HOUSE DOCKET, NO. 1868 FILED ON: 1/19/2017

HOUSE . . . . . No. 784

The Commonwealth of Massachusetts

PRESENTED BY:

Kimberly N. Ferguson and Joseph D. McKenna

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:
Kimberly N. Ferguson	*1st Worcester*	*1/19/2017*
Joseph D. McKenna	*18th Worcester*	*1/26/2017*
Kevin J. Kuros	*8th Worcester*	*2/3/2017*
F. Jay Barrows	*1st Bristol*	*2/2/2017*
Shawn Dooley	*9th Norfolk*	*1/25/2017*
Peter J. Durant	*6th Worcester*	*2/2/2017*
Ryan C. Fattman	*Worcester and Norfolk*	*1/25/2017*
Paul K. Frost	*7th Worcester*	*2/2/2017*
Susan Williams Gifford	*2nd Plymouth*	*2/3/2017*
Hannah Kane	*11th Worcester*	*2/2/2017*
Bruce E. Tarr	*First Essex and Middlesex*	*2/3/2017*
Jonathan D. Zlotnik	*2nd Worcester*	*2/2/2017*

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By Representatives Ferguson of Holden and McKenna of Webster, a petition (accompanied by bill, House, No. 784) of Kimberly N. Ferguson, Joseph D. McKenna and others relative to the use of insanity as a criminal defense. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *1282* OF 2015-2016.]

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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 General Laws, as appearing in the 2014 Official Edition, is hereby amended by inserting after section 2 the following section:-

Section 2A. (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 or 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.

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

(c) If the finder of fact finds the defendant “ guilty, except insane ” of the crime of 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 shall 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.

(d)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 shall 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.

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

(f) 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.