

HOUSE No. 1354

The Commonwealth of Massachusetts

PRESENTED BY:

Patricia A. Haddad

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act to repeal Chapter 234.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Patricia A. Haddad

5th Bristol

Brian M. Ashe

2nd Hampden

HOUSE No. 1354

By Mrs. Haddad of Somerset, a petition (accompanied by bill, House, No. 1354) of Patricia A. Haddad and Brian M. Ashe relative to the selection and qualification of jurors. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 1373 OF 2013-2014.]

The Commonwealth of Massachusetts

**In the One Hundred and Eighty-Ninth General Court
(2015-2016)**

An Act to repeal Chapter 234.

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 234 of the General Laws, as appearing in the 2010 Official Edition,
2 and as amended by St. 2014, c. 254, §2, is hereby repealed.

3 SECTION 2. Chapter 234A of the General Laws, as appearing in the 2010 Official
4 Edition, is hereby amended by inserting after section 27 the following section:-

5 Section 27A. After a summons has been received by a juror as hereinbefore provided, no
6 person shall, except as otherwise provided by law, question any juror so summoned for the
7 purpose of obtaining information as to his background in connection with his jury duty.

8 SECTION 3. Said chapter 234A is hereby further amended by inserting after section 30
9 the following section:-

10 Section 30A. If, by challenge or otherwise, a sufficient number of jurors duly drawn and
11 summoned cannot be obtained for the trial of a case, the court shall cause jurors to be returned
12 from the bystanders or from the county at large, to complete the panel, if there are on the jury not
13 less than seven of the jurors who were originally drawn and summoned as before provided.

14 Before causing additional jurors to be returned for service the jury pool officer shall file
15 an affidavit with the court stating that more than the usual number of jurors are required on the
16 case and that the jury pool has been exhausted. The judge sitting on the case shall make a finding
17 as to the accuracy of said affidavit prior to the return of additional jurors.

18 The jurors from the bystanders shall be returned by the sheriff or his deputy or by a
19 disinterested person appointed therefor by the court, and shall be such as are qualified and liable
20 to be drawn as jurors.

21 SECTION 4. Said chapter 234A is hereby further amended by inserting after section 67
22 the following three sections:-

23 Section 67A. Upon motion of either party, the court shall, or the parties or their attorneys
24 may under the direction of the court, examine on oath a person who is called as a juror
25 therein, to learn whether he is related to either party or has any interest in the case, or has
26 expressed or formed an opinion, or is sensible of any bias or prejudice, therein; and the objecting
27 party may introduce other competent evidence in support of the objection. If the court finds that
28 the juror does not stand indifferent in the case, another shall be called in his stead. In a criminal
29 case such examination shall include questions designed to learn whether such juror understands
30 that a defendant is presumed innocent until proven guilty, that the commonwealth has the burden
31 of proving guilt beyond a reasonable doubt, and that the defendant need not present evidence in

32 his behalf. If the court finds that such juror does not so understand, another shall be called in his
33 stead.

34 For the purpose of determining whether a juror stands indifferent in the case, if it appears
35 that, as a result of the impact of considerations which may cause a decision or decisions to be
36 made in whole or in part upon issues extraneous to the case, including, but not limited to,
37 community attitudes, possible exposure to potentially prejudicial material or possible
38 preconceived opinions toward the credibility of certain classes of persons, the juror may not
39 stand indifferent, the court shall, or the parties or their attorneys may, with the permission and
40 under the direction of the court, examine the juror specifically with respect to such
41 considerations, attitudes, exposure, opinions or any other matters which may, as aforesaid, cause
42 a decision or decisions to be made in whole or in part upon issues extraneous to the issues in the
43 case. Such examination may include a brief statement of the facts of the case, to the extent the
44 facts are appropriate and relevant to the issue of such examination, and shall be conducted
45 individually and outside the presence of other persons about to be called as jurors or already
46 called.

47 Notwithstanding the above, the following procedures shall govern in all criminal and
48 civil superior court jury trials:

49 (1) In addition to whatever jury voir dire of the jury venire is conducted by the court, the
50 court shall permit, upon the request of any party's attorney or a self-represented party, the party's
51 attorney or self-represented party to conduct an oral examination of the prospective jurors at the
52 discretion of the court.

53 (2) The court may impose reasonable limitations upon the questions and the time allowed
54 during such examination, including, but not limited to, requiring pre-approval of the questions.

55 (3) In criminal cases involving multiple defendants, the commonwealth shall be entitled
56 to the same amount of time as that to which all defendants together are entitled.

57 (4) The court may promulgate rules to implement this section, including, but not limited
58 to, providing consistent policies, practices and procedures relating to the process of jury voir
59 dire.

60 Section 67B. In a civil case each party shall be entitled to four peremptory challenges.
61 Such challenges shall be made before the commencement of the trial and may be made after it
62 has been determined that a person called to serve as a juror stands indifferent in the case.

63 Section 67C. In indictments and penal actions for the recovery of a forfeiture, it shall not
64 be a challenge for cause to a juror that he is liable to pay taxes in a county, city or town which
65 may be benefited by such recovery.

66 SECTION 5. Said chapter 234A is hereby further amended by inserting after section 68
67 the following two sections:-

68 Section 68A. If a jury, after due and thorough deliberation, return to court without
69 having agreed on a verdict, the court may state anew the evidence or any part thereof, explain to
70 them anew the law applicable to the case and send them out for further deliberation; but if they
71 return a second time without having agreed on a verdict, they shall not be sent out again without
72 their own consent, unless they ask from the court some further explanation of the law.

73 Section 68A. After a jury has been impanelled and sworn, the court shall appoint a
74 foreperson.

75 Section 68B. In any civil action the jury shall be instructed that the agreement of five
76 sixths of its members shall be sufficient to render any special or general verdict.

77 SECTION 6. Said chapter 234A is hereby further amended by inserting after section 69
78 the following section:-

79 Section 69A. The court may, upon motion, allow the jury in a civil case to view the
80 premises or place in question or any property, matter or thing relative to the case if the party
81 making the motion advances an amount sufficient to defray the expenses of the jury and the
82 officers who attend them in taking the view, which shall be taxed as costs, if the party who
83 advanced them prevails. The court may order a view by a jury impanelled to try a criminal case.

84 SECTION 7. Said chapter 234A is hereby further amended by inserting after section 74
85 the following section:-

86 Section 74A. If either party to a case at the sitting at which a verdict is returned, either
87 before or after the trial, gives to any of the jurors who try the case anything by way of treat or
88 gratuity, the court may, upon motion of the adverse party, set aside the verdict and award a new
89 trial.