

HOUSE No. 4484

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

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

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

4 A. Notwithstanding any other general or special law to the contrary, any defendant
5 charged with murder as defined by Section 1 of Chapter 265 of the General laws, may be found
6 “guilty except insane” if at the time of the commission of the criminal act the person was
7 afflicted with a mental disease or defect of such severity that the person did not know the
8 criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative
9 defense. Mental disease or defect does not include disorders that result from acute voluntary
10 intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or
11 impulse control disorders. Conditions that do not constitute legal insanity include but are not
12 limited to momentary, temporary conditions arising from the pressure of the circumstances,
13 moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other

14 motives in a person who does not suffer from a mental disease or defect or an abnormality that is
15 manifested only by criminal conduct.

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

25 C. If the finder of fact finds the defendant “guilty, except insane” of the crime of murder
26 as defined in Section 1 of Chapter 265 of the General Laws, the defendant shall be committed to
27 Bridgewater State Hospital, or another maximum security mental health treatment facility. A
28 defendant who is found to be “guilty, except insane” of the crime of murder as defined in Section
29 1 of Chapter 265 shall be committed to Bridgewater State Hospital for no less than ten years.
30 After the initial ten year commitment, the individual may be committed for additional one year
31 periods under the provisions of Section 7 and Section 8 of Chapter 123 of the General Laws.

32 If Bridgewater State Hospital or other treating facility designated by the Commissioner
33 releases an offender found guilty except insane of murder as defined by Section 1 of Chapter
34 265, the individual will be placed under the supervision of the Commissioner of Probation for a
35 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.

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