

SENATE No. 1034

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:

Cindy F. Friedman

DISTRICT/ADDRESS:

Fourth Middlesex

SENATE No. 1034

By Ms. Friedman, a petition (accompanied by bill, Senate, No. 1034) of Cindy F. Friedman for legislation relative to guilty but with a mental illness. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. 938 OF 2019-2020.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court
(2021-2022)**

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 2018
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, which shall include whether the
20 examining physician or psychologist diagnosed the defendant with a mental illness, as defined in
21 this section, or confirmed a previous mental illness diagnosis. If the findings do not indicate that
22 the defendant has a diagnosed mental illness, the court shall impose the sentence. If the findings
23 indicate that the defendant has a diagnosed mental illness, the court shall hold a hearing on the
24 issue of the defendant's mental condition. The court shall find the defendant guilty but with a
25 mental illness if the court finds by a preponderance of the evidence that the defendant has a
26 mental illness. If a defendant is found guilty but with a mental illness, the court shall impose the
27 same sentence as provided by law for a defendant found guilty of the same crime; provided
28 however, if the sentence includes a term of imprisonment, the court shall order the defendant to
29 serve the entirety of their imprisonment at a facility, as defined in section 1, or if the defendant is
30 a male and the court determines that a secure facility is required, the defendant shall serve the
31 sentence at Bridgewater State Hospital. Consistent with public safety and security, the defendant
32 shall be held in the least restrictive setting that is clinically indicated and will not create a
33 likelihood of serious harm, as defined in section 1. Any defendant confined to Bridgewater State

34 Hospital shall be entitled to a hearing after a period of 12 months to determine if the defendant
35 should be transferred to a facility, as defined in section 1.

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