

# HOUSE . . . . . No. 1282

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## 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 adoption of the accompanying bill:

An Act relative to the insanity defense.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Kimberly N. Ferguson</i>	<i>1st Worcester</i>	<i>1/15/2015</i>
<i>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>	<i>9/17/2019</i>
<i>Jennifer L. Flanagan</i>	<i>Worcester and Middlesex</i>	<i>9/17/2019</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>	<i>9/17/2019</i>
<i>Gailanne M. Cariddi</i>	<i>1st Berkshire</i>	<i>9/17/2019</i>

# HOUSE . . . . . No. 1282

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By Mrs. Ferguson of Holden, a petition (accompanied by bill, House, No. 1282) of Kimberly N. Ferguson and others relative to the use of insanity as a criminal defense. The Judiciary.

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[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE HOUSE, NO. 1308 OF 2013-2014.]

## The Commonwealth of Massachusetts

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

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 2012 Official  
2   Edition is hereby amended by adding the following section:-

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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  
7   charged with murder as defined by Section 1 of Chapter 265 of the General laws, may be found  
8   “guilty except insane” if at the time of the commission of the criminal act the person was  
9   afflicted with a mental disease or defect of such severity that the person did not know the

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

28  
29  
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

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

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

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

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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.