

By Mr. Hodgkins of Lee, petition of Christopher J. Hodgkins, Vincent A. Pedone and Brian M. Cresta for legislation to allow a plea or finding of guilty but insane in certain criminal proceedings. The Judiciary.

The Commonwealth of Massachusetts

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

AN ACT ALLOWING 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
7 her 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
10 at the time of the commission of the offense and which impaired
11 said person’s judgment to the extent that he or she did not know
12 what he or she was doing, or understood the consequences of his
13 or her actions, or did not know that his or her act was wrong, and
14 could 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
36 returned instead of a verdict of guilty or not guilty, and that such
37 a verdict requires a finding by the jury beyond a reasonable doubt
38 that the defendant committed the offense charged and that the
39 defendant was legally insane at the time of the commission of the
40 offense .

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

1 SECTION 2. Upon enactment of Section 1, the following
2 technical changes must occur:—

3 123:15 (b) line 20 delete “not. “

4 line 21 after the word “responsible,” add “by reason of mental
5 illness.”

6 123:16 (a) line 3 delete “not guilty by reason of mental illness
7 or mental defect” and replace with “guilty, but insane.”

8 123:16 (b) line 15 delete “not guilty of any crime by reason of
9 mental illness or other mental defect” and replace with “guilty,
10 but insane.”

11 123:16 (f) line 87 delete the final sentence

12 123:17 (b) line 22 delete “other than the defense of not guilty
13 by reason of mental illness or mental defect.”