

**HOUSE . . . . . No. 1295**

The Commonwealth of Massachusetts

PRESENTED BY:

***Kimberly N. Ferguson***

*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>Kimberly N. Ferguson</i>	<i>1st Worcester</i>
<i>Bradley H. Jones, Jr.</i>	<i>20th Middlesex</i>
<i>Matthew A. Beaton</i>	<i>11th Worcester</i>
<i>Kevin J. Kuros</i>	<i>8th Worcester</i>
<i>Richard Bastien</i>	<i>2nd Worcester</i>
<i>Elizabeth A. Poirier</i>	<i>14th Bristol</i>
<i>Ryan C. Fattman</i>	<i>18th Worcester</i>
<i>George T. Ross</i>	<i>2nd Bristol</i>
<i>Randy Hunt</i>	<i>5th Barnstable</i>
<i>Shaunna O'Connell</i>	<i>3rd Bristol</i>
<i>Steven L. Levy</i>	<i>4th Middlesex</i>
<i>Todd M. Smola</i>	<i>1st Hampden</i>
<i>Jennifer L. Flanagan</i>	
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Donald F. Humason, Jr.</i>	<i>4th Hampden</i>
<i>Paul K. Frost</i>	<i>7th Worcester</i>
<i>Stephen L. DiNatale</i>	<i>3rd Worcester</i>

**HOUSE . . . . . No. 1295**

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By Mrs. Ferguson of Holden, a petition (accompanied by bill, House, No. 1295) of Kimberly N. Ferguson and others relative to the use of insanity as criminal defense. The Judiciary.

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The Commonwealth of Massachusetts

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In the Year Two Thousand Eleven  
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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 Massachusetts General Laws, as appearing in the 2008 Official  
2 Edition is hereby amended by adding the following section:-

3

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

5

6 A. Notwithstanding any other general or special law to the contrary, any defendant  
7 charged with murder as defined by Section 1 of Chapter 265 of the General laws, may be found  
8 “guilty except insane” if at the time of the commission of the criminal act the person was  
9 afflicted with a mental disease or defect of such severity that the person did not know the  
10 criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative  
11 defense. Mental disease or defect does not include disorders that result from acute voluntary  
12 intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or

13 impulse control disorders. Conditions that do not constitute legal insanity include but are not  
14 limited to momentary, temporary conditions arising from the pressure of the circumstances,  
15 moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other  
16 motives in a person who does not suffer from a mental disease or defect or an abnormality that is  
17 manifested only by criminal conduct.

18

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

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30           C . If the finder of fact finds the defendant “ guilty , except insane ” of the crime of  
31 murder as defined in Section 1 of Chapter 265 of the General Laws, the defendant shall be  
32 committed to Bridgewater State Hospital, or another maximum security mental health treatment  
33 facility . A defendant who is found to be “ guilty , except insane ” of the crime of murder as  
34 defined in Section 1 of Chapter 265 s hall be committed to Bridgewater State Hospital for no less

35 than ten years. After the initial ten year commitment, the individual may be committed for  
36 additional one year periods under the provisions of Section 7 and Section 8 of Chapter 123 of the  
37 General Laws.

38

39           If Bridgewater State Hospital or other treating facility designated by the Commissioner  
40 releases an offender found guilty except insane of murder as defined by Section 1 of Chapter  
41 265, the individual will be placed under the supervision of the Commissioner of Probation for a  
42 period of not less than five years after the date of release. The treating facility shall transmit to  
43 the Commissioner of Probation and to the Parole Board a report on the condition of the offender  
44 which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the  
45 remission of symptoms; the potential for the recidivism, and for danger to the offender's own  
46 person or the public; and recommendations for future treatment. The Commissioner will order  
47 that intensive treatment is a condition of probation and the defendant must report to the probation  
48 department not less than three times per week. If the individual does not comply with conditions  
49 of probation, the Commissioner may petition the court of jurisdiction to hold a hearing for re-  
50 commitment to Bridgewater State Hospital.

51

52           D. A “guilty except insane” verdict is a criminal conviction and shall appear on the  
53 Criminal Offender Record Information System.

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