under the seal of the court stating the conviction and sentence, and that a stay of execution of the
429 sentence has been granted under section 4 of chapter 279, section 13(A) or section 17(D) of this
430 chapter, and that such stay has been revoked under these sections, and shall at the same time
431 transmit to the superintendent of the state prison a certified copy of the warrant. Such warrant
432 shall be directed to the superintendent commanding him to cause execution to be done in
433 accordance with the provisions of such sentence. The clerk of the court shall, upon revocation
434 under section 4 of chapter 279, section 13(A) or section 17(D) of this chapter, of the stay of
435 execution of the sentence, make out and deliver to the governor a certified copy of the whole
436 record of the conviction and sentence, including any rescripts from the supreme judicial court.

437 Section 14. The sheriff of the county in a jail where a prisoner convicted of capital
438 murder and sentenced to death is confined, or a deputy designated by the sheriff, within ten days
439 after receipt by the sheriff of the warrant for the execution of such sentence shall, at a time
440 chosen by the sheriff, convey such prisoner to the state prison and deliver him, with the warrant
441 in either case, to the superintendent thereof or to the officer performing his duties and such
442 prisoner shall be placed in a cell provided for the purpose. Within 30 days thereafter, the
443 superintendent or officer performing his duties shall cause the prisoner to be examined by a
444 psychiatrist for the purpose of rendering a written and signed opinion as to whether or not the

445 prisoner is psychologically fit to be transferred from special confinement to confinement with the
446 general prison population, and in the case of a female, to the general prison population woman's
447 correctional facility, with full participation in the educational and work programs, within the
448 prison, afforded prisoners under a sentence other than death. Upon receipt of the psychiatric
449 opinion, and other pertinent information, the superintendent or officer performing his duties may
450 transfer the prisoner to confinement with the general prison population with the right of full
451 participation in the privileges afforded other prisoners under a sentence other than death. If the
452 superintendent, or officer performing his duties, does not so transfer the prisoner, he shall notify
453 the prisoner of his decision forthwith, whereupon the prisoner may appeal the decision within 14
454 days of the notification by giving notice to the superintendent, or officer performing his duties,
455 on a form provided him at the time of the receipt of the notification of the adverse decision.
456 Upon receipt of such notice, the superintendent or officer performing his duties shall notify the
457 commissioner of correction forthwith whereupon the commissioner shall hold a hearing on the
458 appeal within 20 days of receipt of notice that such appeal has been made. The commissioner or
459 his appointee shall conduct the hearing and shall render a decision granting or denying the appeal
460 within five days following the date of the hearing. A prisoner who is denied such transfer by the
461 superintendent, or officer performing his duties, shall remain in a cell for the purpose of the
462 execution of his sentence, and shall thereafter be kept therein, unless an appeal made by him of
463 the adverse decision is granted, until the sentence of death is executed upon him, and no person
464 shall be allowed access to him without an order of the court, except the officers and employees
465 of the prison, his counsel, such physicians, priest, or minister of religion as the superintendent
466 may approve and members of the prisoner's family who are identified to the satisfaction of the
467 superintendent. Any prisoner confined to a cell for the purpose of the execution of his sentence

468 shall have his record reviewed annually for the purpose of determining whether or not the
469 prisoner should be placed in the general population, and shall be entitled to a hearing, as
470 provided above, on each adverse decision. Notwithstanding the foregoing, the superior court may
471 make any order relative to the custody of a prisoner confined in the state prison under this
472 section if the prisoner is granted a new trial.

473 Section 15. The sentence of death shall be executed by the superintendent of the state
474 prison, or by a person acting under his direction, not earlier than 20 days nor later than 30 days
475 after service upon the superintendent, or officer performing his duties, of a certificate of the clerk
476 of the court that the stay of the execution of the sentence has been revoked under section 4 of
477 chapter 279, section 13(A) or section 17(D) of this chapter, unless the governor pardons the
478 crime, commutes the punishment therefor or respites the execution or the execution is otherwise
479 delayed by process of law. If the execution is respited or stayed by process of law, the sentence
480 of death shall be executed within the week beginning on the day next after the day on which the
481 term of respite or stay expires. The sentence of death shall be executed upon such day within the
482 limits of time provided in this section as the superintendent elects; but no previous
483 announcement thereof shall be made, except to such persons as may be permitted to be present in
484 accordance with section 20 of this chapter.

485 Section 16. The punishment of death shall be executed by the administration of a
486 continuous intravenous injection of a lethal substance or substances in a quantity sufficient to
487 cause death until a licensed physician, according to accepted standards of medical practice,
488 pronounces death. The commissioner of correction shall determine the lethal substance or
489 substances to be administered, and qualified personnel selected by the superintendent of the
490 facility where the execution occurs shall administer them. The punishment of death shall be

491 executed within an enclosure or building for that purpose at a state prison facility.
492 Notwithstanding any general or special law or regulation to the contrary, administration of the
493 injection does not constitute the practice of medicine, nursing or pharmacy, and the
494 superintendent may obtain and employ the drugs necessary to carry out the provisions of this
495 section.

496 Section 17. (A). A defendant convicted of capital murder and sentenced to death shall be
497 presumed to be mentally competent to be executed. It shall be the defendant's burden to rebut
498 that presumption and to establish, by a preponderance of the evidence, that he is mentally
499 incompetent to be executed.

500 (B). If, at any time prior to execution, a defendant convicted of capital murder and
501 sentenced to death, appears to be mentally incompetent to be executed, the superintendent of the
502 prison or the sheriff having custody of the defendant, the defendant's legal counsel, or a
503 psychiatrist or psychologist who has examined the defendant, shall give notice of the apparent
504 mental incompetence to be executed to the superior court in the county where the defendant was
505 tried.

506 (C). Upon receiving notice pursuant to section 17(B) of this chapter, the superior court
507 shall determine, based on the notice and any supporting information, any information submitted
508 by the district attorney who prosecuted the defendant, or by that district attorney's successor, and
509 the record in the case, including previous hearings and orders, whether probable cause exists to
510 believe that the convict is mentally incompetent to be executed. If the court finds that probable
511 cause exists to believe that the defendant is mentally incompetent to be executed, the court shall
512 hold a hearing to determine whether the defendant is mentally incompetent to be executed. If the

513 court does not find that probable cause of that nature exists, the court may dismiss the matter
514 without a hearing.

515 (D). If, after receiving notice under section 17(B) of this chapter, the court finds probable
516 cause to believe that the defendant is mentally incompetent to be executed, the court shall hold a
517 hearing to inquire into the defendant's mental incompetence and shall give immediate notice of
518 the inquiry to the district attorney who prosecuted the case, or that district attorney's successor,
519 and to the defendant's counsel. If the defendant does not have counsel, the court shall appoint an
520 attorney to represent the defendant in the inquiry. The defendant shall have the right to present
521 evidence and cross-examine any witnesses at the hearing. The court may appoint one or more
522 psychiatrists or psychologists to examine the defendant. The court shall issue any ruling in the
523 matter no later than 90 days from the date of the notice given under section 17(B) of this chapter.
524 Execution of the defendant's sentence shall be stayed pending completion of the inquiry, and
525 until such time as the court decides the matter. If the defendant is found not to be mentally
526 incompetent to be executed, the stay of his sentence shall be revoked immediately.

527 (E). If the court appoints a psychiatrist or psychologist to examine the defendant, the
528 court shall inform the psychiatrist or psychologist of the location of the defendant and of the
529 purpose of the examination. The examiner shall have access to any available psychiatric or
530 psychological report previously submitted to the court with respect to the mental condition of the
531 defendant, including, if applicable, any reports regarding the defendant's competency to stand
532 trial or the defendant's criminal responsibility. The examiner also shall have access to any
533 available current mental health and medical records of the defendant.

534 (F). If the court appoints a psychiatrist or psychologist to examine the defendant, the
535 examiner shall conduct a thorough, in person examination of thee defendant and shall submit a
536 report to the court within 30 days of the examiner’s appointment. The report shall contain the
537 examiner’s findings as to whether the defendant has the mental capacity to understand the nature
538 of the death penalty and why it was imposed upon the defendant and the facts, in reasonable
539 detail, upon which those findings are based.

540 (G). If, at the conclusion of a hearing pursuant to section 17(D) of this chapter, the court
541 determines that the defendant is not mentally incompetent to be executed, the court shall enter an
542 order recording that determination. A copy of the order shall be delivered to the clerk of the
543 superior court and to superintendent of the prison or the sheriff having custody of the defendant.
544 Upon receipt of the order, the clerk shall notify the defendant and the district attorney that the
545 stay of the defendant’s sentence has been revoked and his execution may be carried out in
546 accordance with the warrant.

547 (H). If, at the conclusion of a hearing pursuant to section 17(D) of this chapter, the court
548 determines that the defendant is mentally incompetent to be executed, the court shall suspend the
549 execution until further order. The court shall enter an order recording the determination. A copy
550 of that order shall be delivered to the clerk of the superior court and to superintendent of the
551 prison or the sheriff having custody of the defendant. The court shall also send an order
552 suspending the defendant’s sentence to the commissioner of correction, and to the superintendent
553 of the prison or the sheriff having custody of the defendant. Any time thereafter when the
554 superior court is provided sufficient reason to believe that the defendant is no longer mentally
555 incompetent to be executed, the court shall again determine, pursuant to section 17(D) of this
556 chapter, whether the defendant is mentally incompetent to be executed. Proceedings pursuant to

557 this section may continue to be held at such times as the superior court orders for the remainder
558 of the defendant's life. Any defendant, who is found not mentally competent to be executed,
559 shall be imprisoned in an appropriate correctional facility to be determined by the commissioner
560 of correction.

561 (I). The commonwealth and the defendant shall have the right to appeal any adverse order
562 which determined the defendant's competency to be executed. Upon entering such an order the
563 court must afford the parties a reasonable period of time, which shall not be more than ten days,
564 to determine whether to take an appeal from such an order. The taking of an appeal by either
565 party stays the effectiveness of the court's order. If an appeal is taken, it shall be entered directly
566 on the docket of the supreme judicial court. No costs or attorney's fees shall be assessed against
567 the commonwealth in connection with any appeal of such an order unless the defendant prevails
568 and the supreme judicial court determines that the appeal was frivolous.

569 (J). If a person convicted of a capital murder and sentenced to death is, at the time when
570 the death sentence is to be imposed, after examination by a physician, found by the superior
571 court to be pregnant, the court shall stay the execution of the sentence upon her until it finds that
572 she is no longer pregnant. When the defendant is no longer pregnant, the stay shall be revoked,
573 and her execution shall be carried out in accordance with this chapter.

574 Section 18. The governor may from time to time respite the execution of a sentence of
575 death for stated periods so long as he may consider it necessary to afford him an opportunity to
576 investigate and consider the facts of the case for the purpose of considering whether or not to
577 pardon the defendant or commute his death sentence.

578 Section 19. The supreme judicial court, or a single justice thereof, may stay the execution
579 of a sentence of death from time to time for stated periods, pending the final determination of
580 any judicial question arising in or out of the case in which the sentence is imposed, or to address
581 a recommendation from the death penalty review commission that the execution of a death
582 sentence should be stayed.

583 Section 20. There shall be present at the execution of the sentence of death, in addition to
584 the superintendent, deputy and such officers of the state prison as the superintendent deems
585 necessary, the commissioner of correction or his representative, the person performing the
586 execution under the direction of the superintendent, if any, the prison physician, the chief
587 medical examiner, and one other physician to be selected by the superintendent. The physicians
588 present shall be the legal witnesses of the execution. There may also be present, upon the request
589 of the prisoner who is to be executed, the immediate members of the prisoner's family. There
590 may also be present, upon the request of the prisoner, a priest, minister, rabbi or other
591 representative of the prisoner's religion. There may also be present the sheriff of the county
592 where the prisoner was convicted, or his deputy, and, with the approval of the superintendent,
593 not more than five other persons.

594 Section 21. There shall be a post mortem examination by the chief medical examiner, or
595 his designee, of the body of every prisoner executed in conformity with the sentence of a court.

596 Section 22. When the superintendent has executed the sentence of death upon a prisoner
597 in obedience to a warrant from the superior court, he shall forthwith make return thereof under
598 his hand, with the doings thereon, to the office of the clerk of the superior court.

599 Section 23. (A). There is hereby established, as an independent commission in the
600 executive branch of the commonwealth, a death penalty review commission, hereinafter called
601 the commission, to consist of seven ex officio members or their designees: the attorney general,
602 the secretary of public safety, the chief counsel to the committee for public counsel services, the
603 chief medical examiner, the chief justice for administration and management, the president of the
604 Massachusetts Association of Criminal Defense Attorneys, and the Massachusetts District
605 Attorneys' Association, or their designees. The commission shall also include four additional
606 persons to be appointed by the governor, including one of whom is a fellow or member of the
607 American Academy of Forensic Sciences. The governor shall designate one member as
608 chairman, who shall serve as chairman for three years unless sooner removed at the pleasure of
609 the governor. The members appointed to the commission by the governor shall serve terms of
610 three years and shall serve at the pleasure of the governor.

611 (B). The purpose of death penalty review commission shall be to: (1) investigating any
612 claim of substantive error made by any person subject to a death sentence, i.e., any claim either
613 that the person did not commit the capital murder for which the death sentence was imposed, or
614 that the person was legally ineligible for the death penalty; and (2) investigating the causes of
615 any such substantive errors that may be found to have occurred at trial in any capital murder
616 case.

617 (C). A defendant convicted of capital murder and sentenced to death may file a petition
618 requesting the commission to review his case and sentence at any time up and until seven days
619 before the date of the defendant's scheduled execution. A copy of the record, the briefs, and
620 appendices submitted to the supreme judicial court on appeal shall accompany the petition.

621 (D). A defendant who has not been sentenced to death, or whose death sentence has not
622 been upheld on appeal, shall not be eligible to petition the commission for review of his case and
623 sentence. For the purposes of 28 U.S.C. section 2244(d)(2), a properly filed petition, by an
624 eligible defendant, requesting the commission to review his case and sentence, may be
625 considered an application for state post-conviction or other collateral review with respect to the
626 pertinent judgment or claim. The filing of a petition by such a defendant requesting that the
627 commission review his case and sentence does not, by itself, stay the execution of his sentence.

628 (E). Upon receiving a petition from a defendant convicted of capital murder and
629 sentenced to death, the commission shall review the request to determine if the defendant has
630 made a prima facie showing of any claim contained in section 23(B)(1) of this chapter. If a
631 majority of the commission concludes that the defendant has made such a prima facie showing to
632 warrant further review, the chairman shall issue a written decision to that effect. The
633 commission's decision shall also include a recommendation on whether or not the execution of
634 the defendant's sentence should be stayed pending the commission's full review. The chairman
635 shall give immediate notice of the commission's decision and recommendation to the district
636 attorney who prosecuted the case, or that district attorney's successor, and to the defendant's
637 counsel. When the commission recommends that a stay be granted, the defendant may request,
638 from a single justice of the supreme judicial court, that the execution of his sentence be stayed
639 pending the commission's full review. The defendant's request shall be accompanied by the
640 commission's decision under section 23(E) of this chapter, and the commission's
641 recommendation for a stay.

642 (F). If a majority of the commission determines that the defendant's petition seeking the
643 commission's review of his case and sentence fails to make a prima facie showing of any claim

644 contained in section 23(B)(1) of this chapter, the chairman shall issue a written decision to that
645 effect, and deny the defendant's request for review. The chairman shall give immediate notice of
646 that decision to the district attorney who prosecuted the case, or that district attorney's successor,
647 and to the defendant's counsel. If the commission grants further review, and upon further review,
648 a majority of the commission finds that the defendant has not demonstrated the existence of any
649 claim contained in section 23(B)(1) of this chapter, the chairman shall issue a decision to that
650 effect with the same notice as provided for in this section. Upon the issuance of such a decision,
651 any stay granted by a single justice of the supreme judicial court under section 23(E) of this
652 chapter shall automatically be revoked without further proceedings.

653 (G). In connection with the investigation of a claim of substantive error in a capital
654 murder case, the commission is authorized to hire all necessary staff, including experts; to
655 inspect evidence and other tangible materials connected with the crime; to issue subpoenas; and
656 to request the assistance of the state or local police to carry out searches or make arrests. If the
657 commission concludes that any capital murder case may involve a substantive error, the
658 commission shall refer the case to the superior court with a recommendation for further judicial
659 review. In conjunction with its referral to the superior court, the commission shall issue a public
660 report detailing its findings, including, when appropriate, recommendations for reforms to the
661 commonwealth's capital punishment system.

662 (H). If a defendant submits a second or subsequent request, or requested amendment to a
663 prior request, for the commission's review that raises a claim that the commission has previously
664 reviewed and denied, or one that it has previously reviewed and referred to the superior court, the
665 commission shall deny the request for review in the same manner it would deny a request under
666 section 23(F) of this chapter, where the defendant's petition fails to make a prima facie showing

667 of any claim contained in section 23(B)(1) of this chapter. If the defendant's second or
668 subsequent request for the commission's review, or a request to amend a prior request, raises a
669 claim that would fall within the requirements of 23(B)(1), but is one that could have been
670 presented in a prior petition had the defendant or his counsel exercised due diligence, the
671 commission shall deny the request for review in the same manner it would deny a request under
672 section 23(F) of this chapter, where the defendant's petition fails to make a prima facie showing
673 of any claim contained in section 23(B)(1).

674 SECTION 2. Section 8 of chapter 211D of the General Laws, as so appearing, is hereby
675 amended by inserting, after section 8, the following section:—

676 Section 8A. (1). A list of "capital-case qualified" defense attorneys shall be established
677 and maintained by the committee, pursuant to policies and procedures established by the
678 supreme judicial court. This list should include only those defense attorneys who meet rigorous
679 standards of experience, capital-case training, and proven exemplary performance.

680 (2). A "capital-case qualified" defense attorney shall have, at a minimum, the following
681 experience, unless the superior court determines, after a hearing, that any of the below criteria
682 should be waived or modified.

683 (a) Eight years or more of criminal litigation experience;

684 (b) Experience with plea bargaining in homicide cases;

685 (c) Experience with expert testimony and scientific evidence (including medical, forensic,
686 psychiatric, pathological, and DNA evidence);

687 (d) Experience with all aspects of criminal litigation (including pre-trial, trial, appellate,
688 and post-conviction);

689 (e) Lead counsel in at least ten felony jury trials in the past ten years, five of which
690 involved homicide indictments, that resulted in a verdict, decision or hung jury;

691 (f) Prior capital murder case experience.

692 SECTION 3. Section 9 of chapter 211D of the General Laws, as so appearing, is hereby
693 amended by inserting, after section 9, the following section:—

694 Section 9A. The committee shall establish standards for the public and private counsel
695 divisions for training in the defense of capital murder cases, which shall include but not be
696 limited to:

697 (1) All relevant state and federal law;

698 (2) Investigative techniques and strategies;

699 (3) Investigative support, including investigation of mitigation evidence;

700 (4) Arrest, interrogation, evidence-collection, evidence-handling, evidence-testing, and
701 chain-of-custody issues;

702 (5) Issues relating to human evidence, including the special problems of line-ups,
703 eyewitness testimony, informant testimony, and defendant statements resulting from
704 interrogation;

705 (6) Issues relating to expert testimony and scientific evidence, including medical,
706 forensic, psychiatric, pathological, and DNA evidence;

- 707 (7) Issues relating to exculpatory evidence in possession of the prosecution;
- 708 (8) Issues relating to the defendant’s prior criminal history;
- 709 (9) Issues relating to “tunnel vision” and “confirmatory bias”;
- 710 (10) Pleading and motion practice;
- 711 (11) Pre-trial strategies;
- 712 (12) Capital murder jury selection;
- 713 (13) Trial preparation;
- 714 (14) Coordination of guilt-innocence and sentencing strategies;
- 715 (15) Preserving issues for appellate and federal habeas review;
- 716 (16) Presentation of mitigating evidence;
- 717 (17) Communicating effectively with the defendant, his family and friends; and
- 718 (18) Dealing with a potentially disruptive or recalcitrant defendant.

719 SECTION 4. Section 4 of chapter 279 of the General Laws, as so appearing, is hereby
720 amended by striking out, in line 3, the words “section sixty-one in case of a capital crime.” and
721 replacing them with the following:— “sections 13(A), 17(D) and 23(E) of chapter 279A in the
722 case of a conviction for capital murder where the defendant has been sentenced to death.”

723 SECTION 5. In addition to the provisions of clause Eleventh of section 6 of chapter 4, in
724 the event that the death penalty in this chapter is held to be unconstitutional by the supreme

725 judicial court or by the United States Supreme Court, any person convicted of capital murder and
726 sentenced to death shall be sentenced to life in prison without the possibility of parole.

727 SECTION 6. Sections 57 through 71 of chapter 279 and section 6 of chapter 113 are
728 hereby repealed.