

# HOUSE . . . . No. 1978

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## The Commonwealth of Massachusetts

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HOUSE OF REPRESENTATIVES, May 29, 1945.

The committee on Bills in the Third Reading, to whom was referred the Bill providing for emergency jurors and for the waiver of a full jury (Senate, No. 544), report recommending that the same be amended by the substitution of the accompanying bill (House, No. 1978).

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 four 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 B are drawn who appear and are not excused or  
18 set aside. The men so drawn shall be duly sworn  
19 and impanelled and, subject to section twenty-six B,  
20 shall be the jury to try the issue, and one of them  
21 shall be appointed foreman by the court. The ballots

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

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

45 *Section 26A.* Any defendant in the superior court  
46 in a criminal case, including a capital case, after a jury  
47 has been impanelled may, in case one or more jurymen  
48 shall die or become otherwise unable to serve, so that  
49 there are less than twelve jurors remaining, waive his  
50 right to be tried by a full jury of twelve and request  
51 trial by the remaining members of the jury thus im-  
52 panelled by signing a written waiver and request and  
53 filing the same with the clerk of the court, whereupon  
54 the trial shall continue accordingly, and in every such  
55 case the court shall have jurisdiction of such case

56 with the remaining members of the jury and may ren-  
57 der judgment thereon. If there is more than one  
58 defendant and all do not sign and file a waiver and  
59 request as aforesaid, the court may, in its discretion,  
60 order a severance and try the case of the defendant  
61 or defendants signing and filing such waiver and  
62 request, with the remaining members of the jury.

63 *Section 26B.* In a civil case, or in a criminal case  
64 including a capital case, to be tried with a jury in  
65 the superior court which in the opinion of the court  
66 is likely to be protracted, the court may so certify  
67 and may order impanelled a jury of not exceeding  
68 fourteen members and the court shall have juris-  
69 diction to try the case with such jury subject to the  
70 following provisions of this section. If at the time  
71 of the final submission of the case by the court to  
72 the jury more than twelve members of the jury who  
73 have heard the whole case are alive and not incapaci-  
74 tated or disqualified, the court shall direct the clerk  
75 to place the names of all of the remaining jurors,  
76 except the foreman, in a box and draw the names of a  
77 sufficient number to reduce the jury to twelve mem-  
78 bers, and the court shall thereupon discharge the  
79 jurors whose names are so drawn, and the court shall  
80 have jurisdiction to receive the verdict of the twelve  
81 remaining members of the jury whose names have  
82 not been so drawn and shall have jurisdiction to render  
83 judgment in said case.

1 SECTION 2. 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 section: —

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. In every criminal case the commonwealth  
15 shall be entitled to as many such challenges as equal  
16 the whole number to which all the defendants in the  
17 case are entitled. In a civil case each party shall be  
18 entitled to two such challenges. Peremptory chal-  
19 lenges shall be made before the commencement of  
20 the trial and may be made after the determination  
21 that a person called to serve as a juror stands indiffer-  
22 ent in the case.

1 SECTION 3. This act shall take effect on October  
2 first of the current year.





