HOUSE DOCKET, NO. 2894 FILED ON: 1/18/2013

HOUSE . . . . . No. 1308

The Commonwealth of Massachusetts

PRESENTED BY:

Kimberly N. 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:

An act relative to the insanity defense.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Kimberly N. Ferguson	*1st Worcester*
Matthew A. Beaton	*11th Worcester*
Jonathan D. Zlotnik	*2nd Worcester*
Stephen L. DiNatale	*3rd Worcester*
F. Jay Barrows	*1st Bristol*
Jennifer L. Flanagan	*Worcester and Middlesex*
Donald F. Humason, Jr.	*4th Hampden*
Bradley H. Jones, Jr.	*20th Middlesex*
Kevin J. Kuros	*8th Worcester*

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HOUSE . . . . . No. 1308

By Mrs. Ferguson of Holden, a petition (accompanied by bill, House, No. 1308) of Kimberly N. Ferguson and others relative to the use of insanity as criminal defense. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *1295* OF 2011-2012.]

The Commonwealth of Massachusetts

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:

Chapter 265 of the Massachusetts General Laws, as appearing in the 2010 Official Edition is hereby amended by adding the following section:-

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

A. Notwithstanding any other general or special law to the contrary, any defendant charged with murder as defined by Section 1 of Chapter 265 of the General laws, may be found "guilty except insane" if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal 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
31 murder as defined in Section 1 of Chapter 265 of the General Laws, the defendant shall be
32 committed to Bridgewater State Hospital, or another maximum security mental health treatment
33 facility . A defendant who is found to be “ guilty , except insane ” of the crime of murder as
34 defined in Section 1 of Chapter 265 s hall be committed to Bridgewater State Hospital for no less
35 than ten years. After the initial ten year commitment, the individual may be committed for
36 additional one year periods under the provisions of Section 7 and Section 8 of Chapter 123 of the
37 General Laws.

38

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

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

54

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