

HOUSE No. 1404

The Commonwealth of Massachusetts

PRESENTED BY:

Kimberly N. Ferguson and Jonathan D. Zlotnik

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>Jonathan D. Zlotnik</i>	<i>2nd Worcester</i>
<i>Joseph D. McKenna</i>	<i>18th Worcester</i>
<i>Hannah Kane</i>	<i>11th Worcester</i>

HOUSE No. 1404

By Representatives Ferguson of Holden and Zlotnik of Gardner, a petition (accompanied by bill, House, No. 1404) of Kimberly N. Ferguson and others relative to the use of insanity as a criminal defense. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 784 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

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 2016 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

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

33 (d) If Bridgewater State Hospital or other treating facility designated by the commissioner
34 releases an offender found guilty except insane of murder as defined by section 1 of chapter 265,
35 the individual will be placed under the supervision of the commissioner of probation for a period
36 of not less than five years after the date of release. The treating facility shall transmit to the
37 commissioner of probation and to the parole board a report on the condition of the offender
38 which contains the clinical facts; the diagnosis; the course of treatment, and prognosis for the
39 remission of symptoms; the potential for the recidivism, and for danger to the offender's own
40 person or the public; and recommendations for future treatment. The commissioner shall order
41 that intensive treatment is a condition of probation and the defendant must report to the probation
42 department not less than three times per week. If the individual does not comply with conditions
43 of probation, the commissioner may petition the court of jurisdiction to hold a hearing for re-
44 commitment to Bridgewater State Hospital.

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

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