

HOUSE No. 1651

The Commonwealth of Massachusetts

PRESENTED BY:

Jay D. Livingstone

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 addressing racial disparity in jury selection.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Jay D. Livingstone</i>	<i>8th Suffolk</i>	<i>1/19/2023</i>

HOUSE No. 1651

By Representative Livingstone of Boston, a petition (accompanied by bill, House, No. 1651) of Jay D. Livingstone relative to addressing racial disparity in jury selection. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act addressing racial disparity in jury selection.

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 234A of the General Laws is hereby amended by striking in clause 7
2 in lines 50 and 51 the following language:–“has been convicted of a felony within the past seven
3 years or”.

4 Section 2. Chapter 234A of the General Laws is hereby amended by inserting after
5 Section 67d the following section:–

6 Section 67e: Improper Peremptory Challenge

7 a) In all jury trials, a party may object to the use of a peremptory challenge to raise the
8 issue of improper bias. The court may also raise this objection on its own. The objection shall be
9 made by simple citation to this rule, and any further discussion shall be conducted outside the
10 presence of the panel. The objection must be made before the potential juror is excused, unless
11 new information is discovered.

12 b) Upon objection to the exercise of a peremptory challenge pursuant to this rule, the
13 party exercising the peremptory challenge shall articulate the reasons the peremptory challenge
14 has been exercised.

15 c) The court shall then evaluate the reasons given to justify the peremptory challenge in
16 light of the totality of circumstances. If the court determines that an objective observer could
17 view race or ethnicity as a factor in the use of the peremptory challenge, then the peremptory
18 challenge shall be denied. The court need not find purposeful discrimination to deny the
19 peremptory challenge. The court should explain its ruling on the record.

20 d) In making its determination, the circumstances the court should consider include, but
21 are not limited to, the following:

22 1) the number and types of questions posed to the prospective juror, which may include
23 consideration of whether the party exercising the peremptory challenge failed to question the
24 prospective juror about the alleged concern or the types of questions asked about it;

25 2) the number and types of questions posed to the prospective juror, which may include
26 consideration of whether the party exercising the peremptory challenge failed to question the
27 prospective juror about the alleged concern or the types of questions asked about it;

28 3) whether the party exercising the peremptory challenge asked significantly more
29 questions or different questions of the potential juror against whom the peremptory challenge
30 was used in contrast to other jurors;

31 4) whether other prospective jurors provided similar answers but were not the subject of a
32 peremptory challenge by that party;

33 5) whether a reason might be disproportionately associated with a race or ethnicity; and
34 6) whether the party has used peremptory challenges disproportionately against a given
35 race or ethnicity, in the present case or in past cases.

36 e) The following reasons are presumptively invalid reasons for a peremptory challenge:

37 1) having prior contact with law enforcement officers;

38 2) expressing a distrust of law enforcement or a belief that law enforcement officers
39 engage in racial profiling;

40 3) having a close relationship with people who have been stopped, arrested, or convicted
41 of a crime;

42 4) living in a high-crime neighborhood;

43 5) having a child outside of marriage;

44 6) receiving state benefits; and

45 7) not being a native English speaker.

46 f) If any challenge is based on the prospective juror's conduct (i.e. sleeping; inattentive;
47 staring or failing to make eye contact; exhibiting a problematic attitude, body language, or
48 demeanor; or providing unintelligent or confused answers), that conduct must be corroborated by
49 the judge or opposing counsel or the reason shall be considered invalid.