

SENATE No. 544

[Senate, No. 544. — Substituted by amendment (Mackay) for House Bill No. 1745.]

The Commonwealth of Massachusetts

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

AN ACT PROVIDING FOR EMERGENCY JURORS AND FOR THE
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 section twenty-six, as appearing in the Ter-
4 centenary Edition, and inserting in place thereof the
5 three following sections: —

6 *Section 26.* If a jury is to be impanelled for the
7 trial of a capital case, the clerk of the court shall
8 cause the name of each juror summoned therein to
9 be written on a separate ballot and each ballot to be
10 folded uniformly in such manner that the name
11 written thereon shall not be visible, and shall cause
12 such ballots to be placed in a box provided therefor.
13 He shall then in open court draw the ballots in suc-
14 cession from said box, and the twelve persons or such
15 greater number as the court may order under section
16 twenty-six B whose names are upon the ballots first

17 drawn and who are not excused or otherwise set aside,
18 shall be sworn as the jury for the trial of the case.

19 *Section 26A.* Any defendant in the superior court
20 in a criminal case, including a capital case, after a jury
21 has been impanelled may, in case one or more jurymen
22 shall die or become otherwise unable to serve, so that
23 there are less than twelve jurors remaining, waive his
24 right to be tried by a full jury of twelve and request
25 trial by the remaining members of the jury thus im-
26 panelled by signing a written waiver and request and
27 filing the same with the clerk of the court, whereupon
28 the trial shall continue accordingly, and in every such
29 case the court shall have jurisdiction of such case
30 with the remaining members of the jury and may ren-
31 der judgment thereon. If there is more than one
32 defendant and all do not sign and file a waiver and
33 request as aforesaid, the court may, in its discretion,
34 order a severance and try the case of the defendant
35 or defendants signing and filing such waiver and
36 request, with the remaining members of the jury.

37 *Section 26B.* In a civil case, or in a criminal case,
38 including a capital case, to be tried with a jury in
39 the superior court which in the opinion of the court
40 is likely to be protracted, the court may so certify
41 and may order impanelled a jury of not exceeding
42 fourteen members and the court shall have juris-
43 diction to try the case with such jury subject to the
44 following provisions of this section. If at the time
45 of the final submission of the case by the court to
46 the jury more than twelve members of the jury who
47 have heard the whole case are alive and not incapaci-
48 tated or disqualified, the court shall direct the clerk
49 to place the names of all of the remaining jurors,
50 except the foreman, in a box and draw the names of a

51 sufficient number to reduce the jury to twelve mem-
52 bers, and the court shall thereupon discharge the
53 jurors whose names are so drawn, and the court shall
54 have jurisdiction to receive the verdict of the twelve
55 remaining members of the jury whose names have
56 not been so drawn and shall have jurisdiction to render
57 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
18 be entitled to two such challenges. Peremptory
19 challenges shall be made before the commencement
20 of 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 September
2 first of the current year.

