

# SENATE . . . . . No. 928

By Mr. Jajuga, a petition (accompanied by bill, Senate, No. 928) of James P. Jajuga, Therese Murray, the Massachusetts Chiefs of Police Association, by Paul L. Doherty, executive director, and Jane M. Swift for legislation to allow for a plea or finding of guilty but mentally ill in criminal cases. The Judiciary.

## The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Ninety-Five.

### AN ACT ALLOWING FOR A PLEA OR FINDING OF GUILTY BUT INSANE.

*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. Chapter 123 of the General Laws, as appearing in  
2 the 1992 Official Edition, is hereby amended by inserting, imme-  
3 diately after section 17, the following section: —

4 Section 17a. (a) Notwithstanding any law to the contrary, a  
5 person, who, at the time of the commission of a criminal offense,  
6 was insane, is not relieved of criminal responsibility for his or her  
7 conduct and may be found guilty but insane by the court.

8 For the purposes of this section, “insane” means a substantial  
9 disorder of thought, mood, or behavior which afflicted a person at  
10 the time of the commission of the offense and which impaired said  
11 person’s judgment to the extent that he or she did not know what  
12 he or she was doing, or understood the consequences of his or her  
13 actions, or did not know that his or her act was wrong, and could  
14 not prevent himself or herself from committing the act.

15 (b) A finding of guilty but insane may be accepted or made,  
16 pursuant to appropriate evidence when the plea of guilty but  
17 insane is made.

18 (c) A plea of guilty but insane shall not be accepted until the  
19 defendant has undergone examination by a clinical psychologist  
20 or psychiatrist and the court has examined the psychological or  
21 psychiatric reports, held a hearing on the issue of the defendant’s  
22 mental condition, and is satisfied that there is a factual basis that

23 the defendant was insane at the time of the offense to which the  
24 plea is entered.

25 (d) When a defendant has asserted a plea of insanity, the court  
26 may find the defendant guilty but insane if, after hearing all of the  
27 evidence, the court finds beyond a reasonable doubt that the  
28 defendant:

29 (1) is guilty of the offense charged; and

30 (2) was legally insane at the time of the commission of the  
31 offense.

32 (e) When a defendant has asserted a plea of insanity, the court,  
33 where warranted by the evidence, shall provide the jury with a  
34 special verdict form of guilty but insane, and shall separately  
35 instruct the jury that a verdict of guilty but insane may be returned  
36 instead of a verdict of guilty or not guilty, and that such a verdict  
37 requires a finding by the jury beyond a reasonable doubt that the  
38 defendant committed the offense charged and that the defendant  
39 was legally insane at the time of the commission of the offense.

40 (f) When a verdict of guilty but insane is returned, the defen-  
41 dant shall receive a sentence commensurate with a finding of  
42 guilty. The judge shall take into consideration the verdict of guilty  
43 but insane in the determination of the facility and/or facilities  
44 where the defendant will serve his or her sentence.

1 SECTION 2. Section 15 of Chapter 123 of the General Laws,  
2 as appearing in the 1992 Official Edition, is hereby amended in  
3 paragraph (b) by striking out in line 20 the word "not" and in  
4 line 21 by inserting after the word "responsible", the words "by  
5 reason of mental illness".

1 SECTION 3. Section 16 of Chapter 123 of the General Laws is  
2 hereby amended in paragraph (a) in line 3 by striking out the  
3 words "not guilty by reason of mental illness or mental defect"  
4 and inserting in place thereof the words "guilty, but insane".

5 Said section 16 is hereby further amended in paragraph (b) in  
6 line 15 by striking out the words "not guilty of any crime by  
7 reason of mental illness or other mental defect" and inserting in  
8 place thereof the words, "guilty, but insane".

9 Said section 16 is hereby amended in paragraph (f) by striking  
10 out the last sentence.

1 SECTION 4. Section 17 of Chapter 123 of the General Laws,  
2 as appearing in the 1992 Official Edition, is hereby amended in  
3 paragraph (b) in line 22 by striking out the words “other than the  
4 defense of not guilty by reason of mental illness or mental  
5 defect”.

