

# MASSACHUSETTS CATHOLIC CONFERENCE

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To: Joint Committee on the Judiciary

From: James F. Driscoll, Esq., Executive Director

Re: House 470 "An Act re-Instituting Capital Punishment in the Commonwealth."  
House 2219, "An Act Establishing the Death Penalty in the Commonwealth."

Date: October 5, 2011

The Massachusetts Catholic Conference ("Conference") respectfully submits testimony opposing House 470, "An Act Re-instituting Capital Punishment in the Commonwealth," and House 2219, "An Act Establishing the Death Penalty in the Commonwealth." The Catholic Church opposes the death penalty when other interventions are available to protect the public, and is convinced that in today's society its use is unnecessary.

These bills both seek to re-institute the death penalty in the Commonwealth of Massachusetts. Both bills include provisions for indigent defendants, provisions for jury instruction, as well as

the establishment for a scientific advisory committee and provisions for evidentiary review. These bills seek to amend a 1982 statute which provided that the death penalty may be imposed, if at all, only after a trial by jury. The Supreme Judicial Court ruled in 1984 that this statute was constitutionally invalid because it unfairly encouraged defendants to plead guilty to avoid the death penalty.<sup>1</sup>[1]

### Brief History of the Death Penalty in the Commonwealth

There has been effectively no valid death penalty statute in the Commonwealth since the 1984 Supreme Judicial Court decision in *Commonwealth v. Colon-Cruz*.<sup>2</sup>[2] In *Colon-Cruz*, the SJC argued that “We do not consider that our invalidation of this statute is equivalent to prohibiting the imposition of the punishment of death,”<sup>3</sup>[3] however further held that:

“The death penalty provisions enacted in St.1982, c. 554, violate article 12 of the Declaration of Rights of the Massachusetts Constitution. They impermissibly burden both the right against self-incrimination and the right to a jury trial guaranteed by that article. We base this conclusion on the fact that according to the terms of St.1982, c. 554, the death penalty may be imposed, if at all, only after a trial by jury. Those who plead guilty in cases in which death would be a possible sentence after trial thereby avoid the risk of being put to death. The inevitable consequence is that defendants are discouraged from asserting their right not to plead guilty and their right to demand a trial by jury.”<sup>4</sup>[4]

Thus, while the Supreme Judicial Court held that the permissibility of the death penalty was not unconstitutional per se, the court held that the particular 1982 statute improperly encouraged defendants to plead guilty rather than face a jury trial. Since the *Colon-Cruz* decision, legislation again legalizing the death penalty in the Commonwealth has failed several times.

### Catholic Teaching on Capital Punishment

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1[1] *Commonwealth v. Colon-Cruz*, N.E.2d 116 (1984).

2[2] *Id.*

3[3] *Id.*, at 122.

4[4] *Id.*, at 124.

The Catholic Church has long laid out the case for the limitation of the use of the death penalty. The death penalty is still allowed in the Catholic Church as a just choice that authority may make in its responsibility to safeguard society from an “unjust aggressor.”<sup>5[5]</sup> However, the Church always argues for alternatives to the death penalty, stating that “as a consequence of the possibilities which the state has for effectively preventing crime, by rendering one who has committed an offense incapable of doing harm – without definitively taking away from him the possibility of redeeming himself – the cases in which the execution of the offender is an absolute necessity ‘are rare, if not practically nonexistent.’”<sup>6[6]</sup> Pope John Paul II reaffirmed society’s rationale for punishment in his encyclical, *Evangelium Vitae*,

“Public authority must redress the violation of personal and social rights by imposing on the offender an adequate punishment for the crime, as a condition for the offender to regain the exercise of his or her freedom. In this way authority also fulfills the purpose of defending public order and ensuring people’s safety, while at the same time offering the offender an incentive and help to change his or her behavior and be rehabilitated.”<sup>7[7]</sup>

The United States Conference of Catholic Bishops explained in their 2005 statement in “A Culture of Life and the Penalty of Death,”<sup>8[8]</sup> that the Catholic Church recognizes the state’s legitimate “recourse to impose the death penalty upon criminals convicted of heinous crimes if this ultimate sanction is the only available means to protect society from a grave threat to human life. However, this right should not be exercised when other ways are available to punish criminals and to protect society that are more respectful of human life.”<sup>9[9]</sup> Thus, while the Catholic Church leaves room for the death penalty in extreme cases, the Church teaches that public order and rehabilitation demand that more compassionate and sensible solutions be utilized before the death penalty is utilized. In Massachusetts there are other means available to punish criminals by way of its prison system and sentencing guidelines.

## Conclusion

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<sup>5[5]</sup> Catechism of the Catholic Church (CCC), § 2267.

<sup>6[6]</sup> *Id.*

<sup>7[7]</sup> *Evangelium Vitae*, § 56.

<sup>8[8]</sup> *A Culture of Life and the Penalty of Death*, Committee for Domestic Policy, United States Conference of Catholic Bishops, 2005. Available online at: <http://www.priestsforlife.org/magisterium/bishops/penaltyofdeath.pdf>

<sup>9[9]</sup> *Id.*, at 4.

The death penalty is contrary to the public good. No state authority should seek to utilize the killing of its criminal offenders, except in the most extreme circumstances.

For the reasons stated above, the Conference urges the Committee to give House 2219 and 470 an unfavorable report recommending the bills ought not to pass.

*The Massachusetts Catholic Conference is the public policy office of the Roman Catholic Bishops in the Commonwealth, representing the Archdiocese of Boston and the Dioceses of Fall River, Springfield, and Worcester.*

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