

HOUSE No. 1653

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, March 7, 1945.

The committee on the Judiciary, to whom were referred so much of the annual reports of the Judicial Council (Pub. Doc. No. 144) as relates to emergency jurors and waiver of full jury in criminal cases (20th report, pages 7-14), the petition (accompanied by bill, Senate, No. 16) of the County Commissioners and Sheriffs Association of Massachusetts, by Samuel H. Wragg, that provision be made for alternate jurors in the trial of capital cases, the petition (accompanied by Senate, No. 17) of George W. Krapf for legislation to provide for the selection of special jurors, the petition (accompanied by bill, Senate, No. 102) of James P. McAndrews that provision be made for alternate jurors in the trial of capital cases, and the petition (accompanied by bill, House, No. 257) of Patrick J. McDonough for legislation to provide for an alternate juror in the case of juries impanelled for the trial of capital cases, report the accompanying bill (House, No. 1653).

For the committee,

LESTER B. MORLEY.

The Commonwealth of Massachusetts

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

AN ACT PROVIDING FOR EMERGENCY JURORS AND THE WAIVER OF A FULL JURY.

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 two hundred and sixty-three
2 of the General Laws is hereby amended by inserting
3 after section six, as amended by section one of chapter
4 two hundred and forty-six of the acts of nineteen
5 hundred and thirty-three, the two following new sec-
6 tions:—

7 *Section 6A.* Any defendant in the superior court in
8 a criminal case, including a capital case, after a jury
9 has been impanelled may, in case one or more jurymen
10 die or become otherwise unable to serve, waive his
11 right to be tried by a full jury of twelve and request
12 trial by the remaining members of the jury thus im-
13 panelled by signing a written waiver and request and
14 filing the same with the clerk of the court, whereupon
15 the trial shall continue accordingly, and in every such
16 case the court shall have jurisdiction to hear and try
17 such case with the remaining members of the jury and
18 render judgment and sentence thereon. If there is
19 more than one defendant and all do not sign and file
20 a waiver and request as aforesaid, the court may, in its
21 discretion, order a severance and try the case of the

22 defendant or defendants signing and filing such waiver
23 and request.

24 *Section 6B.* In a capital case to be tried with a jury
25 in the superior court which in the opinion of the court
26 is likely to be protracted, the court may so certify and
27 may order a jury impanelled of not to exceed fourteen
28 members and the court shall have jurisdiction to try
29 the case before such jury as hereinafter provided.
30 If at the time of the final submission of the case by the
31 court to the jury more than twelve members of the
32 jury who have heard the whole case are alive and not
33 incapacitated or disqualified, the court shall direct the
34 clerk to place the names of all of the remaining jurors,
35 except the foreman, in a box and draw the names of a
36 sufficient number to reduce the jury to twelve mem-
37 bers, and the court shall thereupon discharge the
38 jurors whose names are so drawn, and the court and
39 the twelve remaining members of the jury whose
40 names have not been so drawn shall have jurisdiction
41 to determine the issues involved and the court shall
42 have jurisdiction to render judgment and sentence in
43 said case. When more than twelve jurors are drawn
44 the defendant shall be allowed one peremptory chal-
45 lenge as to each place to be thus filled.

1 SECTION 2. Section twenty-six of chapter two
2 hundred and thirty-four of the General Laws, as
3 appearing in the Tercentenary Edition, is hereby
4 amended by inserting after the word "persons" in
5 the seventh line the words:— or such larger number
6 of persons as the court may direct under section six B
7 of chapter two hundred and sixty-three, — so as to
8 read as follows:— *Section 26.* If a jury is to be
9 impanelled for the trial of a capital case, the clerk of
10 the court shall cause the name of each juror sum-

11 moned therein to be written on a separate ballot and
12 each ballot to be folded uniformly in such manner
13 that the name written thereon shall not be visible,
14 and shall cause such ballots to be placed in a box
15 provided therefor. He shall then in open court draw
16 the ballots in succession from said box, and the
17 twelve persons or such larger number of persons as
18 the court may direct under section six B of chapter
19 two hundred and sixty-three whose names are upon
20 the ballots first drawn and who are not excused or
21 otherwise set aside, shall be sworn as the jury for the
22 trial of the case.

1 SECTION 3. Section twenty-five of said chapter
2 two hundred and thirty-four is hereby amended by
3 adding at the end the following: —

4 The provisions of section six B shall also apply to
5 any civil case, or to any criminal case other than a
6 capital case, on motion in the discretion of the court;
7 provided, that, unless a party moves for the selection
8 of a jury of more than twelve prior to the completion
9 of the jury, he shall be deemed to have waived the
10 right to a verdict of twelve, in case of the death or
11 incapacity of one or two of the jurors, if not more
12 than twelve are originally drawn, and the court may
13 enter judgment and impose sentence on the verdict
14 of the ten or eleven jurors, as the case may be.

1 SECTION 4. This act shall take effect upon its
2 passage.