

HOUSE No. 01295

The Commonwealth of Massachusetts

PRESENTED BY:

Kimberly Ferguson

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 passage of the accompanying bill:

An act relative to the insanity defense.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Kimberly Ferguson</i>	<i>1st Worcester</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Matthew Beaton</i>	<i>11th Worcester</i>
<i>Kevin Kuros</i>	<i>8th Worcester</i>
<i>Richard Bastien</i>	<i>2nd Worcester</i>
<i>Elizabeth Poirier</i>	<i>14th Bristol</i>
<i>Ryan Fattman</i>	<i>18th Worcester</i>
<i>George Ross</i>	<i>2nd Bristol</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

HOUSE No. 01295

By Mrs. Kimberly Ferguson of Holden, petition (accompanied by bill, House, No. 01295) of Elizabeth Poirier and others relative to the use of insanity as criminal defense. Joint Committee on the Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An act relative to the insanity defense.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 265 of the Massachusetts General Laws, as appearing in the 2008 Official Edition is
2 hereby amended by adding the following section:-

3

4 Section 2A. Insanity test; burden of proof; guilty except insane verdict

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6 A. Notwithstanding any other general or special law to the contrary, any defendant charged with
7 murder as defined by Section 1 of Chapter 265 of the General laws, may be found “guilty except
8 insane” if at the time of the commission of the criminal act the person was afflicted with a mental
9 disease or defect of such severity that the person did not know the criminal act was wrong. A
10 mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or

11 defect does not include disorders that result from acute voluntary intoxication or withdrawal
12 from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders.
13 Conditions that do not constitute legal insanity include but are not limited to momentary,
14 temporary conditions arising from the pressure of the circumstances, moral decadence, depravity
15 or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does
16 not suffer from a mental disease or defect or an abnormality that is manifested only by criminal
17 conduct.

18

19 B. In a case involving the charge of murder as defined by Section 1 of Chapter 265 of the
20 General Laws, if a plea of insanity is made and the court determines that a reasonable basis exists
21 to support the plea, the court may commit the defendant to Bridgewater State Hospital or another
22 secure mental health facility under the department of health services for up to thirty days for
23 mental health evaluation and treatment. Experts at the mental health facility who are licensed to
24 treat such patients, who are familiar with this state's insanity statutes, who are specialists in
25 mental diseases and defects and who are knowledgeable concerning insanity shall observe and
26 evaluate the defendant. The expert or experts who examine the defendant shall submit a written
27 report of the evaluation to the court, the defendant's attorney and the prosecutor.

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30 C . If the finder of fact finds the defendant “ guilty , except insane ” of the crime of murder as
31 defined in Section 1 of Chapter 265 of the General Laws, the defendant shall be committed to
32 Bridgewater State Hospital, or another maximum security mental health treatment facility . A

33 defendant who is found to be “ guilty , except insane ” of the crime of murder as defined in
34 Section 1 of Chapter 265 s hall be committed to Bridgewater State Hospital for no less than ten
35 years. After the initial ten year commitment, the individual may be committed for additional one
36 year periods under the provisions of Section 7 and Section 8 of Chapter 123 of the General Laws.

37

38 If Bridgewater State Hospital or other treating facility designated by the Commissioner releases
39 an offender found guilty except insane of murder as defined by Section 1 of Chapter 265, the
40 individual will be placed under the supervision of the Commissioner of Probation for a period of
41 not less than five years after the date of release. The treating facility shall transmit to the
42 Commissioner of Probation and to the Parole Board a report on the condition of the offender
43 which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the
44 remission of symptoms; the potential for the recidivism, and for danger to the offender's own
45 person or the public; and recommendations for future treatment. The Commissioner will order
46 that intensive treatment is a condition of probation and the defendant must report to the probation
47 department not less than three times per week. If the individual does not comply with conditions
48 of probation, the Commissioner may petition the court of jurisdiction to hold a hearing for re-
49 commitment to Bridgewater State Hospital.

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51 D. A “guilty except insane” verdict is a criminal conviction and shall appear on the Criminal
52 Offender Record Information System.

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54 E. In cases involving murder as defined by Section 1 of Chapter 265 of the General Laws, “not
55 guilty by reason of insanity” will no longer be an available disposition.