

HOUSE . . . . No. 1745

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**The Commonwealth of Massachusetts**

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HOUSE OF REPRESENTATIVES, April 3, 1945.

The committee on Bills in the Third Reading, to whom was referred the Bill providing for emergency jurors and the waiver of a full jury (House, No. 1653), report recommending that the same be amended by the substitution of the accompanying bill (House, No. 1745).

For the committee,

WILLIAM R. BARRY.

## The Commonwealth of Massachusetts

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

### AN ACT PROVIDING FOR EMERGENCY JURORS AND FOR 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 thirty-four  
2 of the General Laws is hereby amended by striking  
3 out sections twenty-five and twenty-six, as appearing  
4 in the Tercentenary Edition, and inserting in place  
5 thereof the two following sections: —  
6 *Section 25.* On the day when jurors are summoned  
7 to attend at court for the trial of civil or criminal  
8 cases, except capital cases, the clerk of the court shall  
9 cause the name, place of abode and occupation of  
10 each person so summoned to be written on separate  
11 ballots, substantially of uniform size, and shall cause  
12 them to be placed in a box provided therefor. When  
13 a case is ready for trial the clerk in open court, after  
14 shaking the ballots thoroughly, shall draw them out  
15 in succession until the names of twelve or such greater  
16 number as the court may order under section twenty-  
17 six C are drawn who appear and are not excused or  
18 set aside. The men so drawn shall be duly sworn  
19 and impanelled and shall be the jury to try the issue,  
20 and one of them shall be appointed foreman by the  
21 court. The ballots containing names of the jurors so

22 sworn shall be kept apart by the clerk until the verdict  
23 of such jury has been recorded or such jury has been  
24 discharged, when such ballots shall be returned to the  
25 box. If a case is ready for trial before the verdict in  
26 the preceding case has been recorded or the jury dis-  
27 charged, the court may order a jury for the trial of  
28 such issue to be impanelled by the drawing in the  
29 manner aforesaid of ballots from those remaining in  
30 the box.

31 *Section 26.* If a jury is to be impanelled for the  
32 trial of a capital case, the clerk of the court shall  
33 cause the name of each juror summoned therein to  
34 be written on a separate ballot and each ballot to be  
35 folded uniformly in such manner that the name  
36 written thereon shall not be visible, and shall cause  
37 such ballots to be placed in a box provided therefor.  
38 He shall then in open court draw the ballots in suc-  
39 cession from said box, and the twelve persons or such  
40 greater number as the court may order under section  
41 twenty-six B whose names are upon the ballots first  
42 drawn and who are not excused or otherwise set aside,  
43 shall be sworn as the jury for the trial of the case.

1 SECTION 2. Said chapter two hundred and thirty-  
2 four is hereby further amended by inserting after  
3 section twenty-six, as so appearing, the three follow-  
4 ing sections: —

5 *Section 26A.* Any defendant in the superior court  
6 in a criminal case, including a capital case, after a jury  
7 has been impanelled may, in case one or more jurymen  
8 die or become otherwise unable to serve, waive his  
9 right to be tried by a full jury of twelve and request  
10 trial by the remaining members of the jury thus im-  
11 panelled by signing a written waiver and request and  
12 filing the same with the clerk of the court, whereupon

13 the trial shall continue accordingly, and in every such  
14 case the court shall have jurisdiction to hear and try  
15 such case with the remaining members of the jury and  
16 render judgment and sentence thereon. If there is  
17 more than one defendant and all do not sign and file  
18 a waiver and request as aforesaid, the court may, in its  
19 discretion, order a severance and try the case of the  
20 defendant or defendants signing and filing such waiver  
21 and request, with the remaining members of the jury.  
22 *Section 26B.* In a capital case to be tried with a  
23 jury in the superior court which in the opinion of the  
24 court is likely to be protracted, the court may so  
25 certify and may order impanelled a jury of not ex-  
26 ceeding fourteen members and the court shall have  
27 jurisdiction to try the case with such jury subject to  
28 the following provisions of this section. If at the  
29 time of the final submission of the case by the court  
30 to the jury more than twelve members of the jury  
31 who have heard the whole case are alive and not in-  
32 capacitated or disqualified, the court shall direct the  
33 clerk to place the names of all of the remaining jurors,  
34 except the foreman, in a box and draw the names of a  
35 sufficient number to reduce the jury to twelve mem-  
36 bers, and the court shall thereupon discharge the  
37 jurors whose names are so drawn, and the court and  
38 the twelve remaining members of the jury whose  
39 names have not been so drawn shall have jurisdiction  
40 to determine the issues involved and the court shall  
41 have jurisdiction to render judgment and sentence in  
42 said case.

43 *Section 26C.* In a criminal case other than capital  
44 to be tried with a jury in the superior court, on motion  
45 of any defendant, or in a civil case to be tried with a  
46 jury in such court, on motion of any party, the court

47 may, in its discretion, order impanelled a jury of not  
48 exceeding fourteen members and the court shall have  
49 jurisdiction to try the case with such jury, and in  
50 such event the provisions of section twenty-six B  
51 relative to the trial of a capital case shall apply. If  
52 a defendant in such a criminal case or a party in such  
53 a civil case does not make a motion for the selection  
54 of a jury of more than twelve members prior to the  
55 completion of the jury, he shall be deemed to have  
56 waived the right to a verdict of a jury of twelve, in  
57 case of the death or incapacity of one or two of the  
58 jurors, and the court may enter judgment and impose  
59 sentence in such a criminal case, or enter judgment in  
60 such a civil case, on the verdict of the ten or eleven  
61 jurors, as the case may be, without a further waiver.

1 SECTION 3. Said chapter two hundred and thirty-  
2 four is hereby further amended by striking out sec-  
3 tion twenty-nine, as so appearing, and inserting in  
4 place thereof the following:—

5 *Section 29.* Upon the trial of an indictment for a  
6 crime punishable by death or imprisonment for life,  
7 each defendant shall be entitled to twelve peremptory  
8 challenges of the jurors called to try the case, and in  
9 other criminal cases each defendant shall be entitled  
10 to two such challenges; provided, that each defendant  
11 in a capital case in which additional jurors are chosen  
12 under section twenty-six B shall be entitled to one  
13 additional peremptory challenge for each additional  
14 juror and each defendant in any other criminal case  
15 in which additional jurors are chosen under section  
16 twenty-six C shall be entitled to three such challenges  
17 in such case. In every criminal case the common-  
18 wealth shall be entitled to as many such challenges as

19 equal the whole number to which all the defendants  
20 in the case are entitled. In a civil case each party  
21 shall be entitled to two such challenges, except that  
22 he shall be entitled to three such challenges in case  
23 additional jurors are impanelled under section twenty-  
24 six C. Peremptory challenges shall be made before  
25 the commencement of the trial and may be made  
26 after the determination that a person called to serve  
27 as a juror stands indifferent in the case.

1 SECTION 4. This act shall take effect on August  
2 first of the current year.



