

By Mr. Naughton of Clinton, petition of Harold P. Naughton, Jr., relative to a guilty but insane plea. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RELATIVE TO A GUILTY BUT INSANE PLEA.

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 is hereby amended
2 by inserting after section 17 the following section:—

3 Section 17A. (a) Notwithstanding the provision of any law to the
4 contrary, a person who timely offers a defense of not guilty by
5 reason of mental illness or metal defect in accordance with the pro-
6 visions of this chapter and the rules of criminal procedure may be
7 found guilty but insane at trial if the trier of facts finds, beyond a
8 reasonable doubt that the person is guilty of the offense, was insane
9 at the time of the commission of the offense and did not meet the
10 legal requirements of mental illness or mental defect at the time of
11 the commission of the offense as set out in this chapter.

12 (b) A person who waives his right to trial may plead guilty but
13 insane. No pleas of guilty but insane may be accepted by the trial
14 judge until the defendant has undergone examination by a licensed
15 psychologist or psychiatrist and the trial judge has examined the
16 psychological or psychiatric reports, held a hearing on the sole issue
17 of the defendant's insanity at which either party may present evi-
18 dence and is satisfied that the defendant was insane at the time of the
19 offense to which the plea is entered. If the trial judge refuses to
20 accept a plea of guilty but insane, the defendant shall be permitted to
21 withdraw his plea. A defendant whose plea is not accepted by the
22 court shall be entitled to a jury trial, except that if a defendant subse-
23 quently waives his right to a jury trial, the judge who presided at the
24 hearing on mental illness shall not preside at the trial.

25 (c) For purposes of this section the term “insane” shall mean
26 having a disorder of thought or mood which significantly impairs
27 judgment, behavior, capacity to recognize reality, or ability to cope
28 with the ordinary demands of life; provided, however, that “insane”
29 shall not include a mental state manifested only by repeated
30 unlawful or antisocial conduct.

31 (d) In all cases in which the defense of mental illness or mental
32 defect is asserted, the trial judge shall charge the jury with regard to
33 the special verdict of guilty but insane.

34 (e) Whenever a defendant is found or pleads guilty but insane, the
35 court shall sentence him in the same manner as a defendant found
36 guilty of the offense but shall take into consideration the verdict in
37 determining in which facility the defendant will serve his sentence;
38 provided, however, that in no event shall the defendant be released
39 until he has served his sentence.

1 SECTION 2. This act shall apply to all criminal proceedings com-
2 menced on or after the effective date of this act.