

**SENATE . . . . . No. 938**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Cindy F. Friedman***

*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 guilty but with a mental illness.

PETITION OF:

| NAME:                    | DISTRICT/ADDRESS:       |                 |
|--------------------------|-------------------------|-----------------|
| <i>Cindy F. Friedman</i> | <i>Fourth Middlesex</i> |                 |
| <i>Kay Khan</i>          | <i>11th Middlesex</i>   | <i>2/1/2019</i> |
| <i>Liz Miranda</i>       | <i>5th Suffolk</i>      | <i>2/1/2019</i> |
| <i>Marcos A. Devers</i>  | <i>16th Essex</i>       | <i>2/8/2019</i> |

**SENATE . . . . . No. 938**

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By Ms. Friedman, a petition (accompanied by bill, Senate, No. 938) of Cindy F. Friedman, Kay Khan, Liz Miranda and Marcos A. Devers for legislation relative to guilty but with a mental illness. The Judiciary.

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**The Commonwealth of Massachusetts**

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

An Act relative to guilty but with a mental illness.

*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. Section 15 of chapter 123 of the General Laws, as appearing in the 2016  
2 Official Edition, is hereby amended by inserting before the words “(a) Whenever”, in line 1, the  
3 following words:-

4 For the purposes of this section, “mental illness” shall mean a substantial disorder of  
5 thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior,  
6 capacity to recognize reality or ability to meet the ordinary demands of life, but shall not include  
7 intellectual or developmental disabilities, autism spectrum disorder, traumatic brain injury or  
8 psychiatric or behavioral disorders or symptoms due to another medical condition as provided in  
9 the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM)  
10 published by the American Psychiatric Association.

11 SECTION 2. Said section 15 of said chapter 123, as so appearing, is hereby further  
12 amended by striking out subsection (f) and inserting in place thereof the following subsections:-

13 (f) After a finding of guilty on a felony criminal charge that requires imprisonment, and  
14 prior to sentencing, the court may, upon a motion by the defendant and where warranted by the  
15 evidence, order a psychiatric or other clinical examination to be completed by a qualified  
16 physician or qualified psychologist designated by the department, to determine if the defendant  
17 should receive a finding of guilty but with a mental illness. Such period of observation or  
18 examination shall not exceed 40 days. After the period of observation, the examining physician  
19 or psychologist shall provide the court a report of their findings, including a finding on whether  
20 the defendant suffers from a mental illness, as defined in this section. If the findings do not  
21 indicate that the defendant suffers from a mental illness, the court shall impose the sentence. If  
22 the findings indicate that the defendant suffers from a mental illness, the court shall hold a  
23 hearing on the issue of the defendant's mental condition. The court shall find the defendant  
24 guilty but with a mental illness if the court finds by a preponderance of the evidence that the  
25 defendant suffers from a mental illness. If a defendant is found guilty but with a mental illness,  
26 the court shall impose the same sentence as provided by law for a defendant found guilty of the  
27 same crime; provided however, if the sentence includes a term of imprisonment, the court shall  
28 order the defendant to serve the sentence at a facility, as defined in section 1, or if the defendant  
29 is a male and the court determines that strict security is required, the defendant shall serve the  
30 sentence at Bridgewater State Hospital. Consistent with public safety and security, the defendant  
31 shall be held in the least restrictive setting that is clinically indicated and will not create a  
32 likelihood of serious harm, as defined in section 1. Any defendant confined to Bridgewater State  
33 Hospital shall be entitled to a hearing after a period of 12 months to determine if the defendant  
34 should be transferred to a facility, as defined in section 1.

35           (g) In like manner to the proceedings under paragraphs (a), (b), (c), (e) and (f) of this  
36 section, a court may order a psychiatric or psychological examination or a period of observation  
37 for an alleged delinquent in a facility to aid the court in its disposition. Such period shall not  
38 exceed 40 days.