

SENATE No. 830

The Commonwealth of Massachusetts

PRESENTED BY:

Joseph A. Boncore

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:	
<i>Joseph A. Boncore</i>	<i>First Suffolk and Middlesex</i>	
<i>Liz Miranda</i>	<i>5th Suffolk</i>	<i>2/1/2019</i>
<i>James K. Hawkins</i>	<i>2nd Bristol</i>	<i>2/5/2019</i>

SENATE No. 830

By Mr. Boncore, a petition (accompanied by bill, Senate, No. 830) of Joseph A. Boncore, Liz Miranda and James K. Hawkins for legislation to address racial disparity in jury selection. The Judiciary.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 inserting after
2 Section 67d the following section:-

3 Section 67e: Improper Peremptory Challenge

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

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

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

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

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

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

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

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

30 5) whether a reason might be disproportionately associated with a race or ethnicity;
31 and

32 6) whether the party has used peremptory challenges disproportionately against a
33 given race or ethnicity, in the present case or in past cases.

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

36 1) having prior contact with law enforcement officers;

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

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

41 4) living in a high-crime neighborhood;

42 5) having a child outside of marriage;

43 6) receiving state benefits; and

44 7) not being a native English speaker.

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