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To accompany the petition of George W. Krapf for legislation to provide for the selection of special jurors. The Judiciary.

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**The Commonwealth of Massachusetts**

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In the Year One Thousand Nine Hundred and Forty-One.

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AN ACT PROVIDING FOR SPECIAL JURORS.

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

1 Chapter two hundred and thirty-four of the Gen  
2 eral Laws is hereby amended by adding after section  
3 forty-two, as appearing in the Tercentenary Edition,  
4 the eight following new sections:—

5 *Section 43.* The clerks of the courts of the several  
6 counties, except Suffolk, shall select from the persons  
7 qualified to serve as trial jurors in their respective  
8 counties such number of special jurors as the chief  
9 justice of the superior court shall from time to time  
10 direct. The names of the persons so selected liable  
11 to serve as special jurors shall be entered in suitable  
12 record book, alphabetically arranged, with the resi-  
13 dence and place of business of each. Each such clerk  
14 may from time to time cancel such selection and  
15 strike the names of such special jurors from such list  
16 and select other special jurors in their places. Special  
17 jurors selected as aforesaid shall be exempt from all  
18 other jury duty so long as they continue to be such  
19 special jurors.

20 In the county of Suffolk the clerk for the supreme  
21 judicial court for the county of Suffolk and the clerks  
22 of the superior court for civil and for criminal busi-  
23 ness shall select such special jurors for their respective  
24 sittings of the several courts.

25 *Section 44.* No person shall be selected as such  
26 a special juror who is by law disqualified or who claims  
27 and is allowed exemption from service as a trial  
28 juror, or who has been convicted of a criminal offence  
29 or found guilty of fraud or other misconduct by the  
30 judgment of any civil court, or who possesses such  
31 conscientious opinions with regard to the death  
32 penalty as would preclude his finding a defendant  
33 guilty if the crime charged be punishable by death,  
34 or who doubts his ability to lay aside an opinion or  
35 impression founded upon newspaper reading or  
36 otherwise, or to render an impartial verdict upon the  
37 evidence, uninfluenced by any such opinion or im-  
38 pression, or whose opinion as to circumstantial evi-  
39 dence is such as would prevent his finding a defend-  
40 ant guilty upon such evidence, or who avows such a  
41 prejudice against any particular defence to a criminal  
42 charge as would prevent his giving a fair and im-  
43 partial trial upon the merits of such defence, or who  
44 avows that he cannot in all cases give to a defendant  
45 who fails to testify as a witness in his own behalf the  
46 full benefit of the provision of law that such defend-  
47 ant's neglect or refusal to testify as a witness in his  
48 own behalf shall not create any presumption against  
49 him.

50 *Section 45.* No person shall be selected as a  
51 special juror until he shall have been examined per-  
52 sonally by such clerk as to his qualification and fitness  
53 to serve as a special juror. The clerk shall enter

54 upon a record in his office the age of each special  
55 juror so selected, his business or vocation, if any, the  
56 length of his residence in the commonwealth and the  
57 county and, if naturalized, the date of his naturali-  
58 zation. Such record shall be a public record and open  
59 to public inspection.

60 *Section 46.* Whenever a case is to be tried to a  
61 jury, the district attorney, or the defendant, in a  
62 criminal action, or either party in a civil action, may  
63 apply for a special jury to try such issue. Such appli-  
64 cation may be made at any term of the court ap-  
65 pointed to be held within the county where such issue  
66 is triable, or at any term of any other court of record  
67 in which court such issue is to be tried. It shall be  
68 made upon the indictment, the plea thereto and an  
69 affidavit in a criminal action, or the pleadings and  
70 affidavit in a civil action, upon two days' notice to  
71 the adverse party or his attorney. Where, upon such  
72 application, it appears to the court that by reason of  
73 the importance or intricacy of the case, a special  
74 jury is required, or that the subject-matter of the  
75 indictment or the issue to be tried has been so widely  
76 commented upon that the court is satisfied that an  
77 ordinary jury cannot without delay and difficulty be  
78 obtained to try such issue, or that for any other  
79 reason the due, efficient and impartial administration  
80 of justice in the particular case would be advanced  
81 by the trial of such an issue by a special jury, the  
82 court to which the motion is made may make an  
83 order directing that such trial be had by a special  
84 jury, and such trial shall be had accordingly. The  
85 order shall specify the time when the drawing of such  
86 special jury shall take place and the number of special  
87 jurors to be then drawn, the term of the court and

88 particular day in the term when such special jury  
89 shall attend.

90 *Section 47.* At the time specified in the order the  
91 special jury shall be drawn at the office of the clerk  
92 of the court where such case is to be tried. A record  
93 of such drawing shall be made by the clerk and shall  
94 be a public record. Notice to such special jurors,  
95 specifying the time and place where they shall attend,  
96 shall be given by registered mail to each juror.

97 *Section 48.* If the panel of the special jurors thus  
98 drawn shall be exhausted before a jury is completed,  
99 or if the trial court shall be of the opinion that addi-  
100 tional special jurors will probably be needed to com-  
101 plete the jury, the trial court may, from time to time,  
102 direct that such additional special jurors be drawn  
103 for the trial as it may deem expedient. The order  
104 shall specify the number to be drawn, the time of the  
105 drawing and the time when such additional jurors  
106 shall be required and notified to attend. Such addi-  
107 tional drawing shall be made by the same officers  
108 authorized to draw the special jurors, either in open  
109 court in the presence of the judge or justice presiding  
110 at the trial, or at the office of the clerk as prescribed  
111 in such order, and shall be conducted in the same  
112 manner as the original drawing and a minute thereof  
113 kept and certified as prescribed for the original draw-  
114 ing, and the jurors so drawn shall be summoned in  
115 the same manner as those originally drawn.

116 *Section 49.* The parties to such an action shall  
117 have the same number of peremptory challenges and  
118 the same challenges for cause to be tried in the same  
119 manner as upon a trial with an ordinary jury. The  
120 rulings of the trial court, however, in admitting or

121 excluding evidence upon the trial of any challenge  
122 for actual bias shall not be the subject of exception.

123 *Section 50.* In each county the names selected  
124 and composing the special jury list heretofore com-  
125 piled, shall be the special jury list for such county  
126 subject to such revision thereof by striking therefrom  
127 and adding thereto the names of such jurors as from  
128 time to time the clerk shall deem proper.



