

**HOUSE . . . . . No. 3773**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Shaunna L. O'Connell and David F. DeCoste*

*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 relative to capital punishment for the murder of law enforcement officers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Shaunna L. O'Connell</i>	<i>3rd Bristol</i>	<i>1/16/2019</i>
<i>David F. DeCoste</i>	<i>5th Plymouth</i>	<i>1/18/2019</i>
<i>William L. Crocker, Jr.</i>	<i>2nd Barnstable</i>	<i>4/30/2019</i>
<i>David Allen Robertson</i>	<i>19th Middlesex</i>	<i>2/1/2019</i>
<i>Alyson M. Sullivan</i>	<i>7th Plymouth</i>	<i>5/6/2019</i>
<i>Sheriff Thomas Hodgson</i>		<i>1/16/2019</i>
<i>Matthew McCaffrey</i>		<i>1/31/2019</i>
<i>Jay DeAngelis</i>		<i>1/31/2019</i>
<i>Ryan McHugh</i>		<i>1/31/2019</i>
<i>Ken Murphy</i>		<i>1/31/2019</i>
<i>John Nelson</i>		<i>1/31/2019</i>
<i>Chief Brian Kyes</i>		<i>1/31/2019</i>
<i>Chief Russell Stevens</i>		<i>1/31/2019</i>
<i>Francis McKinnon Jr.</i>	<i>27 Hamilton Street Saugus Ma, 01906</i>	<i>4/30/2019</i>
<i>Paul Larkham</i>	<i>7 Technology Dr North Chelmsford, MA 01863</i>	<i>4/30/2019</i>
<i>Larry Calderone</i>	<i>295 Freeport Street, Boston, MA 02122</i>	<i>5/1/2019</i>

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By Representatives O'Connell of Taunton and DeCoste of Norwell, a petition (accompanied by bill, House, No. 3773) of Shaunna L. O'Connell, David F. DeCoste and others relative to capital punishment for the murder of law enforcement officers. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninety-First General Court  
(2019-2020)**  
\_\_\_\_\_

An Act relative to capital punishment for the murder of law enforcement officers.

*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. Chapter 265 of the General Laws, as appearing in the 2016 Official  
2 Edition, is hereby amended by inserting after section 1 the following section:-

3 Section 1A. (a) Whoever, having reached 18 years of age or older, murders a law  
4 enforcement officer, as defined in this section, either knowing that the victim was a law  
5 enforcement officer engaged in the performance of his or her duties or in retaliation for  
6 performance of his or her duties, or both, and: (i) intentionally kills the victim; (ii) intentionally  
7 inflicts serious bodily injury that resulted in the death of the victim; (iii) intentionally participates  
8 in an act, contemplating that the life of a person would be taken or intending that lethal force  
9 would be used in connection with a person, other than one of the participants in the offense, and  
10 the victim dies as a direct result of the act; or (iv) intentionally and specifically engages in an act  
11 of violence, knowing that the act creates a grave risk of death to a person, other than one of the  
12 participants in the offense, such that participation in the act constitutes a reckless disregard for

13 human life and the victim dies as a direct result of the act, is guilty of capital murder and shall be  
14 punished by death or imprisonment in the state prison for life and shall not be eligible for parole  
15 pursuant to section 133A of chapter 127 following a presentence hearing conducted under  
16 chapter 279.

17 (b) For purposes of this section, “law enforcement officer” shall mean a correction officer  
18 or a person exercising the authority of a police officer, sheriff, or deputy sheriff.

19 SECTION 2. Chapter 279 of the General Laws, as so appearing, is hereby amended by  
20 striking out section 68 and inserting in place thereof the following section:-

21 Section 68. (a) Upon a verdict or plea of guilty to the offense of capital murder set forth  
22 in section 1A of chapter 265, a presentence hearing shall be conducted. If the case was tried  
23 before a jury, the hearing shall be conducted before such jury.

24 (b) The presentence hearing may be conducted before the court alone if the defendant and  
25 the commonwealth stipulate to a court hearing. In that event the court shall consider the  
26 aggravating and mitigating circumstances and decide the sentence in the same manner as is  
27 provided in this section for the jury.

28 (c) During the presentence hearing, the only issue shall be the determination of the  
29 punishment to be imposed. During such hearing the jury shall hear all additional relevant  
30 evidence presented by either the commonwealth or defendant in mitigation of punishment  
31 regardless of its admissibility under the law governing the admission of evidence at criminal  
32 trials. During such hearing, the jury shall also hear such evidence in aggravation of punishment  
33 as is relevant to the aggravating circumstances as defined in subsection (a) of section 69;  
34 provided, however, that only such evidence in aggravation of punishment as the commonwealth

35 has made known to the defendant prior to his trial or that is introduced as rebuttal to the  
36 defendant's evidence shall be admissible. The jury shall also hear arguments by the defendant or  
37 his or her counsel or both and by the commonwealth regarding the punishment to be imposed.  
38 The commonwealth and the defendant or his or her counsel shall be allowed to make opening  
39 statements and closing arguments at the presentence hearing. The order of those statements and  
40 arguments and the order of presentation of evidence shall be the same as at trial.

41 (d) Upon the conclusion of evidence and arguments at the presentence hearing, the court  
42 shall instruct the jury orally and shall provide to the jury in writing the aggravating and  
43 mitigating circumstances as determined by the court to be warranted by the evidence. The judge  
44 shall also instruct the jury to consider any other relevant mitigating circumstance or mitigating  
45 circumstances. The burden of establishing the existence of any aggravating factor is on the  
46 commonwealth, and is not satisfied unless the existence of such a factor is established beyond a  
47 reasonable doubt. The burden of establishing the existence of any mitigating factor is on the  
48 defendant, and is not satisfied unless the existence of such a factor is established by a  
49 preponderance of the evidence.

50 (e) The jury shall return special findings identifying the aggravating and mitigating  
51 circumstances found to exist. An aggravating circumstance may be found only if the jury is  
52 unanimous. A finding with respect to a mitigating circumstance may be made by 1 or more  
53 members of the jury, and any member of the jury who finds the existence of a mitigating  
54 circumstance may consider such circumstance established for purposes of this section regardless  
55 of the number of jurors who concur that the circumstance has been established. The jury's  
56 findings shall indicate how many jurors found each mitigating circumstance to have been  
57 established.

58 (f) The jury shall further determine whether the aggravating circumstances outweigh the  
59 mitigating circumstances. Based upon this consideration, the jury by unanimous vote shall return  
60 a verdict whether the defendant should be sentenced to death or to life imprisonment without the  
61 possibility of parole. The process of weighing the aggravating circumstances and mitigating  
62 circumstances to determine the sentence shall not be a mere tallying of circumstances for the  
63 purpose of numerical comparison. Instead, it shall be a process by which the aggravating  
64 circumstances and mitigating circumstances relevant to sentence are considered for the purpose  
65 of determining whether the sentence, in view of all the relevant circumstances in an individual  
66 case, shall be life imprisonment without parole, or death.

67 (g) If the jury reaches a unanimous verdict as to sentence, the court shall set a sentence in  
68 accordance with section 70. If the jury is unable to reach a unanimous verdict, the court shall  
69 sentence the defendant to imprisonment in the state prison for life, and the defendant shall not be  
70 eligible for parole pursuant to section 133A of chapter 127.

71 (h) The declaration of a mistrial during the course of the presentence hearing or any error  
72 in the presentence hearing determined on final appeal or otherwise shall not affect the validity of  
73 the conviction.

74 SECTION 3. Said chapter 279, as so appearing, is hereby amended by striking out  
75 section 69 and inserting in place thereof the following section:-

76 Section 69. (a) In all cases in which the death penalty may be authorized, the sentencer  
77 shall consider the following aggravating circumstances:

78 (1) the murder was committed on a victim who was killed while serving in the  
79 performance of his or her official duties as a law enforcement officer as defined in subsection (b)  
80 of section 1A of chapter 265.

81 (2) the murder was committed by a defendant who was at the time incarcerated in a jail,  
82 house of correction, prison, state prison or a correctional or penal institution or a facility used for  
83 the housing or treatment or housing and treatment of prisoners or following escape from any of  
84 those facilities;

85 (3) the murder was committed by a defendant who had previously been convicted of any  
86 crime of violence;

87 (4) the murder was committed by the defendant pursuant to a contract, agreement or  
88 understanding by which the defendant was to receive money or anything of value in return for  
89 committing the murder;

90 (5) the murder was committed by the defendant for the purpose of avoiding, interfering  
91 with, or preventing a lawful arrest of the defendant or another, or the murder was committed by  
92 the defendant for the purpose of effectuating an escape or attempting to effectuate an escape of  
93 the defendant or another from custody in a place of lawful confinement;

94 (6) the murder involved torture to the victim or the intentional infliction of extreme pain  
95 prior to death demonstrating a total disregard to the suffering of the victim;

96 (7) the murder was committed as part of a course of conduct involving the killing of or  
97 causing serious bodily injury to or the attempted killing of or the attempted causing of serious  
98 bodily injury to more than 1 person by the defendant;

99 (8) the murder was committed by means of a destructive device, bomb, or explosive  
100 planted, hidden, mailed, delivered, or concealed in any place, area, dwelling, building, or  
101 structure by the defendant or the murder was committed by means such that the defendant knew  
102 or reasonably should have known that his or her act or acts would create a grave risk of death or  
103 serious bodily injury to more than 1 person;

104 (9) the murder was committed by the defendant and occurred during the commission or  
105 attempted commission or flight after committing or flight after attempting to commit aggravated  
106 rape, rape, rape of a child, indecent assault and battery on a child under 14 years of age, assault  
107 with intent to rape, assault on a child under 16 years of age with intent to rape, kidnapping for  
108 ransom, kidnapping, armed robbery, unarmed robbery, breaking and entering with intent to  
109 commit a felony, armed assault in a dwelling, arson, confining or putting in fear or otherwise  
110 harming another for the purpose of stealing from depositories, or the murder occurred while the  
111 defendant was in possession of a sawed-off shotgun or a machine gun; and

112 (10) any other circumstances of the crime, previous offenses by the defendant, or the  
113 impact of the crime on the victim or the victim's family that the commonwealth proffers and for  
114 which the requirements of paragraph (c) of section 68 are met.

115 (b) In all cases in which the death penalty may be authorized, the sentencer shall consider  
116 the following mitigating circumstances:

117 (1) the defendant has no significant history of prior criminal convictions;

118 (2) the victim was a participant in the defendant's conduct or had consented to it;

119 (3) the murder was committed while the defendant was under extreme duress or under the  
120 domination or control of another;

121 (4) the offense was committed while the capacity of the defendant to appreciate the  
122 criminality of his conduct or to conform his conduct to the requirements of the law was impaired  
123 as a result of a mental disease or defect, organic brain damage, emotional illness brought on by  
124 stress or prescribed medication, intoxication, or legal or illegal drug use by the defendant which  
125 was insufficient to establish a defense to the murder but which substantially affected his or her  
126 judgment;

127 (5) the defendant was over the age of 75 at the time of the murder, or any other relevant  
128 consideration regarding the age of the defendant at the time of the murder;

129 (6) the defendant was battered or otherwise physically, sexually, or mentally abused by  
130 the victim in connection with or immediately prior to the murder for which the defendant was  
131 convicted;

132 (7) the defendant was experiencing post-traumatic stress syndrome caused by military  
133 service during a declared or undeclared war; and

134 (8) other factors in the defendant's background, record, or character or any other  
135 circumstance of the offense that mitigate against imposition of the death sentence.