

**SENATE . . . . . No. 849**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Ryan C. Fattman*

*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:	
<i>Ryan C. Fattman</i>	<i>Worcester and Norfolk</i>	
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>	<i>1/26/2017</i>
<i>Richard J. Ross</i>	<i>Norfolk, Bristol and Middlesex</i>	<i>1/30/2017</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>	<i>2/1/2017</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>	<i>2/2/2017</i>
<i>Bruce E. Tarr</i>	<i>First Essex and Middlesex</i>	<i>2/14/2017</i>

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By Mr. Fattman, a petition (accompanied by bill, Senate, No. 849) of Ryan C. Fattman, Joseph D. McKenna, Richard J. Ross, Kevin J. Kuros and other members of the General Court for legislation relative to the insanity defense. The Judiciary.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Ninetieth General Court  
(2017-2018)**  
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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 General Laws, as appearing in the 2014 Official Edition, is hereby  
2 amended by inserting after section 2 the following section:-

3 Section 2A. (a) Notwithstanding any other general or special law to the contrary, any  
4 defendant charged with murder as defined by section 1 of chapter 265 of the General Laws, may  
5 be found “guilty, except insane” if at the time of the commission of the criminal act the person  
6 was afflicted with a mental disease or defect of such severity that the person did not know the  
7 criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative  
8 defense. Mental disease or defect does not include disorders that result from acute voluntary  
9 intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or  
10 impulse control disorders. Conditions that do not constitute legal insanity include but are not  
11 limited to momentary or temporary conditions arising from the pressure of the circumstances,  
12 moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other

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

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

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

31 (d) If Bridgewater State Hospital or other treating facility designated by the  
32 commissioner releases an offender found guilty except insane of murder as defined by section 1  
33 of chapter 265, the individual will be placed under the supervision of the commissioner of  
34 probation for a period of not less than five years after the date of release. The treating facility

35 shall transmit to the commissioner of probation and to the parole board a report on the condition  
36 of the offender which contains the clinical facts; the diagnosis; the course of treatment, and  
37 prognosis for the remission of symptoms; the potential for the recidivism, and for danger to the  
38 offender's own person or the public; and recommendations for future treatment. The  
39 commissioner shall order that intensive treatment is a condition of probation and the defendant  
40 must report to the probation department not less than three times per week. If the individual does  
41 not comply with conditions of probation, the commissioner may petition the court of jurisdiction  
42 to hold a hearing for re-commitment to Bridgewater State Hospital.

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

45 (f) In cases involving murder as defined by section 1 of chapter 265 of the General Laws,  
46 “not guilty by reason of insanity” will no longer be an available disposition.