



SUPREME JUDICIAL COURT
JOHN ADAMS COURTHOUSE

RODERICK L. IRELAND
CHIEF JUSTICE

July 26, 2012

By Hand

His Excellency Deval Patrick
Governor of the Commonwealth of Massachusetts
State House, Room 360
Boston, MA 02133

Dear Governor Patrick:

I write, on behalf of the Justices, in response to an inquiry from your office regarding certain sections in the Bill Relative to Sentencing and Improving Law Enforcement Tools, HB 4286. As you know, Sections 43 and 44 of the legislation would amend G. L. c. 278, § 33E to expand the definition of capital cases to include the third conviction of a habitual offender pursuant to G. L. c. 279, § 25 (b). Your office has inquired whether this expansion of cases eligible for review pursuant to G. L. c. 278, § 33E would address concerns about sections of the bill that remove sentencing discretion from trial court judges.

The short answer to the inquiry is that it would not. The review of capital cases provided for by G. L. c. 278, § 33E and currently afforded to defendants indicted, tried, and convicted of murder in the first degree focuses on the fairness of the proceedings in the trial court. General Laws c. 278, § 33E does not provide for review of sentencing determinations and the court's review does not encompass reconsideration or modification of the sentence imposed in the trial court. For this reason, the provision for review under § 33E of appeals from habitual offender convictions under G. L. c. 279, § 25 (b) does not address the removal of sentencing discretion from trial judges.

The Justices also have the additional concern that the legislation may have an unintended, adverse effect on the role of the Supreme Judicial Court as the highest court in the Commonwealth. This court's jurisdiction is, with limited exception, highly discretionary. The court has the responsibility to select -- and must have the room on its docket to hear and decide -- the cases that are most important to the development of Massachusetts jurisprudence. These are the cases that present novel legal issues, unresolved points of Massachusetts law, the most significant constitutional issues, and like matters of great public concern. If the legislation were

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interpreted to place all appeals from habitual offender convictions under G. L. c. 279, § 25 (b) directly in this court, the court would have less space on its docket for the types of significant cases just described.

Sincerely,

A handwritten signature in black ink, appearing to read "Roderick L. Ireland". The signature is written in a cursive style with a large initial "R".

Roderick L. Ireland