AAPL Practice Guideline for Forensic Psychiatric Evaluation of Defendants Raising the Insanity Defense[*,†]

Statement of Intent

This guideline is intended as a review of legal and psychiatric factors to give practical guidance and assistance in the performance of insanity defense evaluations. It was developed through the participation of forensic psychiatrists who routinely conduct evaluations of competence to stand trial and have expertise in this area. Some contributors are actively involved in related academic endeavors. The process of developing the guideline incorporated a thorough review that integrated feedback and revisions into the final draft. This guideline was reviewed and approved by the Council of the American Academy of Psychiatry and the Law (AAPL) on May 19, 2013. Thus, it reflects a consensus among members and experts about the principles and practice applicable to the conduct of insanity defense evaluations. This practice guideline should not be construed as dictating the standard for this type of evaluation. Rather, it is intended to inform practice in this area. This guideline does not present all acceptable current ways of performing these forensic evaluations, and following it does not lead to a guaranteed outcome. Differing fact patterns, clinical factors, relevant statutes, administrative and case law, and the psychiatrist's judgment determine how to proceed in any individual forensic evaluation.

Adherence to the approaches and methods set forth in this document will not ensure an accurate assessment of a defendant's mental state at the time of the instant offense. These parameters are not intended to represent all acceptable, current, or future methods of evaluating defendants for and drawing conclusions about the insanity defense. The fact situation, relevant law, and the judgment of the forensic psychiatrist determine the ultimate conduct of each insanity defense evaluation.

The guideline is directed toward psychiatrists and other clinicians who are working in a forensic role in conducting evaluations and providing opinions related to the insanity defense. It is expected that any clinician who agrees to perform forensic evaluations in this domain has appropriate qualifications.

Overview

The insanity defense is a legal construct that, under some circumstances, excuses defendants with mental illness from legal responsibility for criminal behavior. The ability to evaluate whether defendants meet a jurisdiction's test for a finding of not criminally responsible is a core skill in forensic psychiatry. This document is intended as a practical guide to insanity defense evaluations of adult defendants. (While the guideline does not specifically address special issues that arise with youth, the principles related to the insanity defense are largely the same, although a clinical analysis from a developmental perspective will also be integrated into the assessment.) The language used throughout the document is intended to address the insanity defense only, and does not address other issues regarding criminal responsibility, such as diminished capacity or mitigating mental conditions affecting sentencing.

The report acknowledges differences between ethics guidelines and legal jurisdictional requirements.

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Jurisdictional rules of discovery or hearsay, among others, may compel the forensic psychiatrist to conform to different practices in different locations.

Definitions for the purpose of this practice guideline include the following:

Forensic psychiatrist: a psychiatrist with forensic training or a psychiatrist who conducts an insanity defense evaluation.

Mental disease or defect: a legal or statutory definitional requisite criterion for the insanity defense.

Mental disorder: a disorder described in the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders (DSM) or the International Classification of Diseases (ICD).

Insanity defense: a special defense in the criminal law excusing a defendant from criminal responsibility. A defendant whose insanity defense is successful is adjudicated either not guilty by reason of insanity (NGRI or NGI) or guilty but not criminally responsible (NCR), depending on the jurisdiction.

I. Introduction and History of the Insanity Defense

For centuries Anglo-American law has maintained the principle that a person can be found not criminally responsible for an offense if at the time of the offense he was insane.[1] Judge David Bazelon succinctly summarized the moral basis of the insanity defense: "Our collective conscience does not allow punishment where it cannot impose blame."[2] Insanity defense rules have always been controversial. Attempts upon the lives of kings, presidents, and government officials have often led to review and modification of legal standards. The most recent such national review occurred in the aftermath of the attempted assassination of President Ronald Reagan by John W. Hinckley in 1981.

The case history prior to John Hinckley can be divided into three categories that center on one significant legal event—the trial of M'Naughten. (The spelling of M'Naughten is quite controversial. There is evidence, based on his signature, that it should be M'Naughten. The name has been spelled at least nine other ways in the medical and legal literature. We have elected to use the spelling most often found in the legal literature.)[3] The legal cases prior to *M'Naughten*, the *M'Naughten* case itself, and the legal cases after *M'Naughten* define the three historic periods that shape our present-day understanding of the insanity defense.

*A. Pre-*M'Naughten *History*

Commentary on Hebrew Scriptures as early as the 6th century B.C.E. distinguished between offenses where fault could be imposed and those that occur without fault. Examples of the latter were those committed by children, who were seen as incapable of weighing the moral implications of personal behavior, even when willful, and by the intellectually disabled and insane persons who were likened to children.[4]

In the 12th century, issues of moral wrongfulness began to develop in pre-English law that raised the concept of "madness" as it relates to culpability. Lords of state began granting pardons to individuals who were convicted of a crime and obviously mad.[5] These pardons usually ordered the accused to commitment and treatment in a mental institution instead of a prison. Unfortunately, the mental institutions and prisons lacked both adequate facilities and treatment for the seriously mentally ill. Granting pardons, however, preserved the dignity of the legal process.

In the 13th century, the moral wrongfulness requirement of Christian law was merged into English common law, to require both the presence of a criminal act (*actus reus*) and the presence of a guilty mind (*mens rea*). Henry Bracton, who wrote the first study of English law, noted that because children and the insane were incapable of forming both intent and will to do harm, they therefore did not have the capacity to form a guilty intent.[6]

With reference to children, the common law settled into its present form between the 5th century and the time of Lord Coke in the 17th century: The *doli incapax* doctrine found in common law consisted of an irrebuttable presumption that children under age seven were incapable of committing a crime. Between the ages of 7 and 13 (inclusive), however, incapacity was presumed but was open to challenge. This rebuttable presumption could be overcome by the prosecution producing evidence that showed the child was intelligent enough to distinguish between right and wrong (or good and evil) and, therefore, aware of the wrongful nature of the act in question.[7] The "knowledge of right and wrong" language denotes a general capacity or status that young children are thought to lack.

Prior to the *M'Naughten* case, English jurists made several attempts to find the appropriate test for insanity. The "wild beast test" of Justice Tracy in the

1723 Arnold case held that a man must be ". . . *totally deprived* [emphasis added] of his understanding and memory, and doth not know what he is doing, no more than an infant, . . . a brute, or a wild beast . . ." before being found insane.[8] Other English tests included the *offspring of a delusion* test championed by Thomas Erskine in the Hadfield trial of 1800. The importance of this case was that insanity could be partial rather than total. Another important influence during this period was Isaac Ray's *Treatise on the Medical Jurisprudence of Insanity*, written in 1838.[9] Ray was concerned with tests that looked only at cognition and not volition. The 1840 case of Edward Oxford proposed a volitional or behavioral test that introduced the concept of the *irresistible impulse* defense. The test allowed for a person to be acquitted because, as a result of a mental disorder, he could not resist the impulse to commit the crime.[10] Sir James Fitzjames Stephen later championed this test. Queen Victoria, however, was not happy with Oxford's acquittal, because she was the target of his attempted regicide. The Queen believed that a mentally ill person who attempted a crime should still be held accountable for it.

> . . . Punishment deters not only sane men but also eccentric men, whose supposed involuntary acts are really produced by a diseased brain capable of being acted upon by external influence.
>
> A knowledge that they would be protected by an acquittal on the grounds of insanity will encourage these men to commit desperate acts, while on the other hand certainty that they will not escape punishment will terrify them into a peaceful attitude towards others [Ref. 6, p 193].

The wide variety of cognitive and behavioral tests, the uncertainty about the insanity defense, and the Queen's displeasure with the outcome of the Oxford case set the stage for the most widely publicized case in England: the *M'Naughte*n trial of 1843.

B. The M'Naughten *Rule*

Daniel M'Naughten was a Scottish wood turner who believed that the Tory Party of England was persecuting him. He worried that Sir Robert Peel, a leader in the Tory Party, was part of this torment. M'Naughten was thought to have been targeting Peel, but instead he killed Peel's secretary, Edward Drummond. The press followed the case closely because of the controversial nature of the defense: not guilty by reason of insanity. Despite all of the psychiatric witnesses' agreeing that M'Naughten was not of sound mind, and Justice Tyndall's agreeing that M'Naughten was legally insane, the public was outraged at the jury's verdict supporting the plea. Queen Victoria, who was also concerned about the verdict, summoned the 15 Law Lords in the House of Lords and asked them five questions concerning the insanity defense. The answers to two of the questions compose what is now known as the *M'Naughten* rules or *M'Naughten* test.[11]

> . . . every man is to be presumed to be sane,. . . to establish a defense on the ground of insanity, it must be proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong.[12]

This test became the law of the land in England and was imported by several American states. Although the wording was modified in some jurisdictions, the basic cognitive framework required "a defect in reason caused by a disease of the mind (mental illness), which impairs a person's ability to know the wrongfulness of one's conduct."

C. The Product Test or Durham Rule

The New Hampshire Supreme Court, influenced by Isaac Ray's view that the *M'Naughten* standard was too narrow, strongly criticized *M'Naughten* in the 1870 *State v. Pike* decision.[13] The following year, the *State v. Jones* decision announced the product test: "No man shall be held accountable, criminally, for an act which was the offspring and product of mental disease."[14] The test did not gain wide acceptance by the courts, although it did gain notoriety when Justice Bazelon in the District of Columbia (D.C.) adopted it in the Durham case.[15] This broad test for insanity was so widely abused in D.C. that Justice Bazelon attempted to modify its impact with a new definition of mental illness in the *McDonald v. United States*[16] decision. He also attempted to discourage overly conclusive testimony by psychiatrists in the *Washington v. United States* decision, which he felt was undermining the test.[17] In 1972, the D.C. federal court, in *Brawner v. United States*, abandoned the product test,[18] as did most jurisdictions, except for New Hampshire[19] and the Virgin Islands.[20]

D. The Irresistible Impulse Test

This test, first proposed in the 1840 Oxford case, deals with an individual's ability to control impulses or conform conduct to the requirements of the law.

The first American legal support for this test is found in the 1886 case of *Parsons v. State*[21]:

> . . . he may nevertheless not be legally responsible if the following conditions occur: (i) if by reason of the duress of such mental disease, he had so far lost the power to choose between the right and the wrong, and to avoid doing the act in question, as that his free agency was at the time destroyed, (ii) and if, at the same time, the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been a product of it solely.

The resulting irresistible impulse test focuses on whether the mental disease or defect has prevented the person from controlling his behavior at the time of the offense. The practical aspects of applying this defense have led to problems distinguishing between an irresistible impulse and an impulse not resisted. Thus, as of 1990 no state uses irresistible impulse as its sole insanity defense. A few states combine it with a cognitive *M'Naughten* arm as part of their insanity test.

E. The Model Penal Code, American Law Institute Test

By 1950 the *M'Naughten* insanity test was used by two-thirds of the states, with one-third of those states adding some volitional or irresistible impulse component. In 1955 the American Law Institute (ALI) formulated the Model Penal Code, which contained what would become a second model insanity test that has had wide influence in the United States. The ALI test, which is described in Section 4.01 of the Model Penal Code, states:

> A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he *lacks substantial capacity* either to *appreciate* the criminality [wrongfulness] of his conduct or to *conform his conduct* to the requirements of law [emphasis added].[22]

This is a combination of the *M'Naughten* test and irresistible impulse concept, with significant modifications in wording. The ALI test used the term "lacked substantial capacity" and deleted "know the nature or quality of the act." This means the impairment needs only to be substantial and not total. Changing know to appreciate also expands the cognitive prong, which had previously been very strictly interpreted by judges and attorneys. The writers of Model Penal Code gave state legislators the choice to either use criminality or wrongfulness of conduct.[23] The ALI test was adopted by half of the states and the federal courts prior to the trial of John Hinckley. By 1980, just before Hinckley's trial, the Model Penal Code, or ALI test, had become the most influential and widely used test for insanity in the United States.

F. The Trial of John W. Hinckley, Jr. and Its Aftermath

Just like the *M'Naughten* case 139 years earlier, the *Hinckley* trial was quite influential in shaping subsequent revisions of the insanity defense. The entire nation watched in horror as John Hinckley, Jr., shot President Reagan and his press secretary, Jim Brady, and two others. The trial was lengthy, with the psychiatric testimony alone consuming 1,700 pages of transcript.[13] The psychiatric opinions and diagnoses varied widely, from schizophrenia to dysthymia. Just as in the *M'Naughten* case, when Mr. Hinckley was found not guilty by reason of insanity, the public was outraged and could not accept the fact that the president's attacker was being "let off."

This led Congress and many states to enact reforms tightening an insanity defense that had become too liberal in the eyes of the public. Both the American Psychiatric Association (APA) and the American Medical Association (AMA) produced position statements on the insanity defense after *Hinckley*. The APA recommended that the terms "mental disease" or "mental retardation" include only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable primarily to the voluntary ingestion of alcohol or other psychoactive substances. The APA further "did not endorse" an irresistible impulse test for insanity.[24] The AMA went even further, arguing that the insanity defense be abolished in its entirety and replaced by statutes providing for acquittal only when a criminal defendant, as a result of mental disease, lacked the *mens rea* required as an element of the offense charged.[25] The APA retired this position statement in 2007[26] and produced a new position statement on the insanity defense, supporting the defense for persons suffering from serious mental disorders, but not endorsing any particular legal standard.[27] In 2005 the AMA rescinded its policy calling for the abolition of the insanity defense, noting it was "outdated."[28]

G. Post-Hinckley Insanity Reform: The Insanity Defense Reform Act

The acquittal by reason of insanity of John W. Hinckley, Jr. set into motion the widest call for insanity defense reform since the assassination of President Garfield by Charles Guiteau. In the Guiteau

trial, the legitimacy of "moral insanity" was the issue of the day.[29] In contrast, after *Hinckley*, everything was on the table. Four states—Idaho (1996), Kansas (1996), Montana (1979), and Utah (1983)—abolished the defense. Nevada's legislature abolished the insanity defense in 1995, but the Nevada Supreme Court held in 2001 that abolishing the insanity defense violated the due process clauses of both the Nevada and U.S. Constitutions.[30] Altogether, 36 states have imposed some form of insanity defense reform since Hinckley's acquittal. Dozens of bills were proposed in Congress, culminating in the Insanity Defense Reform Act of 1984, which changed the standard for federal courts and formed the basis for much of the post-*Hinckley* insanity defense reform in the states.[22]

The Insanity Defense Reform Act contained provisions in four areas that limited the scope of insanity acquittals[31]:

1. Under the new federal insanity defense test, a defendant is not responsible for criminal conduct if, "as a result of a severe mental disease or defect, [he] was unable to appreciate the nature and quality or the criminality or wrongfulness of his acts."[32] The act provides for a special verdict of "not guilty only by reason of insanity" in such cases.[33] Prior to the enactment of the new test, federal courts had used the Model Penal Code test as a matter of common law with some variations among the circuits.[34]

The language of the statute shows this to be a cognitive test with no volitional prong. (The legislative history indicates that, although Congress acknowledged the moral basis of a volitional test, it decided not to include a volitional component in the new federal test because of the difficulty of proving reliably whether a particular defendant was unable rather than unwilling to exercise self-control.)[35] In short, it combines elements of the *M'Naughten* test and the cognitive prong of the Model Penal Code test. Congress adopted the Model Penal Code's use of the term appreciate[36] to designate the cognitive capacity at issue. The new test incorporates both the *M'Naughten* test's reference to awareness of the "nature and quality" of an act, and the Model Penal Code's reference to awareness of the "wrongfulness" of an act, to describe the types of appreciation in question.

Note that the cognitive prong of the Model Penal Code test refers only to "appreciation of the wrongfulness or criminality of conduct," omitting the *M'Naughten* test's explicit reference to "appreciation of the nature and quality of conduct." Since the Model Penal Code drafters declared their intent to use a broad cognitive prong, free of the perceived limits of the *M'Naughten* test, and since appreciation of wrongfulness or criminality of conduct generally requires appreciation of the nature and quality of conduct, the cognitive prong of the Model Penal Code test should be interpreted to encompass the *M'Naughten* test. By including the Model Penal Code and *M'Naughten* formulations explicitly, the new federal test has the virtue of providing greater clarity on this issue.

Presumably to emphasize that nonpsychotic behavioral disorders or neuroses may not suffice to establish the defense, the test states that the defendant's mental illness must be "severe" to be exculpatory. The federal test also omits the Model Penal Code qualification that incapacity due to mental illness is exculpatory if it is "substantial."[37]

The American Bar Association (ABA) recommended a virtually identical test, providing that "[a] person is not responsible for criminal conduct if, at the time of such conduct, and as a result of mental disease or defect, that person was unable to appreciate the wrongfulness of such conduct."[38] These tests do not include volitional components. They are expansive cognitive tests that use the broad terms *appreciate* and *wrongfulness* introduced by the Model Penal Code. By using the term *appreciate* to encompass affective dimensions of major mental illness, the tests take into account all aspects of the defendant's mental and emotional functioning relating to an ability to recognize and understand the significance of personal actions. They use the term *wrongfulness* to indicate an incapacity to appreciate the immoral as well as unlawful character of particular criminal conduct. Along with the new federal test, these tests omit the Model Penal Code's qualification of the relevant incapacity as *substantial* (but without adding the federal test's qualification that the mental illness must be severe). As the ABA's report explains:

> This approach has been taken both to simplify the formulation and to reduce the risk that juries will interpret the test too loosely. By using the "substantial capacity" language, the drafters of the ALI standard were trying to avoid the rigidity implicit in the M'Naghten formulation. They correctly recognized that it is rarely possible to say that a mentally disordered person was totally unable to know what he was doing or to know that it was wrong; even a psychotic person typically retains some grasp of reality. However, it is not necessary to retain the phrase "substantial capacity" to

> take into account these clinical realities. Sufficient flexibility is provided by the term appreciate, as defined earlier [Ref. 43, pp 344–5].

2. The burden of proof shifted from the prosecution. Under prior law, after the defense presented a *prima facie* case for insanity, the prosecution then had to prove the defendant was sane beyond a reasonable doubt. After the Insanity Defense Reform Act, the defense has the burden of proving the defendant's insanity by clear and convincing evidence, *i.e.*, an affirmative defense.

3. Commitment of the acquittee to the custody of the U.S. Attorney General for treatment is specified, with a provisional term of confinement set at the maximum term of confinement authorized for the offense. The court has the option to revise the confinement if the defendant recovers from his/her illness.[39]

4. The federal courts also introduced a new rule of evidence barring specific testimony by expert witnesses directed to the mental state of a defendant at the time of the alleged criminal act—i.e., the "ultimate issue." This rule states, in part:

> No expert witness testifying with respect to the mental state or condition of a defendant . . . may state an opinion or inference as to whether the defendant did or did not have the mental state or condition constituting an element of the crime charged or of a defense thereto.[40]

In addition, many states modified their insanity defense statutes to make it more difficult to qualify for the defense, or to be discharged or released when found not guilty by reason of insanity.

H. Review of State Statutes and Federal and Military Law

Statutory law defines the test for criminal responsibility in the federal system and in most states. Case law defines the standards in some states: Massachusetts, Mississippi, Nebraska, New Hampshire, New Mexico, North Carolina, Rhode Island, Virginia, and West Virginia. Providing the opportunity to raise an insanity defense is not, however, constitutionally required, except under a holding of the Nevada Supreme Court.[41] Idaho, Kansas, Montana, and Utah have repealed their insanity defense. Kansas, Montana, and Utah allow mental disease or defect to negate an element of the offense. Colorado and North Dakota include *mens rea* as part of their insanity defense statute. The Idaho statute does not allow the use of mental condition as a defense for any charge of criminal conduct. In *Delling v. Idaho* the United States Supreme Court had an opportunity to review the Idaho statute and to consider whether the insanity defense was constitutionally required by the Due Process Clause of the Fourteenth Amendment. However, *certiorari* was denied.[42]

Legal standards can be categorized by the presence of a cognitive or a volitional prong. They can also be defined as meeting the criteria of the ALI test, *M'Naughten* standards, or product test. Some include variations of the *M'Naughten* or ALI standards. All require the presence of a mental disease or defect and a related impairment in cognition or conduct or both. The definitions of mental disease or defect vary considerably from state to state. Many states define specific exclusions to their statutory definition of mental illness. Some states exclude voluntary intoxication in their statutory definition of mental illness or defect. Legal standards and rules are always subject to revision. The current compilation reflects the standards as they applied in 2013 and can be found in Tables 1–6 in this guideline.

1. The M'Naughten Standard

The *M'Naughten* test focuses solely on the defendant's cognition *vis à vis* the criminal act. Modifications include the substitution of *appreciate*, *understand*, *recognize*, *distinguish*, or *differentiate* for *know*; omission of the *wrongfulness* language; or omission of the *nature* and *quality* language. See the Table for specific state language.

2. The ALI Standard

The ALI test uses both a cognitive and volitional prong. While not used as commonly as the *M'Naughten* standard, ALI is the second most popular standard used. Generally, the ALI test is open to broader interpretation than the more narrowly interpreted cognitive *M'Naughten* test.

3. The Irresistible Impulse Test

This test requires that an individual be unable to control his or her actions as a result of a mental disease. There are no states that currently use the irresistible impulse test as the sole definition for criminal responsibility. See the Table for specific state language.

4. The Federal Standard

The federal test of criminal responsibility, according to the Insanity Defense Reform Act of 1984, is as follows:

> It is an affirmative defense to a prosecution under any federal statute that, at the time of commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense.

This test does not have a volitional or irresistible impulse component. In the *United States v. Ewing*, the United States Court of Appeals for the Seventh Circuit held that "wrongfulness for purposes of the federal insanity defense statute is defined by reference to objective societal or public standards of moral wrongfulness, not the defendant's subjective personal standards of moral wrongfulness."[43]

5. The Military Standard

Military law consists of the Uniform Code of Military Justice and other statutory provisions to govern persons in the armed forces. Lack of mental responsibility is an affirmative defense that follows the federal Insanity Defense Reform Act standard. The defendant has the burden at trial to establish this affirmative defense by clear and convincing evidence.[44] In an unpublished opinion, *United States v. Richard R. Mott*, the United States Navy-Marine Corps Court of Criminal Appeals, citing *United States v. Ewing*, also held that "the phrase 'appreciate the wrongfulness' must employ an objective societal standard of moral wrongfulness."[45] (The precedential value of unpublished opinions is controversial, but Federal Rule of Appellate Procedure 32.1 permits them in federal appellate courts after 2007.)

II. Substance Abuse and the Insanity Defense

A. Voluntary Intoxication

U.S. jurisdictions uniformly subscribe to the long-standing rule that voluntary drug intoxication may not be used to exonerate a defendant completely. This does not mean that voluntary drug intoxication has no impact on a defendant's criminal responsibility.

For centuries, defendants whose substance-induced mental diseases or defects are settled—i.e., present when the individual is not intoxicated (e.g., alcohol-induced dementia)—have been permitted to raise the insanity defense.[46,47] Two cases address issues related to this principle. *State v. Hartfield*[48] held that the insanity defense may be pleaded when voluntarily consumed drugs or alcohol have caused a permanent mental condition that has destroyed a defendant's ability to distinguish right from wrong. In *Brunner v. State*[49] the court held that the defendant is entitled to a jury instruction that long-term drug use can induce insanity.

Most jurisdictions sharply distinguish between settled insanity and temporary insanity caused by voluntary intoxication and do not allow the latter to be used as a defense to criminal activity. In *People v. Skinner*[50] the California Supreme Court laid out four criteria for determining settled insanity: the mental illness must be fixed and stable, last for a reasonable period of time, extend past the ingestion or the duration of the effects of the drug, and meet the jurisdiction's legal definition of insanity. Kentucky courts[51] have held that it is proper to exclude testimony about insanity induced by a defendant's voluntary drug use and that juries should be instructed to this effect. *Bieber v. People*[52] rejected an insanity defense arising from mental illness caused by a defendant's active, voluntary substance use. A few jurisdictions, however, appear to differentiate between drug-induced psychoses and other forms of drug-induced mental incapacity. Although the case law is sometimes murky, these jurisdictions seem to follow the rule that, although voluntary drug intoxication is no defense to a criminal act, temporary insanity caused by voluntary drug intoxication may sometimes be a valid defense. Examples include a temporary insanity induced by the voluntary use of drugs that does not necessarily subside when the drug intoxication ends and a unique latent mental illness that remains dormant most of the time, but can be triggered by the voluntary use of drugs.[53]

Two courts have held that because the effects of phencyclidine persist beyond the time of intoxication, individuals who ingested the drug voluntarily, and remained psychotic after the period of intoxication ended, were entitled to raise the insanity defense.[54] California courts reached similar conclusions regarding individuals using LSD and mescaline[55] and held that, whether the period of insanity resulting from the voluntary ingestion of drugs lasted several months or merely a few hours, a defendant did not lose the defense of insanity, even though he might also have been high on drugs at the time of the offense. California statute later clarified that voluntary intoxication could be used to negate specific intent but was not, by itself, grounds for an insanity defense.[56]

Some jurisdictions allow the insanity defense in the context of voluntary intoxication only when the defendant has evidence of a well-established mental illness and has symptoms at the time of the offense that would independently meet the requirements for an insanity defense.[57] In *Commonwealth v. Berry*, the Massachusetts Supreme Judicial Court ruled that a defendant would still be entitled to an insanity defense if drug or alcohol consumption activated a latent or intensified an active mental disease or defect.[58] However, the defendant's knowledge at the time of the offense of the effect of the substance use on her latent or active mental disease or defect could negate the potential for an insanity defense.

It is important to understand the distinction between the insanity defense (including an insanity defense based on settled insanity) and defenses based on diminished capacity, specific intent, or *mens rea*.[59] However, diminished capacity, diminished responsibility, specific intent, or *mens rea* defenses do not have clearly accepted definitions from jurisdiction to jurisdiction. An analysis of these differences is beyond the scope of these practice guidelines, but can be found in *United States v. Pohlot*.[60]

Current Ohio law does not permit a diminished capacity defense, nor does it allow a defendant to introduce expert psychiatric testimony unrelated to the insanity defense to show that he/she lacked the capacity to form the specific mental state required for a particular crime.[61] However, in reversing a conviction on a charge of abduction, the Ohio Supreme Court ruled that the trial judge had to issue a jury instruction on insanity because of testimony that the defendant suffered from cocaine psychosis, along with bipolar disorder, which met the criteria for insanity.[62]

United States v. Knott[63] concerned the appeal of a conviction following the trial court's refusal to instruct the jury to consider voluntary alcohol intoxication, together with schizophrenia, when deciding whether the defendant qualified for an insanity acquittal under the federal insanity rule in 18 U.S.C.A. § 17(a). The circuit court observed that the legislative history of the Insanity Defense Reform Act of 1984 showed that Congress had intended to exclude an insanity defense based on voluntary intoxication alone. The appellate court also cited the longstanding Anglo-American principle that "[a] mental disease or defect must be beyond the control of the defendant if it is to vitiate his responsibility for the crime committed. . . . Insanity that is in any part due to a defendant's voluntary intoxication is not beyond his control."[64]

More recently, in *United States v. Fisher*[65] the defendant suffered from several anxiety disorders and drank alcohol at the time of the offense to alleviate withdrawal symptoms. He alleged that, at the time of the offense, he was insane due to withdrawal from his prescribed drug. Despite the defense's objections, the district court instructed the jury that the defendant could not claim insanity if his condition was the result of his failure to take a prescription drug. The Tenth Circuit Court of Appeals affirmed and held that, even if insanity could be raised on the basis of withdrawal and the district court erred in its limiting instruction, there was overwhelming evidence that defendant was not suffering from withdrawal so severe as to render him insane under 18 U.S.C.S. § 17(a).[66]

In *United States v. Frisbee*,[67] the court held that the language of 18 U.S.C.A. § 17, which states that, other than for an affirmative defense of insanity, mental disease or defect is not a defense, does not prohibit the defense from introducing evidence that negates the existence of specific intent and proves the defendant's innocence. In a subsequent case, in which the offense concerned distribution of drugs, the Eleventh Circuit Court of Appeals went further and held that psychiatric evidence of impaired volitional control or inability to reflect on the ultimate consequences of one's conduct was inadmissible to support an insanity defense or for any other purpose.[68] More recently, the U.S Supreme Court upheld a Montana statute that provides that voluntary intoxication "may not be taken into consideration in determining the existence of a mental state which is an element of [a criminal] offense." The Supreme Court justices found that, since voluntary intoxication was an aggravating factor in 19th century case law, it was not a fundamental right of a defendant to introduce such evidence, and states could decide how they wished to treat such evidence.[69]

B. Involuntary Intoxication

The practice of excusing criminal responsibility committed while in a state of involuntary intoxication extends back to the earliest days of common law.[70] In addressing the issue of involuntary intoxication, the courts have defined it in essentially the

same terms as insanity.[71] Like insanity, involuntary intoxication potentially excuses a defendant from culpability because intoxication affects the ability to distinguish between right and wrong.[72] Thus, the mental state of an involuntarily intoxicated defendant is measured by the same test of legal insanity as used for other mental disorders.[73]

There is no comprehensive definition for what constitutes involuntary intoxication.[74] In the past, it has been said that the only safe test of involuntary intoxication is the absence of an exercise of independent judgment and volition on the part of the accused in taking the intoxicant.[75] There are instances when intoxication is deemed involuntary despite the fact that the accused exercised appropriate judgment and had volition in taking the intoxicant.[76] In this vein, involuntary intoxication claims have also arisen from the use of prescribed psychotropic medications such as fluoxetine (Prozac).

For example, in *Boswell v. State*,[77] Mr. Boswell was charged with shooting a police officer. He defended on the basis that he was very inebriated as a result of taking the prescribed medications Xanax and Prozac. Mr. Boswell had cirrhosis of the liver, which led to a toxic level of Prozac. Experts testified that the antidepressants such as Prozac can cause side effects, such as paranoid reactions and hallucinations, and that Mr. Boswell was suffering from hallucinations when he "heard a shot." The Florida Supreme Court held that the trial court erred in failing to give the involuntary intoxication instruction, reiterating that "[a] party is entitled to have the jury instructed upon the law which is applicable to his theory of the case, if there is any competent evidence adduced that could support a verdict in his favor."

III. Non-traditional Mental Conditions Considered in Insanity Defense Cases

U.S. jurisdictions have adopted a variety of legal criteria for what constitutes insanity. Nevertheless, all jurisdictions that retain the insanity defense require that the defendant suffer from some form of mental disorder, often termed a disease or defect, to claim criminal nonresponsibility.

The majority of insanity defenses involve individuals who suffer from psychotic disorders or intellectual disability (formerly termed mental retardation). Insanity is pled in about one percent of all felony cases, and successful pleas are rarer still.[78–80] The publicity surrounding John Hinckley's 1982 insanity acquittal fueled widely shared myths about the defense, including the belief that defendants who used it were suffering from minor problems or faking serious problems so they could "get off."[81] State and federal legislators responded by revising statutory definitions of insanity in an effort to narrow the class of individuals who might receive insanity acquittals.[82]

Despite these legislative efforts, in recent years there has actually been an expansion of the psychiatric diagnostic categories that may justify an insanity acquittal.[83]

A. Posttraumatic Stress Disorder

Although medical practitioners have long recognized that wartime experiences and other emotionally traumatic events might induce long-lasting psychopathology, the 1980 publication of DSM-III marked the first time the term posttraumatic stress disorder (PTSD) was recognized in U.S. psychiatry's official diagnostic nomenclature. As described in the DSM-IV-TR, PTSD may follow exposure to an extreme traumatic stressor involving direct personal experience of an event that involves actual or threatened death or serious injury, or other threats to one's physical integrity; or witnessing an event that involves death, injury, or a threat to the physical integrity of another person; or learning about unexpected or violent death, serious harm, or threat of death or injury experienced by a family member or other close associate. The diagnostic definitions for PTSD have been modified in the Diagnostic and Statisticaly Manual of Mental Disorders, Fifth Edition (DSM-5).[84] All of the cases cited below rely on DSM-IV-TR or earlier definitions of PTSD. Levin, Kleinman, and Adler discuss these changes and postulate how they may affect the criminal law, including defendants pleading insanity.[85]

Its characteristic symptoms include re-experiencing the trauma, persistent avoidance of things associated with the trauma, emotional numbing, and persistently increased arousal.

Any criterion-satisfying trauma might be the cause of PTSD, but much of the case law concerning PTSD and criminal defendants has centered on Vietnam veterans who have gone to federal prisons.[86] Thus, appellate cases, law review articles, and mental health literature on PTSD and criminal defense issues frequently refer to Vietnam stress syndrome and its associated psychiatric problems.

Courts have ruled narrowly concerning which types of experts may testify about the syndrome's effects,[87] whether failure to pursue a PTSD defense represented inadequate assistance of counsel,[88] and the granting of new trials to defendants whose convictions preceded formal recognition of the disorder in Vietnam veterans.[89] Insanity defenses based on Vietnam-related PTSD may be viewed skeptically because establishing the diagnosis depends heavily on self-reports, and because co-existing alcohol or drug abuse may make it difficult to define the degree to which mental incapacity at the time of an alleged act was due to the disorder or to voluntarily consumed intoxicants.

The use of PTSD as a basis for an insanity defense appears to be rare. In a review of insanity pleas from 49 counties in 9 states, PTSD was the basis of an insanity plea in only 0.3 percent of cases.[90] However, case law clearly establishes PTSD as at least a potential basis for an insanity defense. For example, when the government sought to prevent a defendant from introducing lay and expert evidence on PTSD to support his insanity claim in *United States v. Rezaq*, a federal court ruled that, although a disorder had to be severe to support an insanity defense, the mere absence of the word severe from a PTSD diagnosis did not preclude the possibility that the disorder met the federal severity standard. "[T]he relevance of the evidence pertaining to defendant's PTSD diagnosis turns on whether defendant's case of PTSD is of sufficient severity to constitute an affirmative defense of insanity."[91]

The use of PTSD as a basis for an insanity defense has been controversial, in large part due to the subjective nature of PTSD symptoms. Establishing a causal connection between PTSD symptoms and the criminal act can be difficult, especially in *M'Naughten* jurisdictions. It may be appropriate to consider insanity only in the rare circumstance that a dissociative flashback led to an unpremeditated criminal act.[92] At the trial court level in 2009, returning Iraqi war veteran Jesse Bratcher was found NGRI in Oregon for murder as a result of PTSD. Prior to the crime, Mr. Bratcher had received a full service-connected claim for disability insurance for PTSD, connected to his witnessing of a vehicular accident in which a friend died. At trial, Mr. Bratcher presented evidence that he killed the unarmed victim during a flashback. Presenting convincing evidence of a dissociative flashback may be difficult without input from witnesses to the alleged offense. Because witnesses can provide an objective description of a defendant's demeanor and actions, the forensic evaluation in such cases may involve significant time devoted to locating and talking to those persons.[92]

In jurisdictions using a Model Penal Code definition of insanity, symptoms of PTSD other than a dissociative flashback may be relevant in establishing a causal connection between the symptoms and the actions involved in the offense. In jurisdictions using the ALI Model Penal Code, PTSD symptoms may be easier to link to the volitional prong (i.e., lacking sufficient ability to conform one's conduct to the requirements of the law). Once again, if the crime occurred during a dissociative flashback, an argument for impairment in the defendant's capacity to conform conduct can be made. Some experts have attempted to link the symptoms of increased arousal to the volitional prong. For example, assaultive behaviors have been linked to the PTSD symptoms of irritability or outbursts of anger. Whether PTSD-related irritability can rise to a level of impairing capacity to conform is controversial. This is, in part, due to the inherent difficulty in differentiating an irresistible impulse from an impulse that a criminal defendant chose not to resist.[93]

On the other hand, courts have affirmed guilty verdicts in cases in which Vietnam veterans presented evidence of PTSD for an insanity defense. (For example, in *State v. Felde*, in denying a rehearing, the judge stated, "a rational juror could have found that defendant [a Vietnam veteran with PTSD] failed to prove insanity by a preponderance of the evidence and that he had the specific intent to inflict great bodily harm or kill.")[94] Moreover, an attorney's failure to pursue a Vietnam veteran's viable PTSD-based insanity defense may constitute ineffective assistance of counsel.[95] However, in a case involving a prison escapee who claimed in his appeal for postconviction relief that "the stressful circumstances at the penitentiary caused his mind to snap and he began to hallucinate," the court ruled that a decision not to pursue a Vietnam-induced insanity defense was not ineffective assistance of counsel.[96]

B. Automatism

Automatism has been defined as "the existence in any person of behavior of which he is unaware and

over which he has no conscious control."[97] Black's Law Dictionary defines it as "behavior performed in a state of mental unconsciousness . . . apparently occurring without will, purpose, or reasoned intention."[98] A seminal British case concisely described automatism as "connoting the state of a person who, though capable of action, is not conscious of what he is doing."[99] Automatism manifests itself in a range of conduct, including somnambulism (sleepwalking), hypnotic states, fugues, metabolic disorders, and epilepsy and other convulsions or reflexes.[100] Canadian law distinguishes insane from noninsane automatism. Defendants who have committed crimes linked to major mental illness are found to be suffering from insane automatism and are found not criminally responsible. Defendants who have committed crimes due to transitory states not related to major mental illness, such as sleepwalking disorder, are found to be suffering from noninsane automatism and are acquitted.[93]

In the states that have addressed the issue, it is well established that automatism can be asserted as a defense to a crime.[101] Rather than questioning whether automatism is a defense at all, the debate in these states has focused on the manner in which evidence of automatism can be presented. These jurisdictions are split between recognizing insanity and automatism as separate defenses and classifying automatism as a species of the insanity defense.[102] Jurists sometimes favor the latter approach because the defendant is required to interpose a plea of insanity, thus giving reasonable notice to the state of the contention being made. It is also favored because treatment, when appropriate, can be required after a finding that the defendant committed the offense but is not criminally responsible. Recognizing insanity and automatism as separate defenses, however, is the majority rule.[103]

C. Dissociative Identity Disorder

Dissociative identity disorder (DID) is the DSM-5 term for what had previously been termed multiple personality disorder (MPD). Persons with DID suffer from the "Disruption of identity characterized by two or more distinct personality traits . . . The disruption in identity involves marked discontinuity in sense of self and sense of agency, accompanied by related alterations in affect, behavior, consciousness, memory, perception, cognition, and/or sensory-motor functioning . . ." (Ref. 84, p 292). Most case law, which antedates DSM-5, refers to the condition with the older term.

Despite its inclusion in the recent diagnostic manuals, DID's prevalence and, for some clinicians, its mere existence are matters of significant debate.[104] Most insanity defense case law has accepted the existence of MPD, focusing instead on this philosophical issue: is it right to punish a person with MPD for actions committed when the host or dominant personality was not in control and has no memory of the events leading to the criminal charge?

Courts have responded in several ways.[105] For example, some state courts have held that culpability hinges on the mental condition of the personality that was in control at the time of the alleged offense. The lead case, *State v. Grimsley*,[106] was concerned in part with a statute that provided for acquittal of a person who acts unconsciously and without volition. However, *Grimsley* has been cited frequently in subsequent cases dealing with defendants who raised MPD as an insanity defense.

State v. Grimsley was an appeal of a drunk driving conviction. The defendant contended that, on the day of the offense, a report of a lump on her breast had caused her to dissociate into the secondary personality of Jennifer. When she was Jennifer, Robin (the primary personality) was unaware of what was going on, had no control over Jennifer's actions, and had no memory of what Jennifer had done when Robin resumed control. The court found that, even if (as "the uncontroverted evidence" suggested) there was a complete break between the defendant's consciousness as Robin and her consciousness as Jennifer, and assuming Jennifer alone was in control of the defendant's body when the offense occurred, Jennifer was neither unconscious nor acting involuntarily.

> There was only one person driving the car and only one person accused of drunken driving. It is immaterial whether she was in one state of consciousness or another, so long as in the personality then controlling her behavior, she was conscious and her actions were a product of her own volition. . . .[S]he failed to establish her defense of insanity, because . . .[t]he evidence fails to establish . . . that Ms. Grimsley's mental disorder had so impaired her reason that she—as Robin or as Jennifer or as both—either did not know that her drunken driving was wrong, or did not have the ability to refrain from driving while drunk.[107]

Several other jurisdictions have followed *Grimsley's* approach. *Kirkland v. State*[108] is a Georgia case in which a woman was convicted of bank robbery. The psychiatrist testified that the latent personality who robbed the bank did so with rational, purposeful

criminal intent and with knowledge that it was wrong. In *Commonwealth v. Roman*[109] a Massachusetts court instructed the jury to consider only the defendant's mental state at the time of the offense, and declined to instruct the jury to determine whether the core personality possessed the capacity to conform the behavior of the subsidiary personality to the law. In *State v. Rodrigues*[110] the Hawaii Supreme Court held that each personality may or may not be criminally responsible and, therefore, each had to be examined under the state's test for insanity.

A federal appeals court took a different view of this problem in *United States v. Denny-Shaffer*.[111] Here, the defendant appealed her kidnapping conviction, arguing that she should have been found NGRI because "her dominant or host personality was neither aware of nor in control of the commission of the offense, and thus was unable to appreciate the nature and quality or wrongfulness of the conduct which the alter or alters carried out."[112] At trial, the district court judge had ruled an insanity defense was not applicable because no evidence had suggested the alter personality could not appreciate the wrongfulness of the alleged offense. The appeals court reversed the conviction. It held that MPD qualified under the federal insanity definition as a "severe mental disease or defect" and that Denny-Shaffer would qualify for an insanity acquittal if she could prove by clear and convincing evidence that, at the time of the alleged offense: (1) "she suffered from MPD"; (2) "her dominant or host personality was not in control . . . and was not aware that an alter personality or personalities were the cognizant parties" committing the offense; and (3) MPD made the host personality "unable to appreciate the nature and quality or wrongfulness of the conduct which the alter or alters controlled."[113]

A third approach was taken in *State v. Wheaton*[114] and affirmed in *State v. Greene*.[115] Wheaton and Greene both concerned the admissibility of evidence on MPD (or DID) under the *Frye* rule, which Washington State still follows. In *Wheaton*, all the parties stipulated to the defendant's mental condition at the time of the crime, agreeing that there had been a host personality and one alter personality: the alter personality was in executive control of the physical body; the host personality was not in executive control of the physical body and had no independent knowledge of the acts constituting the offense. The defense and court-appointed mental health experts would not give ultimate issue testimony about whether Wheaton met the criteria for an insanity acquittal. The trial court subsequently found the defendant guilty. In *Greene*, the Washington Supreme Court also refused to adopt a particular legal standard for assessing the criminal responsibility of a defendant with DID. Although, the court acknowledged, the question of who should be held responsible for a crime is ultimately a legal decision, it needed more information from the scientific community "in understanding how DID affects individuals suffering from it and how this may be related to a determination of legal culpability." Because the court found it impossible to connect reliably the symptoms of DID to a defendant's sanity or mental capacity, it affirmed the trial court's ruling excluding the evidence. Using the *Frye* test, the court deemed DID a generally accepted, diagnosable psychiatric condition. However, the court concluded that the evidence of DID was not admissible because it would not be helpful to the trier of fact under Washington's rules of evidence.[116]

More recent state court decisions have followed this line of reasoning and have excluded psychiatric testimony in criminal responsibility cases involving DID, finding that the scientific evidence failed to meet reliability standards.[117]

D. Impulse-Control Disorders

The courts' traditional skepticism regarding impulse-control disorders as defenses to criminal acts is well illustrated by the following comment, taken from a case in which the defendant sought to have his conviction for intoxication overturned because alcoholism was a disease:

> If chronic alcoholism or dipsomania were to be accepted as a defense to a charge of drunkenness, would it not also be logical to accept it as a defense to a charge of driving while drunk? If so, how are we to eliminate or slow down the greatest cause of death on the highways? And why not accept a plea of pyromania by an arsonist, of kleptomania by a thief, of nymphomania by a prostitute, or a similar plea of impulse and non-volitional action by the child molester? Many other examples might be listed. What criminal conduct can be regulated or controlled if impulse, a feeling of compulsion, or of non-volitional action arising out of these situations is to be allowed as a defense? This Pandora's box had best be left alone for now.[118]

Some states' statutes specifically preclude impulse-control disorders from being used to support an insanity defense.[119]

E. Intermittent Explosive Disorder

As a result of *United States v. Lewis*,[120] intermittent explosive disorder (IED) is not considered a severe mental disorder as defined by Article 50a, UCMJ, 10 U.S.C. § 850a, which applies the federal insanity standard for military prosecutions. Thus, evidence that a court-martialed defendant suffered from IED did not obligate the judge to order inquiry concerning the defendant's mental responsibility.

In other jurisdictions, however, IED may be the basis for an insanity defense. In *Robey v. State*[121] the appellate court affirmed the trial court's finding a mother guilty of involuntary manslaughter after she failed to seek necessary medical treatment for her child, whom she battered. At trial the mother asserted that IED had rendered her unable to understand what she was doing. She was found NGRI for the beatings themselves. The appellate court, however, found ample evidence that the mother experienced several lucid intervals after the beating incidents, which supported the trial court's conclusion that she was sane and criminally responsible for failing to seek medical treatment for the child.

People v. Smith[122] also concerned a case in which IED was accepted as the potential basis for a valid insanity defense, although in this case the jury rejected the defense. The appellate court found the verdict was "not against the weight of the evidence." The prosecution presented convincing expert testimony and documentary evidence that the defendant, a 13-year-old charged with killing a 4-year-old, did not have IED. Similarly, in *State v. Filiaggi*,[123] the trial court permitted expert testimony on IED-related insanity, but the jury ultimately found the defendant guilty of aggravated murder. *State v. Ellis*[124] held that a defendant was entitled to present expert testimony on IED to establish a diminished capacity defense, subject to admissibility under Evidence Rule 702 and subject to appropriate instructions to the jury.

At least two cases have dealt with the interaction between IED and the guilty but mentally ill (GBMI) verdict. In *People v. Wiley*,[125] the court held that the presence of IED did not require a GBMI verdict. In *People v. Grice*,[126] the appellate court rejected the defense's suggestion that a GBMI jury instruction could occur only if the state had presented testimony indicating the defendant was mentally ill but not insane. At trial Grice had asserted an insanity defense based on IED, which was sufficient to justify the trial judge's giving the GBMI instruction to the jury.

F. Pyromania

Courts have long recognized that pyromania is a mental disorder.[127] As an example, see *Hanover Fire Ins. Co. of N.Y. v. Argo*,[128] which refers to "the many weird motivations of a pyromaniac." The disorder has been variously described in case law as a psychoneurosis, or a psychopathic state in which the pyromaniac has an intense urge to set fires, or has little control over his urge to set fire. A pyromaniac's impulse control can be further reduced by factors such as intoxication.[129] Because pyromaniacs typically set fires for the psychological gratification derived from starting and observing the fires they set, their disorder has been used to negate the specific intent requirement in certain types of arson offenses.[130] Such defenses may be vitiated, however, by evidence of premeditation, such as plans to escape or profit from the fire.[131]

In a 1956 case, *Briscoe v. United States*,[132] a defendant with pyromania was permitted to withdraw his guilty plea and enter an insanity plea. This suggests that pyromania might be grounds for an insanity acquittal. No reported case describes a pyromania-based insanity acquittal, however.

G. Gambling Disorder

The DSM-5 lists the criteria for gambling disorder in its section on, "Non Substance-Related Disorders," in which the disorder's essential feature is defined as "persistent and recurrent problematic gambling leading to clinically significant impairment or distress. . . ." (Ref. 84 pp 585–6). Following its listing as a disorder, termed pathological gambling in the 1980 diagnostic manual (DSM–III), several courts have considered, and usually rejected, pathological gambling as an exculpatory condition for purposes of an insanity defense.

In cases that were decided before the Insanity Defense Reform Act removed the volitional prong from the federal insanity definition, two federal courts ruled that pathological gambling was irrelevant to an insanity defense because of the notion that persons with the disorder lacked the substantial capacity to conform their conduct to the requirements of the law and because it was not generally accepted by psychiatrists and psychologists.[133] Other federal decisions held that expert testimony on the disorder was irrel-

evant because the testimony could not establish a causal link between pathological gambling and the defendant's offenses,[134] and thus lacked probative value.[135] An Illinois decision, *People v. Lowitzki*,[136] held that pathological gambling was unavailable as a defense to a charge of theft.

One of the most frequently cited cases in this area is *United States v. Torniero*.[137] In September 1982, John Torniero was charged with interstate transportation of stolen jewelry. He wanted to argue at trial that he was legally insane under the volitional prong of the then-operative ALI insanity test. He asserted that his gambling compulsion had rendered him unable to resist stealing from his employer (a jewelry store) to support his habit. The government asked the trial court judge to abolish the insanity defense outright. Failing this, the government sought to prevent Mr. Torniero from presenting any evidence related to compulsive gambling. After holding several days of hearings at which several forensic psychiatrists testified about the relationship between compulsive gambling and the ability to conform conduct, the district (trial court) judge ruled that the relationship between compulsive gambling and the desire to steal was too tenuous to permit introduction of expert testimony. Mr. Torniero was tried and convicted. He then appealed, contending that the trial judge had erred by refusing to let the jury consider his compulsive gambling defense.

The circuit court held that, for expert testimony on pathological gambling to be relevant, respected authorities in the field must agree that the disorder is a mental disease or defect that could impair a defendant's ability to desist from the offense charged or to appreciate the wrongfulness of his conduct. The appellate court did not decide this issue, but looked only at whether the trial judge's decision to exclude expert testimony was reasonable. Even if compulsive gambling constituted a mental disease under the ALI test, said the court, there is still ample basis for the trial court's conclusion that Mr. Torniero's compulsive gambling disorder is not relevant to the insanity defense. The trial judge noted that the relevance standard requires that the alleged pathology have "a direct bearing on [the] commission of the acts with which [the defendant] is charged."[138] To sum up, "a compulsion to gamble—even if it constitutes a mental disease or defect—is not *ipso facto* relevant to the issue of whether the defendant was unable to restrain himself from nongambling offenses, such as transporting stolen property."[139] The circuit court concluded that, given the disagreement among the experts who testified, the trial judge had not abused discretion in finding that the connection between compulsive gambling and stealing was not satisfactorily established.

However, in a 1981 Connecticut case, *State v. Lafferty*,[140] a defendant used pathological gambling to obtain an insanity verdict after all the examining experts agreed that the disorder left him unable to conform his conduct to the requirements of the law. The Connecticut legislature subsequently amended its definition of mental disease or defect to exclude pathological gambling as a potential insanity defense.[141]

H. Paraphilic Disorders

The DSM-IV-TR defined paraphilia as intense, recurring sexual fantasies, sexual urges or behaviors that involve non-human objects, children or nonconsenting adults, suffering or humiliation (to self or to others). The DSM-5 differentiates paraphilia from paraphilic disorder. Per the DSM-5 paraphilia "denotes any intense and persistent sexual interest other than sexual interest in genital stimulation or preparatory fondling with phenotypically normal, physically mature, consenting human partners." Patients with paraphilia are not thought to be suffering from a mental disorder unless the paraphilia causes "distress or impairment to the individual or a paraphilia whose satisfaction has entailed personal harm, or risk of harm, to others" (Ref. 84, pp 685–6). Readers of case law and the scientific literature must remember that material written before DSM-5 (2013) makes no such distinction, and that the cases cited below use the term paraphilia to denote a mental disorder.

Despite their inclusion as mental disorders in DSM-5, there has been an ongoing debate among mental health professionals about whether paraphilic disorders should constitute a mental illness for purposes of civil commitment or other court-ordered confinement. As Supreme Court Justice Stephen Breyer points out in his dissenting opinion in *Kansas v. Hendricks*,[142] however, it is because of the paraphiliac's "specific, serious, and highly unusual inability to control his actions" that "[t]he law traditionally has considered this kind of abnormality akin to insanity for purposes of confinement."

One would assume that states with a *M'Naughten*-type insanity standard (knowledge of wrongfulness),

would make it difficult for defendants who suffer only from a paraphilia (and who do not have an accompanying psychotic disorder) to mount a successful insanity defense. Yet several decisions have recognized that a paraphilia-based insanity defense is at least conceivable. For example, a New York appellate court upheld a conviction after the defendant had unsuccessfully mounted an insanity defense, noting:

> Whatever diseases the defendant suffers from, none are of such proportion as to cause the defendant to lack substantial capacity to know or appreciate the nature and consequences of his conduct or that it was wrong. Although the defendant clearly suffers from pedophilia, it does not cause the requisite mental incapacity.[143]

This case implies that pedophilia might be the basis of an insanity defense in New York, although, for the defense to be successful, the disorder would have to render a defendant unable to recognize the wrongfulness of his acts. Similarly, *United States v. Benedict*[144] also implied that pedophilia, though not a psychotic disorder, might be the basis of an insanity defense.

I. Battered Woman Syndrome

Over the last 30 years, several state supreme courts have addressed the question of whether expert mental health testimony concerning the *battered woman syndrome* (BWS) can assist a jury in analyzing a battered woman's claim that she acted in self-defense. (Although decisions and statutes dealing with this issue usually refer to the plight and mental state of adult women who are abused by male partners, a growing body of case law has permitted children, nonheterosexual women, and adult men to raise past battering as a defense to a criminal charge.) The vast majority of jurisdictions have held that expert testimony concerning how domestic violence affects the perceptions and behavior of battering victims should be admissible at trial.[145] Such testimony can allay inaccurate stereotypes and myths regarding battered women and help jurors understand why battered women remain with their mates, despite their long-standing, reasonable fear of severe bodily harm. With increasing frequency, courts have held that BWS has "gained a substantial enough scientific acceptance to warrant admissibility."[146]

Testifying mental health professionals may be asked to tell jurors how battered women react to batterers; explain why battered women may believe that danger or great bodily harm is imminent; and rebut the argument that battered women can easily leave their dwellings to seek safety. Mental health testimony may help jurors assess issues concerning credibility, a defendant's belief that she was imminently threatened, and the subjective or objective reasonableness of that belief. Many jurisdictions, however, limit experts to providing information about the syndrome in general, and do not permit them to address ultimate issues, such as whether the particular defendant suffered from BWS, whether her perceptions of danger were objectively reasonable, or whether she acted with specific intent to kill.[147]

Although defendants with BWS may offer testimony about the syndrome as part of an insanity defense, the syndrome typically is not conceptualized this way. Testimony on BWS has been accepted in cases where the syndrome is asserted in support of a traditional claim of self-defense. Courts uniformly have held that the BWS defense is not a separate, new defense to criminal charges.[148] BWS evidence usually is adduced to justify behavior under a traditional self-defense doctrine, arguing that the syndrome represents a normal response to an awful situation.[149] In contrast, an insanity defense represents an excuse from criminal responsibility by someone whose severe mental disability renders that person blameless.[150]

Women who have BWS typically do not suffer from the sorts of severe mental disorders usually required to sustain an insanity defense. For example, in *State v. Moore*[151] the court held that the defendant's actions before, during, and after she shot her husband did not indicate she was suffering from a mental disease or defect that left her unable to distinguish right from wrong. A rational jury, therefore, could have easily concluded she was not insane.[152] Ohio, however, specifically permits the introduction of BWS as part of an insanity defense plea. Its law code states:

> If a defendant is charged with an offense involving the use of force against another and the defendant enters a plea to the charge of not guilty by reason of insanity, the person may introduce expert testimony of the 'battered woman syndrome' and expert testimony that the defendant suffered from that syndrome as evidence to establish the requisite impairment of the defendant's reason, at the time of the commission of the offense, that is necessary for a finding that the defendant is not guilty by reason of insanity. The introduction of any expert testimony under this division shall be in accordance with the Ohio Rules of Evidence.[153]

> Many courts have found that battered woman syndrome is not a mental disease, defect, or illness.[154] Rather, BWS is considered a form of posttraumatic stress disorder, which is "an anxiety-related disorder . . . occur[ring] in response to traumatic events outside the normal range of human experience."[155]

IV. Agency Relationships

The defendant's attorney, the prosecuting attorney, a judge, or an administrative agency can retain forensic psychiatrists to evaluate a defendant's state of mind for an insanity defense. Before beginning such an evaluation, the forensic psychiatrist must know to whom a duty is owed and the limits of confidentiality.

When retained by the defense, the forensic psychiatrist owes a duty to the defense attorney. The forensic psychiatrist must communicate data and opinions completely and honestly to the retaining attorney. In many jurisdictions, the opinions of defense experts are covered under the attorney-client privilege or work product rule.[156] This means that the defense psychiatrist cannot be forced to give testimony by the prosecution in cases in which they have not testified for the defense or have not written reports. However, in other jurisdictions, there are a significant number of cases where defense experts have been subpoenaed or called by prosecutors to be fact witnesses opposing the defendant's claims.[157]

Decisions have not been uniform; some decisions have permitted prosecution access to nontestifying defense psychiatric experts. A major case was *United States ex rel Edney v. Smith*,[158] in which the defendant was facing charges of kidnapping and murder of an eight-year-old daughter of a former girlfriend. The defense argued insanity and called an expert. The court permitted the government to call a defense witness hired for trial preparation but not called by the defense. At that time (1976), New York had a rule that stated:

> . . . where insanity is asserted as a defense and * * * the defendant offers evidence tending to show his insanity in support of this plea, a complete waiver is effected, and the prosecution is then permitted to call psychiatric experts to testify regarding his sanity even though they may have treated the defendant.[159]

Thus, the court ruled that the defendant waived any claim of attorney-client privilege by offering expert testimony on the insanity issue.

In the early 1990s, two law review articles reviewed the literature and made opposing recommendations; one suggesting the privilege should be quite strict in precluding such prosecutorial discovery. That author also felt that the mere assertion of an insanity defense should not constitute a waiver.[160]

An article by Imwinkelried[161] took a less strict view. His proposal was that the communications from the defendant to the psychiatrist should be protected, but that the psychiatric expert's report was not privileged, even if the expert was not testifying. Since the report was attorney-client *work product*, he argued that, if the prosecution had a compelling need for the information, it should be released.

There have been a number of other psychiatric and nonpsychiatric cases in which this issue has been reviewed. In *Lange v. Young* the Seventh Circuit Court of Appeals denied Lange's application for a writ of *habeas corpus*, in part, by not supporting his claim that the government violated his constitutional right to counsel by calling a psychiatrist who was originally retained by defense counsel.[162] The psychiatrist was initially consulted in the preparation of an insanity defense for a murder charge and concluded that the defendant did not qualify. He was not retained. At a second trial looking at the sanity question, the government called him as its witness. The trial court permitted him to testify, ruling that the attorney-client privilege did not bar the testimony. As a matter of state law, the Wisconsin Court of Appeals held that the attorney-client privilege does not extend to statements made by the client to a psychiatrist or to the opinion of the psychiatrist based upon those statements. Wisconsin law states in its confidentiality and privilege statute for psychiatrists that there is no psychiatrist-client privilege if the client uses his mental condition as a defense in civil or criminal matters. The court did not distinguish a forensic psychiatrist employed by defense counsel from a treating psychiatrist.

In sum, courts have split on this question. Some courts hold that when a defendant asserts an insanity defense the attorney-client privilege is waived or otherwise does not apply to a nontestifying defense-retained examining psychiatrist.

Thus, it is important to know the rules in the jurisdiction of the evaluation. Broad statements of confidentiality to defendants may not hold up. These cases are of interest in exploring the nuances of attorney-client privilege, work product doctrine, and the forensic roles of consulting and testifying experts. Being designated an expert by the court may change the privilege status of the expert even if he is not

called. It is the responsibility of the forensic evaluator to clarify with the retaining attorney the rules surrounding this area and to ensure the attorney has explained the rules to his client.

In some jurisdictions the defendant's attorney can impose an insanity defense plea over the objections of a competent defendant.[163] However, in most jurisdictions a competent defendant can prevent the defense attorney from filing an insanity defense plea.[164–166] Before a plea is withdrawn, the defense evaluator also may be asked to assess the defendant's capacity to weigh the risks and benefits of an insanity defense plea. If the defense evaluator determines the defendant is not competent the defense attorney should be so informed.[167]

The defense evaluator also may actively consult with and advise the defense attorney.[168] Some attorneys prefer to have consultants who are not evaluators, and some experts believe that consultants should not testify because of the risk of excess advocacy.[169]

Insanity defense pleas are exceedingly rare.[22,88] Even an experienced defense attorney may have tried only a few insanity defense cases. The experienced forensic psychiatrist can educate the defense attorney about the risks and consequences to the defendant of a successful defense in a case involving a minor crime where the potential jail time is minimal, but where the potential time of criminal commitment to a mental hospital may be substantial and the stigma greater. In such cases the defense evaluator may recommend alternative dispositions, such as a guilty plea with probation conditioned on receiving mental health treatment.

Evaluating a defendant in a case where the prosecution has given notice of intent to seek the death penalty raises additional issues for defense evaluators. Mental state and detailed behavioral data that evaluators obtain from the defendant that seemingly support a finding of insanity may, if the insanity defense fails, be used by the state to argue for the death penalty.[170] These issues should be discussed with the defense attorney prior to the initial evaluation of the defendant.[171]

The forensic psychiatrist has a duty to further the interests of justice, regardless of the identity of the retaining party. Prosecution or court-retained evaluators should be particularly careful to follow the ethics and legal guidelines that are meant to protect the defendant's rights.[172] AAPL ethics guidelines preclude evaluation of a defendant prior to access to or the availability of defense counsel, except to treat an emergent psychiatric condition.[173] Non-defense evaluators are generally not permitted to interview the defendant until a court order has been obtained. Defendants must be informed of the following: who has retained the evaluator; that they can refuse to participate in the evaluation; that they may choose not to answer any particular question; and that there may be legal consequences for noncooperation with a nondefense forensic psychiatrist.[174] The defendant should also understand that any noncooperation might be reported to the retaining attorney, court, or administrative agency.

A prosecution- or court-retained forensic psychiatrist should not initiate an insanity defense evaluation if the defense attorney is unaware of the evaluation order or has not had an opportunity to raise any appropriate legal concerns. It is important to reiterate the lack of confidentiality to the defendant and to assess the defendant's capacity to understand the nonconfidential nature of the evaluation; the purpose of the evaluation; and the fact that it may be used against the defendant's interests. The ABA's Criminal Justice Mental Health Standards recommends that the defendant's mental condition at the time of the offense should not be combined in any evaluation to determine competency to stand trial, unless the defendant requests it or unless good cause is shown.[175] However, this is not the practice in all jurisdictions. Some states combine competence to stand trial and criminal responsibility in the same evaluation. This may create ethics problems for the prosecution- or court-retained evaluator if he feels the defendant is incompetent to stand trial but is revealing information that may be incriminating. In such situations, the evaluator may suspend the evaluation and inform the retaining party of the defendant's incompetency. Jurisdictional practices vary, however, and a further discussion of this matter can be found in the AAPL Practice Guideline for the Forensic Psychiatric Evaluation of Competence to Stand Trial.[176]

V. Ethics

As physicians, forensic psychiatrists are bound by the ethics standards of the medical profession. However, psychiatric evaluations conducted in a legal context often involve different ethics issues.

In the absence of a traditional physician-patient relationship, traditional medical ethics do not provide clear guidance for forensic psychiatrists in their consultations to the legal system. However, AAPL[177] and ABA[178] have formulated guidelines specific to the practice of forensic psychiatry.[179]

A. Scope of Participation

As mental health professionals with special training and experience, forensic psychiatrists are permitted, indeed encouraged, to consult with the criminal justice system. Forensic psychiatrists are in a unique position to promote cooperation among the people legitimately concerned with the medical, psychological, social, and legal aspects of mental illness.[180]

Forensic psychiatrists who participate in the evaluation of defendants for the insanity defense are ethically obligated to conduct such evaluations competently. Forensic psychiatrists should have sufficient professional knowledge to understand the relevant legal matters and conduct an evaluation that addresses the specific legal issues involved in an insanity defense evaluation. In addition, forensic psychiatrists should limit their opinions to those within their area of expertise.[180,181]

B. Honesty and Objectivity

Forensic psychiatrists have an ethics-based obligation to adhere to the principle of honesty and to strive for objectivity in conducting insanity defense evaluations.[182] In evaluating the defendant's mental state at the time of an alleged offense, the forensic psychiatrist has an obligation to conduct a thorough assessment and to formulate opinions based on all available data, no matter who initiated the request for the evaluation. Evidence-based practice and familiarity with the literature are important standards in forensic psychiatry, as in clinical medicine. Because reports and testimony involve reasoning, crafting a narrative, and applying forensic judgments to complex social issues, it is important that forensic psychiatrists be aware of any biases that may distort their objectivity and take appropriate steps to counter them.[178]

C. Confidentiality

Forensic psychiatrists who perform insanity evaluations must be ever mindful that they are ethically obligated to safeguard the confidentiality of the information, within the constraints of the law.[183]

Insanity defense evaluations usually require a written report or testimony that exposes defendants' behaviors and statements to public scrutiny. The forensic psychiatrist should clearly explain that his/her role is that of a forensic evaluator and not of the defendant's treating physician. Forensic psychiatrists are ethically obligated to give the defendant an appropriate explanation of the nature and purpose of the evaluation and its limits of confidentiality. This explanation should identify who requested the evaluation and what will be done with the information obtained during the interview. Assessing the defendant's understanding of the limits of confidentiality is an important part of the evaluation and may appropriately result in contacting the defendant's attorney to protect the defendant's rights. In a report, the evaluator's responsibility extends to including only information that is relevant to the legal question and is not merely gratuitous or inflammatory. If, during the course of the evaluation, the defendant appears to believe that there is a therapeutic relationship with the evaluator, then the psychiatrist should take appropriate steps to correct the misapprehension.

D. Consent and Assent

Forensic psychiatrists ordinarily are ethically obligated to obtain informed consent, when possible, from an evaluee before performing a forensic evaluation. Where the evaluee's agreement to be evaluated is not required, as in many court-ordered evaluations, the evaluee should nonetheless be informed of the nature of the evaluation. In this and all other circumstances, informed consent of the defendant may be sought, even when assent alone is all that is required.

If a defendant in a court-ordered insanity defense evaluation refuses to participate in the evaluation, the forensic psychiatrist should explain that the court has nonetheless authorized the evaluation. The forensic psychiatrist may also inform the defendant that the defendant's refusal to participate in the evaluation will be included in the psychiatrist's report or testimony, that a report may be produced even without the defendant's participation, and that the lack of participation may have legal consequences in relation to presentation of the insanity defense.[178,180] The referring attorney should be notified of any lack of cooperation.

E. Conducting the Evaluation

Forensic psychiatrists generally have wide discretion in how they conduct insanity defense evaluations, depending on their knowledge and skills and the particular circumstances of each case.

Forensic psychiatric ethics suggest that psychiatrists not form an insanity defense opinion without first attempting to interview, or otherwise to evaluate, the defendant in person.[178,184] In cases where no personal examination is possible, even after appropriate efforts, forensic psychiatrists must nonetheless list their sources of information and state that their opinions, reports, and testimony are limited by the absence of an interview.[185]

Because of the vulnerability of evaluees who are not represented by counsel, absence of informed consent, and legal considerations of due process, forensic psychiatrists should avoid performing insanity defense evaluations before an attorney has been appointed or retained to represent the defendant.[180] However, if a defendant requires emergency medical or psychiatric evaluation or treatment, it is ethically permissible for a psychiatrist to evaluate the defendant's need for treatment, to refer the defendant, or to provide any needed treatment to a defendant prior to the availability of an attorney.[180,186]

F. Fees

A psychiatrist may charge a higher fee for a forensic mental evaluation than for clinical work. It is ethical, and at times desirable, for the forensic psychiatrist to request a retainer, or to be paid in advance of an evaluation. However, contingency fees (fees paid only in the event of a favorable verdict) are unethical because of the potential influence on objectivity.[185,187] Some jurisdictions or courts have a fixed amount of funding available for psychiatric evaluations. However, fixed fees are often insufficient to cover the costs of tests such as magnetic resonance imaging (MRI) or psychological testing, which may be necessary for a competent evaluation. Consequently, if fixed fees are low, the evaluator may be unable to perform an adequate evaluation. Clarifying these issues before the evaluation may affect the decision to undertake the assessment.

G. Conflicts

Forensic psychiatrists are ethically obligated to attempt to resolve conflicts of interest that may affect their objectivity. For example, forensic psychiatrists should generally avoid performing insanity defense evaluations on persons with whom they have a current or former physician-patient relationship.[185] However, forensic psychiatrists employed in the public sector, such as a state forensic facility, may be unable to avoid providing both forensic services and clinical care.[188] Forensic psychiatrists should nevertheless be wary of having multiple roles with conflicting obligations in the same case, since these may affect their objectivity or cause a potential conflict in agency obligations. If such conflicts are present, they should be disclosed verbally to the retaining agency. Disclosing the conflict in writing in the report may be considered if the clinical relationship is current, or if the forensic opinion relies significantly upon information obtained solely from the clinical relationship.

Finally, forensic psychiatrists should be aware that ethics standards and practice guidelines complement the law of the jurisdiction where the insanity defense evaluation takes place. Because laws on the insanity defense and expert testimony vary among jurisdictions, forensic psychiatrists who perform out-of-state evaluations should be aware of the locality's restrictions on such practices and take these into account in their practice. Forensic experts are ethically obligated to learn and apply the legal standards of the jurisdiction in which they are performing the evaluation.

VI. The Forensic Interview

Before beginning the interview, the forensic evaluator must have the permission of the defendant's attorney or be acting under court order. The evaluator must inform the defendant of the evaluator's role, the nonconfidential nature of the interview, and the difference between a forensic and a clinical examination.

Here is an example of a nonconfidentiality warning for a prosecution- or court-retained examination:

> I am a physician and psychiatrist who has been asked by [the court or the prosecuting attorney] to answer three questions:
>
> 1. What was your mental state at the time of the crimes you have been charged with committing?
>
> 2. Did you have a mental disorder?
>
> 3. At the time of the crime you are charged with committing, were you so mentally ill that the court should find you not criminally responsible?
>
> Although I am a psychiatrist, I will not be treating you. My purpose is to provide an honest evaluation, which you or your attorney may or may not find helpful. You should know that anything you tell me is not confidential, as I have

to prepare a report that the judge, the prosecutor, and your attorney will read. It is important for you to be honest with me. You don't have to answer every question, but if you choose not to answer one, your refusal will be noted in my report. Do you have any questions? Do you agree to continue with the interview?

Here is a confidentiality warning for a defense-retained examination in a jurisdiction where the defense evaluator works under the attorney-client privilege:

I am a physician and psychiatrist who has been asked by your defense attorney to answer three questions:

1. What was your mental state at the time of the crimes you have been charged with committing?

2. Did you have a mental disorder?

3. At the time of the crime you are charged with committing, were you so mentally ill that the court should find you not criminally responsible?

Although I am a psychiatrist, I will not be treating you. My purpose is to provide an honest evaluation, which you or your attorney may or may not find helpful. If your attorney believes my opinion is helpful, what you tell me may be revealed in a report or in testimony in court. If your attorney believes my opinion is not helpful to your case, only you, your attorney, and I will know what we discussed. It is important for you to be honest with me. You don't have to answer every question, but if you choose not to answer one, your refusal will be noted in my report. Do you have any questions? Do you agree to continue with the interview?

Some evaluators choose to review all available collateral data and prior medical records before interviewing the defendant. These may include police reports, witness statements, police laboratory data, and a copy of the defendant's prior criminal record. Others begin the evaluation with the clinical interview.

The insanity defense evaluator may also be asked to perform a simultaneous assessment of the defendant's competency to stand trial. If so, the evaluator should first complete the full competency evaluation. If the evaluator assesses the defendant as not capable of understanding the insanity plea, the interview may have to be suspended (especially if both competency and responsibility evaluations are court ordered to be conducted simultaneously), and the requesting party informed. However, the evaluation may continue if the psychiatrist is working for the defense and under the attorney-client privilege. This situation often arises if the psychiatrist evaluates a defendant within hours or days of a crime. In other situations, a prosecution-retained psychiatrist may have early access to a defendant to evaluate criminal responsibility, but may not communicate with the prosecutor until the defendant is deemed competent and files an intent to employ an insanity defense.

The forensic psychiatrist performing an insanity defense evaluation must answer three basic questions:

1. Did the defendant suffer from a mental disorder at the time of the alleged crime? (retrospective mental state evaluation)

2. Was there a relationship between the mental disorder and the criminal behavior?

3. If so, were the criteria met for the jurisdiction's legal test for being found not criminally responsible?

The elements assessed to evaluate and diagnose the presence or absence of a mental disorder at the time of the alleged crime follow the general principles elucidated in the APA's *Practice Guidelines for Psychiatric Evaluation of Adults*, Section III,[189] with some notable additions. The defendant's history of contacts with the legal system should be explored. If the defendant served in the military, was he or she the subject of an Article 15 hearing or court martial? What type of discharge did the defendant receive? Has the defendant been arrested? How many times? For what types of crimes? How much time has the defendant spent in jail or prison? If previously incarcerated, was there evidence of malingering symptoms? How much good time did the defendant lose? Did the defendant spend time in lockup (punitive segregation)? How many administrative infractions did the defendant receive in jail or prison? What were the infractions for (violent versus nonviolent behavior)? Was the defendant ever charged with a new crime while incarcerated?

While inquiring about a history of substance abuse is part of any standard psychiatric evaluation, obtaining a history of alcohol and prescribed or illicit drug use that may have affected the defendant's mental state at the time of the alleged offense is critical to an insanity defense evaluation. Many jurisdictions exclude from consideration an insanity defense plea for mental disorders caused by voluntary intoxication (see Section II, "Substance Abuse and the Insanity Defense," especially A, "Voluntary Intoxication"). In contrast, mental disorders caused by the side effects of prescribed medications may help explain the acute onset and rapid resolution of bizarre behavior and thinking

related to the defendant's alleged actions. The evaluator might ask the defendant which substances were used, how much was used, and the time course of use in relation to the crime. Defendants may have had a blood or urine sample taken at the time of arrest. If the arrest occurred soon after the crime, a toxicology screen performed on the sample may be useful. Evaluators should be familiar with the strengths or limitations of the particular toxicological method used, including the type of sample taken, the time of sampling in relationship to the time of the offense, which drugs the particular toxicological method screens for, and whether the toxicological method was designed as a screen or as a definitive test. (Following a positive screen, gas chromatography/mass spectrometry (GC/MS) is the current gold standard method for confirmatory testing.)

Unlike a standard clinical evaluation, which focuses on the patient's chief complaint and present illness, the focus of the insanity defense evaluation is on the defendant's thinking and behavior at the time of the alleged crime. The evaluator must obtain the defendant's version of the events before, during, and after the alleged crime, including thinking, motivation, self-description of behaviors, and abnormal mental phenomena. The evaluator must then compare the defendant's report with data supplied by victims, witnesses, and arresting and investigating law enforcement officers. If there are discrepancies between the collateral data and the defendant's version of events, the evaluator may ask the defendant for an explanation. Treatment records and interviews with family members, friends, employers, mental health professionals, and anyone else who can report on the defendant's behaviors and thinking around the time of the crime, may be particularly helpful. Records of the defendant's behavior in custody after arrest, from an emergency room (where the defendant may have been taken upon arrest), jail administrative files, psychiatric or medical records, or the oral reports of custody officers should also be reviewed.

Defendants entering an insanity plea may be more likely to malinger mental illness symptoms than patients seeking treatment.[180,190] On the other hand, defendants pleading insanity who suffer from paranoia or other mental disorders may, like others with such symptoms, hide their symptoms.[191] Both possibilities should be taken into consideration during the interview.

As in all psychiatric practice, forensic evaluators should consider—and counter—their own possible biases for and against defendants, victims, and collateral informants. Such biases may color the evaluator's judgment and affect the validity of the data collected.

If the forensic psychiatrist audio- or videotapes the interview, the evaluator should be generally familiar with AAPL's guidelines, "Videotaping of Forensic Psychiatric Evaluations."[178]

VII. Collateral Data

A thorough review of collateral information, including that related to the fact situation, helps the forensic psychiatrist formulate and support a well-reasoned, forensic opinion. Before considering the collateral information, the forensic psychiatrist should become familiar with the relevant insanity test, as this will help guide the collection, review, interpretation, and application of the information.

The collateral data can help the evaluator arrive at a more objective understanding of the defendant's mental state at the time of the offense. Additionally, the forensic psychiatrist can use the collateral information to check the defendant's self-report of events, which may help in the assessment of his/her overall truthfulness and with the detection of malingering.[179,192]

A. Obtaining Collateral Information

The referring attorney or court typically gathers collateral information and provides it to the forensic psychiatrist. When retained by either the prosecuting or defense attorney, the forensic psychiatrist may include a statement in the retainer agreement that the attorney agrees to provide access to all of the relevant information available and that the attorney will make every effort to obtain any additional information requested by the psychiatrist. Sometimes this will require the attorney to seek a court order to compel opposing counsel to produce information deemed relevant by the forensic evaluator. The forensic psychiatrist should not contact opposing counsel, or other sources of information, before consulting with the retaining attorney. The forensic psychiatrist may interview collateral witnesses after consultation

with and approval by the retaining counsel. When retained directly by the court, the forensic psychiatrist may speak to both the prosecution and defense attorneys.

Ideally, the forensic psychiatrist should review first hand any relevant information that is summarized or referred to, but not included in, any available records. Whenever possible, the forensic psychiatrist should avoid relying on summaries of documents or audio- and videotapes. In addition to obtaining original sources, the forensic psychiatrist may identify missing information that could help formulate the forensic opinion. For example, the psychiatrist may find school records important when the question of an intellectual disability has been raised, or employment records useful when assessing a defendant's claim that psychiatric symptoms affected performance or actions at work.

Information requested, but not obtained, by the forensic psychiatrist may be noted in the forensic report, along with the reason why access was denied. It is appropriate for the forensic psychiatrist to include in the report a statement reserving the right to change the opinion should any conflicting information subsequently become available.

B. Managing Collateral Information

All material reviewed by the forensic psychiatrist is considered confidential and under the control of the court or the attorney providing it; therefore, it should not be disclosed or discussed without the court's or the attorney's consent.[193] The forensic psychiatrist should be aware that notations made on this material, or notes written or typed separately, may be subject to direct and cross-examination. Moreover, the opposing counsel may take portions of these notes and use them at trial to imply bias or lack of objective thinking on the part of the psychiatrist. When making such notations while reviewing records, the psychiatrist should remain aware of how they might be interpreted by an outside reader.

Material generated by the forensic psychiatrist during the course of the evaluation (e.g., interview notes, videotapes) is initially considered the work product of the referring attorney; as such, it should not be disclosed or discussed without the attorney's or the court's consent. If requested, it is appropriate for the forensic psychiatrist to furnish copies of this material to the referring attorney or court. If the evaluator testifies, opposing counsel may request the interview notes. The forensic psychiatrist should retain copies of all collateral materials reviewed throughout the course of the evaluation, trial, and subsequent appeals.

C. Common Types of Collateral Information

1. Written Records

a. Police reports

The evaluator should review the police report of the instant offense, paying particular attention to documentation of the underlying facts, the crime scene, and the defendant's mental state at the time of the crime, as well as any defendant statements or confessions. When statements to police have been recorded, the evaluator may seek to review the audio- or videotaped record in addition to reviewing a written summary. Descriptions of the defendant's interactions with officers or others at the scene or afterward (e.g., in the law enforcement vehicle, at the station) may also be important in developing a comprehensive understanding of his or her mental state and psychological functioning around the time of the crime. Arrest and conviction history and autopsy reports (in cases involving a death) also can be useful, and, if not provided, they should be requested. Evaluators may also ask the retaining attorney for permission to contact law enforcement investigators directly.

b. Psychiatric, substance abuse, and medical records

Psychiatric, substance abuse, and medical records may prove particularly helpful to the evaluator in understanding the defendant's psychiatric symptoms and diagnosis, past response to treatment, and knowledge and appreciation of the risks of treatment noncompliance. A review of family history may be useful as well. Appropriate consent must be obtained for all of these records. Such records are particularly important if a defendant was examined in a hospital immediately after the index offense.

c. School records

School records shed light on baseline cognitive functioning and date when any psychiatric symptoms first developed; they can also help in the evaluation of any defendant reports of psychiatric symptoms impairing school functioning. Special education records, such as individual education plans, counseling records, and psychological and academic

achievement testing reports may have to be requested specifically.

d. Military records

Military records may reveal evidence of oppositional or antisocial behavior or, conversely, stable behavior and exemplary performance. These may be reflected in reports of Article 15, Captain's Mast or court martial proceedings, or in honors, medals, successfully completed military occupational specialty assignments, and promotions. Deterioration from previous good performance and the type of discharge may also be significant.

e. Work records

Personnel files may corroborate or contradict the defendant's account of job requirements, work performance, attendance pattern, and psychiatric disability. Disciplinary actions and improvement plans should be noted as well.

f. Other expert evaluations and testimony

Evaluations performed by other experts, both in psychiatry and other disciplines, can help determine the consistency of the defendant's reports and scores on psychometric testing. Expert evaluations and testimony relating to previous crimes may also be considered.

g. Custodial records

Jail and prison records document mental and physical health treatment during incarceration, total length of incarceration, and compliance with custodial requirements (e.g., any disciplinary actions, time spent in administrative segregation, loss of good time). At times, recordings of phone calls from the correctional facility may be reviewed as data. Prison work and school records may also be reviewed.

h. Personal, communication, and social media records

The forensic psychiatrist may request access to various sources of information about the defendant to get a better understanding of social, occupational, recreational, and financial aspects of life functioning. These records can also be used to corroborate statements made in the interview or from other sources. There is an ever-expanding web of social media technologies that can provide information about a person's interests, activities, relationships, communication abilities, cognitive functioning, and reputation. For example, text message records or Facebook postings may illuminate relevant emotional states or behaviors, especially if written around the time of the index offense. Personal records can be important; for example, sophisticated financial transactions in banking records would refute defendants' claims that their psychosis rendered them unable to manage their assets. Diaries or journals may be another vein of helpful data.

i. Psychometric testing, hypnosis, brain imaging, and other special procedures

The use of psychometric testing (e.g., psychological or neuropsychiatric testing) may be useful as an adjunctive source of information in insanity evaluations. Testing is often conducted to help supplement the psychiatrist's clinical impressions. This can undercut criticisms that the expert merely relied on the defendant's report of symptoms and his version of the history. Testing can also provide information about personality traits and aspects of the person's cognitive style that are relatively stable over time (e.g., intelligence quotient (IQ) tests). Response style on testing also can prove informative, as respondents' answers may suggest straightforwardness, defensiveness, exaggeration, disorganization, inattention, poor effort, or malingering. Nonetheless, psychometric testing cannot speak to the specific state of mind at the time of the offense or lead to a definitive diagnosis. However, it may be suggestive of certain disorders or conditions and be clinically useful in this regard. Likewise, neuropsychiatric testing may help identify specific deficiencies that result from dementia or traumatic brain injury.

Hundreds of psychological tests covering a broad range of topics are available to the practitioner. Psychiatrists routinely perform tests of psychometric assessment. However, they should have adequate training and experience before using these tools. Depending on the case facts and complexity, psychiatrists may refer part or all of the testing to an experienced psychologist or other psychometrician, who will interpret the results and may also testify at trial. Psychiatrists should not testify regarding details of specific testing if it is beyond their expertise. On the other hand, the medical background of psychiatrists gives them the advantage of being able to determine whether medical conditions are influencing the defendant's response to and outcome of testing.

The U.S. Supreme Court has determined hypnosis of a defendant to be an acceptable procedure without *per se* precluding the defendant from testifying.[194] Although witnesses may be precluded from testifying if hypnotized, the defendant's right to explore such possible defenses is permitted. This situation arises when there is a credible report of amnesia for the events surrounding the offense. Videotaping of hypnotic interviews is strongly recommended. A New Jersey landmark case offers guidance for necessary and appropriate procedures for hypnosis in the forensic setting.[195]

Brain imaging remains a rapidly expanding area of scientific research. Results from MRI, functional MRI (fMRI), positron emission tomography (PET), single-photon emission computed tomography (SPECT), and diffusion tensor imaging (DTI) studies may be requested by attorneys in an attempt to show concrete evidence of brain abnormalities. These presentations may be persuasive to a jury, regardless of their scientific merit or relevance to mental state at the time of the crime. Currently, imaging procedures may help confirm or establish the diagnosis of certain brain disorders, but they do not provide any evidence that a defendant met either the cognitive or volitional prong of the insanity defense.[196] Further, the presence of a brain lesion documented through brain imaging does not speak directly to a defendant's culpability.[187] Such a defect may or may not be relevant to criminal responsibility. Careful analysis of all case information must still be undertaken, as in any insanity evaluation, to arrive at a rational, comprehensive opinion.

2. Photographs, Audiotapes, and Videotapes

The forensic psychiatrist may review photographs, audiotapes, and videotapes collected during the investigation of the instant offense and subsequent evaluations. These may include photographs of the crime scene and the defendant's residence, as well as tapes of confessions and witness interviews. This material may be forwarded by the court, the defense, or the prosecution, or it may have been collected by an attorney's own investigator. Tapes of other forensic evaluations may be reviewed as well.

3. Collateral Interviews

Performing interviews of collateral sources, such as family members, friends, co-workers, law enforcement sources, and eyewitnesses may help form the forensic opinion.[197] The method of contacting collateral sources to be interviewed is arranged in collaboration with either the court or retaining attorney. Interviewees are given a nonconfidentiality warning similar to the defendant's. They are further notified that they may be called upon to testify during trial. In addition to a verbal warning, the forensic psychiatrist may also provide a written nonconfidentiality statement and ask the interviewee to sign it. The interview may be recorded with notes or by audiotape or videotape. Records of the interview belong to the court or are the work product of the retaining attorney. They are not discussed or disclosed without the court's or attorney's consent.

4. Physical Evidence

Actual physical evidence collected by law enforcement is not routinely reviewed by forensic psychiatrists. On occasion, the psychiatrist may ask or be asked to view physical evidence. In particularly complex or unique cases, this personal observation may help in the assessment of a defendant's mental state at the time of the offense.

5. Visits to the Crime Scene or Other Relevant Locations

Although it is not routine practice, the forensic psychiatrist may gain insight into the defendant's criminal responsibility by visiting relevant locations, such as the crime scene or defendant's home. The psychiatrist may consider data such as distances traveled by the defendant, surrounding area characteristics (e.g., type of neighborhood), method of access to a structure, likelihood that the defendant was observed during his acts, impact of the time of day on the commission of the alleged acts, other activities carried out by defendants in addition to the extant crimes, context of eyewitness statements, and other aspects of the physical setting.

VIII. The Forensic Report

Unlike clinical practice, where the psychiatrist's report serves to diagnose and treat a patient, the forensic psychiatrist's insanity defense report provides the basis of the evaluator's opinion, which ultimately may help in the disposition of the case.[185] The basis of the opinion is the three questions posed in an insanity defense (see Section VI, "The Forensic Interview").

Opinions of a psychiatrist working for the defense should first be communicated orally to the defense attorney. This conversation may not be discoverable

by the prosecution or the court. The decision as to whether the psychiatrist will write the report is the defense attorney's, while the report's content belongs solely to the evaluating psychiatrist. (Some jurisdictions, such as Virginia, require full written reports from defense experts in all cases.)[198]

Ordinarily, the written report contains details of the case facts and other data, as well as information that supports the evaluator's opinions. In some jurisdictions, however, there may be good reasons not to write a detailed report. In those cases, the expert should be fully prepared to disclose during testimony any details requested and explain the rationale behind the opinion.

The rest of this section describes one way to write a detailed report.

Usually, the primary audience for the written forensic insanity defense report consists of the attorneys and the presiding judge. Most insanity defense cases are resolved before trial, based on experts' reports.[88] A judge typically adjudicates the few cases that do go to trial.[22] When insanity cases are tried before a jury, the jury may have to rely on a redacted report or may not have access to the report.

Any limitations of the report should be clearly spelled out. For example, the defendant may have been uncooperative, the evaluator's access to the defendant or collateral informants may have been limited, or relevant records may have been requested but not received.

The defendant's version of events may differ substantially from those of witnesses or collateral informants. Data provided by witnesses or collateral informants can vary widely, depending on the source. Defendants may even deny participating in the crime itself. The forensic evaluator must remember that the fact finder in a criminal case is the judge or jury, not the evaluator. In cases with more than one factual scenario, the evaluator may need to offer alternative opinions.

Reports should convey data and opinions in language that a non-mental health professional can understand. There is no one correct style or format for writing a report. Several examples are in the Group for the Advancement of Psychiatry (GAP) report[199] and the textbook by Melton *et al.*[88] Here is one possible format, developed by Phillip Resnick, MD.[200]

1. Identifying information

2. Source of referral

3. Referral issue: What are the questions being asked by the referral source?

4. Sources of information: List all material reviewed, including the dates and time spent interviewing the defendant and collateral informants; which psychological were tests administered; and a list of all records reviewed.

5. Statement of non-confidentiality: Did the defendant understand the non-confidentiality warning and agree to proceed?

6. Family history

7. Past personal history

8. Educational history: Include special education and behavioral disturbances, fighting (specify with teachers or other students), suspensions, or expulsions.

9. Employment history: Focus on employment performance around the time of the crime. Was it impaired?

10. Religious history: Does the defendant have religious beliefs relevant to delusions or wrongfulness?

11. Military history: Was the defendant honorably discharged? Was the defendant discharged at a rank appropriate to his time in service? Were there Article 15 hearings or courts martial?

12. Sexual, marital, and relationship history

13. Medical history

14. Drug and alcohol history: Was there chronic substance use that led to psychotic or mood symptoms in the past? Did alcohol or drugs around the time of the event influence the defendant's mental state?

15. Legal history: Include both juvenile and adult crimes and civil matters. Were the crimes similar to the current offense? Were civil actions related to thinking or behavioral disturbances?

16. Past psychiatric history

17. Prior relationship of the defendant to the victim

18. State's version of the current offense (witness or victim account of crime)

19. Defendant's version of the offense: Direct quotes from the defendant are important. Include psychiatric signs and symptoms that the defendant says occurred at the time of the crime.

20. Mental status examination: psychiatric signs and symptoms present at the time of the evaluation.

21. Relevant physical examination, imaging studies, and laboratory tests

22. Summary of psychological testing

23. Competency assessment: Answers to questions relating to the defendant's ability to understand the proceedings and to collaborate with the defense attorney should be included, if a full competency evaluation was requested by the court. In some jurisdictions, competence data would be left for a separate report. Otherwise the data relating to the defendant's capacity to consent to the insanity defense evaluation may be included, if relevant.

24. Psychiatric diagnosis: Diagnoses should follow the DSM or ICD relevant at the time of the offense. If a non-DSM or ICD diagnosis is used, citations to the relevant literature should be provided. If there is a differential diagnosis, the reason should be explained. If the diagnosis turns on a fact in dispute (for example, whether the defendant's symptoms were induced by intoxication), there should be an explanation as to how the disputed fact affects the differential diagnosis. Diagnoses may change over time. Different diagnoses may be provided for relevant points in time, but should always be included in the diagnosis at the time of the offense. Some jurisdictions may require that any diagnoses, if offered, be described in terms that meet the criteria for the jurisdiction's legal definition of mental disorder for the insanity defense.

25. Opinion: The opinion section is the most critical part of the forensic report. It should summarize pertinent positives and negatives and answer the relevant forensic questions, based on that jurisdiction's legal definition for being found not criminally responsible. The reasoning behind the opinion should be carefully explained. If the defendant is charged with more than one offense, the issue of criminal responsibility on each charge should be individually addressed.

The exact language of the not criminally responsible test should be addressed in the report. The federal government and some states now restrict psychiatric testimony to the defendant's diagnoses, the facts upon which those diagnoses are based, and the characteristics of any mental diseases or defects the evaluator believes the defendant possessed at the relevant time. They do not allow psychiatric testimony regarding the ultimate issue in the case.[201] However, full and detailed reasoning based on the standards of the jurisdiction's insanity test should be discussed in the evaluator's report, unless instructed otherwise by the referring party. Testimony may also address the effects of the illness on behavior generally and on motivations other than the defendant's insanity. In addition to insanity defenses, abnormal mental states may be used in some jurisdictions as the basis of defenses asserting lack of specific intent, lack of capacity to form *mens rea*, diminished capacity, or imperfect self-defense. This guideline does not address these special other defenses.

Opinions should be stated to a "reasonable degree of medical certainty" or a "reasonable degree of medical probability," depending on the jurisdiction. If the evaluator is unable to form an opinion to a reasonable degree of medical certainty or probability, that fact should be stated. The jurisdiction's definition of reasonable medical certainty or probability should be discussed with the referring party.[202,203]

At times, the evaluator may be unable to answer whether the defendant suffered from a mental disorder or whether he/she met the jurisdiction's test for being found not criminally responsible. If so, this should be clearly communicated in the report. The evaluator might also state what additional data might help form an opinion to a reasonable degree of medical certainty or probability.

IX. The Forensic Opinion

The forensic psychiatric opinion usually addresses three areas in the formulation or conclusion section. The first is the determination of mental disease or defect. The second is a clarification of the relationship between the mental disease or defect, if any, and the criminal behavior. The third assesses whether the defendant's mental state at the time of the crime satisfies the jurisdictional requirements for an insan-

ity defense. This section reviews current practices in all three of these interrelated areas.

A. Establishing Mental Disease or Defect

Tests for an insanity defense typically require the presence of mental disease or defect at the time of the crime. Statutes or case law may or may not define the psychiatric equivalents of mental disease or defect. In jurisdictions where these are defined, definitions vary. Some states' statutes define mental disease as a serious mental illness. In other states, courts have determined that mental disease means a DSM disorder. Some jurisdictions specifically exclude all personality disorders or antisocial personality disorder. Voluntary intoxication with alcohol or other drugs may also be excluded, particularly in the absence of a co-morbid psychiatric diagnosis. The forensic psychiatrist must carefully review the statutory definitions and case law interpretations of mental disease or defect applicable to the case.

In jurisdictions where the mental disease or defect is not formally defined, the forensic psychiatrist may seek guidance from the referring attorney. The forensic psychiatrist may find it useful to review recent court decisions involving the insanity defense in the case's jurisdiction. The experience of other experts, case law, and statutes concerning the admissibility of expert opinions also may be considered.

Consequently, the forensic psychiatrist should try to assess the presence or absence of mental illness at the time of the crime and describe it in the forensic opinion. In jurisdictions where mental disease is strictly defined as a severe mental disorder, the forensic psychiatrist may first have to determine whether the mental illness meets that threshold before proceeding with the remainder of the analysis.

Section I, "Introduction and History of the Insanity Defense," especially subsection G, "Post-*Hinckley* Insanity Reform: the Insanity Defense Reform Act," reviews legal cases addressing the insanity defense. There are clear trends in the courts' acceptance of some diagnosable mental disorders and syndromes. Psychotic disorders, such as schizophrenia, schizoaffective disorder, and mood disorders with psychotic features are diagnoses that typically qualify as serious or severe mental disorders or mental disease. Other diagnoses differ in outcome, depending on the facts of the case, the degree and nature of the symptoms, and the jurisdictional precedent. For example, personality disorders, paraphilias, impulse-control disorders, dissociative identity disorders, and developmental disorders can vary widely in terms of acceptance. Certain cognitive disorders, such as dementia or delirium, may also qualify as mental disease or defect, depending on circumstances and jurisdiction. Courts also have considered, and some statutory language has suggested, that psychiatric syndromes and cognitive disorders not in the DSM or ICD, such as battered woman syndrome, may constitute mental disease for purposes of an insanity defense.

Forensic psychiatrists take different approaches in relating clinical diagnoses to an insanity standard. Most experts consider mental disorders or their equivalents. Some consider only those conditions listed in the DSM or ICD in deciding whether a defendant has a mental disease or defect. Some experts believe that a formally recognized diagnosis is not necessary when a narrative of the defendant's state of mind describes symptom clusters or syndromes that meet the jurisdictional requirement of mental disease or defect. DSM diagnostic disorders are often limited by strict time requirements and do not include newly emerging syndromes or illnesses. Most experts believe that a psychiatric diagnosis should be made whenever possible.[204]

In summary, the forensic psychiatrist should discuss the presence or absence of mental disease or defect in the conclusion of the report. Case law or statutes may specify jurisdictional definitions of mental disease or defect. In the absence of specific definitions, trends in case law and standards for the admissibility of expert testimony may provide guidance. Acceptable practices for the establishment of mental disease or defect should contain at least a narrative description of a scientifically based disorder, symptom cluster, or syndrome. Generally speaking, the use of specific diagnoses helps the expert organize patterns of symptoms and explain the conclusions drawn.

B. Establishing the Relationship Between Mental Disease or Defect and Criminal Behavior

Once the presence or absence of a mental disease or defect is established, the psychiatrist focuses on the relationship, if any, between the mental disease or defect and the alleged crime. The analysis of this relationship may focus on one or more of the following: the individual's severity of illness; history of illness; perception of reality; motivations, beliefs and

intentions; and behavior and emotional state as related to the criminal behavior. (In states requiring severe mental illness, the severity of mental illness may be addressed more appropriately in the determination of mental disease or defect.) The relevance and importance of each of these factors will vary from case to case. The psychiatrist must carefully assess the credibility of the defendant's report in each of these arenas.

The severity of an individual's illness or defect helps determine how the psychiatric symptoms led to the person's behavior. Severity of mental illness involves the nature, duration, frequency, and magnitude of psychiatric symptoms, and how these symptoms impinge on the person's awareness, thinking, and functioning. Cognitive testing and the relationship of impairment to the person's intellectual and adaptive functioning influence the severity of a mental defect.

The individual's history of mental illness or defect may be relevant in establishing the presence of a mental disease or defect at the time of the crime and substantiating the relationship of the individual's behavior to the reported symptoms. For example, an individual's report of assaultive behavior due to psychotic symptoms is more credible if psychiatric records document similar behavioral responses to psychotic symptoms before the crime took place. Although such a history may be relevant, the psychiatrist should state the limitations of rendering an insanity opinion based solely on that history.

Understanding what motivates a person to behave criminally is important when studying the relationship between mental illness and criminal acts. Analyzing the criminal intent of defendants involves examining their awareness of what they were doing during the crime and what their motivations for actions taken were at that time. Indeed, analyzing the defendant's behavior before and after the crime may contribute greatly to the psychiatrist's overall understanding of the individual's mental states and how they bear on criminal intent. The psychiatrist determines if the reported feeling states are consistent with the individual's psychiatric symptoms and behaviors.

The defendant's emotional state at the time of the crime helps to determine the relationship between a mental disease/defect and criminal behavior. In particular, the psychiatrist inquires as to how the defendant felt before, during, and after the criminal acts. The psychiatrist determines whether the reported feeling states are consistent with the individual's psychiatric symptoms and behavior.

Finally, the psychiatrist should carefully consider the possibility that defendants may, to avoid criminal prosecution, fabricate or exaggerate psychiatric symptoms and past psychiatric illness. They may misrepresent their motivations or intent regarding their criminal behavior, as well as any emotions they experienced while committing the crime. Conducting collateral interviews, reviewing collateral records, and administering appropriate psychological testing can assist clarification of possible malingering.

Since each case is unique, the importance, weight, and combination of each of the three areas of analysis will vary. That is why relying on just one factor may be inappropriate in certain situations. The forensic psychiatrist should strive for a consistent approach to the analysis to ensure a thorough review of all data and reliable testimony. The approach to and basis for the forensic psychiatrist's opinion should be explained clearly in the report and testimony.

C. Relationship Between Mental Disease or Disorder, Criminal Behavior, and the Legal Standard

In formulating the opinion, the psychiatrist considers to what degree the mental condition and its relationship to the alleged crime meet the legal standard for criminal responsibility. When an individual is charged with multiple offenses, the psychiatrist generally conducts the insanity analysis for each offense. Because the legal standards for determining insanity vary between states and the federal system, an individual could theoretically be found insane in one jurisdiction and sane in another.

As the definition of insanity is a legal one, it is important for psychiatrists to review their jurisdiction's definition of insanity. Regardless of the test used, psychiatrists should explain how they determined that the defendant did or did not meet the legal standard for insanity.

1. Cognitive Tests of Insanity

Cognitive tests of insanity focus on the relationship between the individual's cognitive impairments and the alleged crime. Such tests are part of the *M'Naughten* test, the first prong of the ALI test, variations of these two traditional standards, and the federal insanity defense test. The *M'Naughten* standard serves as the basis for most insanity statutes with a cognitive component. The traditional *M'Naughten*

cognitive prong focuses on whether individuals have a mental disorder that prevents them from "knowing the nature and quality of what they were doing and/or from knowing the wrongfulness of their actions." Some state statutes require both knowledge of behavior and knowledge of wrongfulness or criminality, whereas other states require only one of these components. Some states have substituted appreciate, understand, recognize, distinguish, or differentiate for know.

Jurisdictions vary in their interpretation of the *M'Naughten* standard and its modifications. The traditional standard is considered the hardest cognitive test to meet. Variations of the word know have led to different interpretations. For example, some state insanity statutes and the federal test use the word appreciate rather than know in reference to the defendant's understanding of wrongfulness. Some state courts have interpreted the word appreciate to represent a broader reasoning ability than know. Some state courts, however, have held to the strict *M'Naughten* standard, despite the substituted language. Similarly, in some jurisdictions, a finding of insanity requires that defendants' mental disorders prevented them from knowing (or appreciating) the legal wrongfulness, whereas other states require only that the person's mental disorder prevented them from knowing (or appreciating) the moral wrongfulness of their behavior. The type of wrongfulness can be determined by statute or case law or can be left to the discretion of the jury.

In general, the cognitive prong of the ALI standard is considered easier to meet than the cognitive prong of the *M'Naughten* standard (or its variations). This prong of the ALI standard states that the person "lacks substantial capacity to appreciate the criminality of his conduct." (In some states wrongfulness rather than criminality is used.) Many courts have interpreted the "substantial capacity to appreciate" language as the broadest reasoning ability in cognitive tests of insanity. The interpretation, however, is specific to the jurisdiction, although the general intent is to broaden the standard.

An example of the variations in interpreting know and appreciate is the contrasting testimony of Dr. Park Elliot Dietz and Dr. William T. Carpenter in the *Hinckley* trial. In that trial, the applicable standard was whether the defendant lacked the substantial capacity to appreciate the wrongfulness of his conduct. The prosecution argued that the correct interpretation of appreciate was the consideration of cognitive function, excluding affective impairment or moral acknowledgment. The defense argued that appreciation went beyond the mere cognitive acknowledgment that the act was wrong and encompassed the "affective and emotional understanding of his conduct" (Ref. 13, pp 12–4, 49–50).

Dr. Carpenter testified:

> So that I do think that he had a purely intellectual appreciation that it was illegal. Emotionally he could give no weight to that because other factors weighed far heavier in his emotional appreciation. And these two things come together in his reasoning processes, his reasoning processes were dominated by the inner state—by the inner drives that he was trying to accomplish in terms of the ending of his own life and in terms of the culminating relationship with Jodie Foster.
>
> It was on that basis that I concluded that he did lack the substantial capacity to appreciate the wrongfulness of his acts [Ref. 13, p 56].

In contrast, Dr. Dietz testified:

> Let me begin by saying that the evidence of Mr. Hinckley's ability to appreciate wrongfulness on March 30, 1981 has a background. That background includes long-standing interest in fame and assassinations. It includes study of the publicity associated with various crimes. It includes extensive study of assassinations. It includes the choice of Travis Bickle as a major role model, a subject I will tell you about when I describe *Taxi Driver*. It includes his choice of concealable handguns for his assassination plans, and his recognition that the 6.5 rifle he purchased was too powerful for him to handle. It includes his purchase of Devastator exploding ammunition on June 18, 1980. It includes multiple writings about assassination plans.
>
> Now on that backdrop we see specific behaviors involved in Mr. Hinckley's pursuit of the President . . . . He concealed successfully from his parents, his brother, from his sister, from his brother-in-law and from Dr. Hopper, including hiding his weapons, hiding his ammunition, and misleading them about his travels and plans. The concealment indicated that he appreciated the wrongfulness of his plans . . . .
>
> Mind you, no single piece of evidence is determinative here. I am providing you with examples of kinds of evidence that, taken together, make up my opinion about his appreciation of wrongfulness . . . .
>
> Finally, his decision to proceed to fire, thinking that others had seen him, as I mentioned before, indicates his awareness that others seeing him was significant because others recognized that what he was doing and about to do were wrong [Ref. 13, 63–5].

The importance of understanding the cognitive test and its jurisdictional interpretation is its relevance in forming an opinion. A strict *M'Naughten* standard sets a high threshold and may exclude individuals with major psychotic or mood disorders, as

these defendants may still possess sufficient cognition to know the nature and quality of their act. Conversely, the ALI cognitive test is generally believed to broaden the cognitive test to include, among other components, affect. This has the effect of lowering the threshold for a successful insanity defense. The forensic psychiatrist must investigate the interpretation of the cognitive prong on a case-by-case and jurisdiction-by-jurisdiction basis. The nuances of meaning for *know* or *appreciate* are subject to fierce legal battles, even in jurisdictions where statutes and case law appear to have provided clear definitions.

2. Volitional Tests of Insanity

Volitional tests of insanity focus on how defendants' mental disorders affect their ability or capacity to control their behavior. This test has been called both the irresistible impulse test and the volitional prong of the ALI test. Insanity statutes vary regarding the degree of mental disorder necessary to show that behavioral control was impaired. For example, some statutes require that the person's mental disorder render them unable to control their behavior. Other jurisdictions allow an insanity defense if defendants "lacked substantial capacity to control their behavior" as a result of a mental disorder. In conducting this type of analysis, psychiatrists should consider the possibility that defendants chose not to control their behavior for reasons unrelated to a mental disorder.

Since legal tests of insanity vary among jurisdictions, as noted earlier, it is possible for an individual to meet the criteria for insanity under one test but not another.

To illustrate, consider a woman who suffers from the obsession that she is contaminated with germs whenever she leaves her house. To combat her fear that she will bring the contamination into her home, she feels compelled to completely undress and wash with soap and water outside her house before going inside. She may know, understand, or appreciate the nature and quality of her actions, and may have a cognitive awareness that her behavior violates the law against public nudity. Therefore, she would likely not meet a cognitive test for insanity. However, because her compulsion renders her unable to refrain from her behavior, she may meet a volitional test of insanity.

A person suffering from severe mania provides a further example where impairments in volitional control may exist despite the person's cognitive awareness of his behavior and its wrongfulness. For example, consider a man on an inpatient psychiatric unit with severe mania. He has not responded to mood stabilizers or electroconvulsive therapy. He remains extremely hypersexual and recurrently exposes himself to female staff and patients. Although the patient knows what he is doing and can articulate that it is wrong, he nevertheless continues his behavior. Under a volitional test of insanity, the trier of fact may consider the possibility that this man's mania resulted in an inability to control his behavior.

3. The Product Test

A rare insanity standard, known as the product test, is still used in New Hampshire and the Virgin Islands. New Hampshire's standard is cited as "whether the defendant was insane and whether the crimes were the product of such insanity are questions of fact for you (the jury) to decide." This test does not include either a cognitive or a volitional prong. Under this test, the psychiatrist describes the person's mental disorder and how this disorder affects the individual's behavior. The trier of fact then determines whether the person's alleged criminal behavior resulted from the mental disorder described by the psychiatrist.

D. Review of Formulating an Opinion

In formulating the opinion regarding a defendant's sanity at the time of the act, the psychiatrist determines the presence or absence of a mental disorder; discusses the relationship, if any, of the mental disorder to the alleged criminal behavior; and determines whether such a relationship meets the jurisdictional standard for insanity. Federal law and some state laws preclude an expert from testifying to so-called ultimate issues, such as whether the defendant actually meets the jurisdictional standards for the defense. However, there is nothing to prevent its inclusion in a report.

Existing law may affect the admissibility of expert testimony on mental conditions. Jurisdictions apply either the *Frye* test[205] or Federal Rule of Evidence 702 as interpreted by the *Daubert* trilogy[206] of cases to determine admissibility. Under *Daubert*—the standard used in federal courts and several states—the trial court considered several factors, including

testing with scientific methodology, peer review, rates of error, and acceptance within the scientific community. Some states still apply the *Frye* rule, which focuses specifically on general acceptance as the basis for proposed testimony. Jurisdictions typically articulate standards for the admission of expert testimony in either case law or statute.

X. Summary

The insanity defense is a legal construct that excuses certain mentally ill defendants from legal responsibility for criminal behavior. This practice guideline has delineated the forensic psychiatric evaluation of defendants raising the insanity defense. The document describes acceptable forensic psychiatric practices. Where possible, specific practice and ethics guidelines have been specified. Where appropriate, the practice guideline has emphasized the importance of analyzing the individual case, the jurisdictional case law, and the state (or federal) statute.

This practice guideline is limited by the evolving case law, statutory language, and legal literature. The authors have emphasized the statutory language of current legal standards, as well as the state or federal courts' interpretation of those standards, because the same statutory language has been interpreted differently in different jurisdictions. Similarly, this practice guideline has reviewed the state and federal trends that determine which diagnoses meet the criteria for mental disease or defect. These trends yield to jurisdictional court interpretations.

Finally, the authors hope this practice guideline has begun the dialogue about formulating a forensic psychiatric opinion by surveying the various approaches used to analyze case data. The forensic psychiatrist's opinion in each case requires an understanding of the current jurisdictional legal standard and its application, as well as a thorough analysis of the individual case. The psychiatrist's analysis and opinion should be clearly stated in the forensic psychiatric report. It should be noted that the role of a psychiatric expert witness in the criminal justice system is predicated on the law's interest in individualizing the criteria of mitigation and exculpation. Forensic psychiatric analyses and formulations of opinions are, therefore, subject to change as the legal guidance changes.

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The Insanity Defense: State and Federal Standards

"The Insanity Defense: State and Federal Standards, (2000-2001)" found in the *2002 Practice Guideline*[1] created the basis for this table. Any incorrect or out of date information was updated and such changes were described in the "State" column. Some states have insanity defenses but do not include them statutorily, and instead refer to them at common law. In the "Source of Law" column citations to statutes were listed, with parentheses indicating the most recent year in which the statute had been amended. If the defense was at common law, and not codified, the most relevant case was listed in that column. Next, the "standard" column includes the most relevant language, lifted directly from the statutory or case law text. The "cognitive prong" column indicates whether the statute addresses the defendant's thought process. The "volitional prong" column designates whether the statute or common law addresses the defendant's ability to control themselves behaviorally. The "strict ALI" column specifies whether the statute contains the same terms and language as the ALI test: "A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law." The "strict M'Naghten" column indicates whether the statute contains the same terms and language as the M'Naghten test: "To establish a defense on the ground of insanity, it must be proved that, at the time of the committing of the act, the party accused was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing; or if he did know it, that he did not know he was doing what was wrong." The "Variation" column signifies whether significant terms and language in the traditional versions of ALI and M'Naghten were altered. The "M'Naghten variant" and "ALI variant" columns, address whether the variant originated from either of those tests. In the last column, "Abolished Defense" jurisdictions that do not have an insanity defense were identified.

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Table 1. The Insanity Defense: State and Federal Standards.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
Alabama	Ala. Code 1975 § 13A-3-1	It is an affirmative defense if the defendant "as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts."	C	M'Naghten Variant	Addition of "severe" and "appreciate"
Alaska	AS § 12.47.010 (1982)	It is an affirmative defense that defendant was "unable, as a result of a mental disease or defect, to appreciate the nature and quality of that conduct."	C	M'Naghten Variant	No M'Naghten wrongfulness language; addition of the term "appreciate"
Arizona *(updated in 2008, but changes only with respect to sentencing)*	A.R.S. § 13-502 (2008)	A person is "guilty except insane" if "afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense."	C	M'Naghten Variant	No M'Naghten "nature and quality" language
Arkansas *(updated in 2001, but changes only delineated the legislature's intent)*	Ark. Code Ann. § 5-2-312 (2001)	It is an affirmative defense that "at the time the defendant engaged in the conduct charged, he lacked capacity, as a result of mental disease or defect, to conform his conduct to the requirements of law or to appreciate the criminality of his conduct."	C, V	ALI Variant	No "substantial capacity"
California	West's Ann. Cal. Penal Code § 25 (1982)	Not guilty by reason of insanity only if accused was "incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense."	C	Strict M'Naghten	
Colorado	Colo. Rev. Stat. § 16-8-101.5 (1995)	"A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable….A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is a essential element of the crime charges [is not accountable]."	C	M'Naghten Variant	No M'Naghten "nature and quality" language and includes a mens rea element as part of insanity."
Connecticut	C.G.S.A. § 53a-13 (1995)	Affirmative defense that the defendant "lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law."	C, V	ALI Variant	Uses "control" instead of "conform"

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
District of Columbia	Case Law, e.g., *Bethea v. United States*, 365 A.2d 64 (1976)	A person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacked substantial capacity either to recognize the wrongfulness of his conduct or to conform his conduct to the requirements of law.	C, V	ALI Variant	"Recognize" instead of "appreciate." "Wrongfulness" instead of "criminality"
Delaware *(updated in 2007 by striking the words "psychiatric disorder" and substituting "mental illness or mental defect" and striking "non-social" but replacing it with "antisocial.")*	11 Del. C. § 401 (2007)	"Affirmative defense that, at the time of the conduct charged, as a result of mental illness or mental defect, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct."	C	ALI Variant	Dropped the volitional prong of ALI
Florida *(This statute was enacted in 2000. Therefore, there is now statutory law defining the defense, as opposed to only case law)*	West's F.S.A. § 775.027 (2000)	"Affirmative defense that at the time of the commission of the acts constituting the offense, the defendant was insane. Insanity is established when: The defendant had a mental infirmity, disease, or defect; and; Because of this condition, the defendant: Did not know what he or she was doing or its consequences; or Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong."	C	Strict M'Naghten	
Georgia	Ga. Code Ann., § 16-3-3 (1968); Ga. Code Ann., § 16-3-2 (1968) and (*Freeman v. State*, 132 Ga. App. 742, [1974])	Not guilty when "the person, because of mental disease, injury, or congenital deficiency, acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime"; or when "the person did not have mental capacity to distinguish between right and wrong."	C	M'Naghten Variant	Case law clarifies no volitional prong
Hawaii *(1984, not 1972 as was listed in the 2002 AAPL Guidelines)*	HRS § 704-400 (1984)	Not responsible if "as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of law."	C, V	Strict ALI	

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
Idaho	I.C. § 18-207 (1996) Upheld in: *State v. Searcy*, 798 P.2d 914 (Idaho 1990) and *State v. Delling*, 267 P.3d 709 (Idaho 2011), cert. denied, 133 S.Ct. 504 (2012).	ABOLISHED DEFENSE IN 1982 "Mental condition not a defense to any charge of criminal conduct." And "[n]othing herein is intended to prevent the admission of expert evidence on the issue of any state of mind which is an element of the offense, subject to the rules of evidence."	n/a	n/a	n/a
Illinois	720 ILCS 5/6-2 (1998)	Not criminally responsible if "at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct."	C	ALI Variant	Dropped the volitional prong of ALI
Indiana	IC 35-41-3-6 (1984)	Not criminally responsible if "as a result of mental disease or defect, [actor] was unable to appreciate the wrongfulness of the conduct."	C	ALI Variant	Dropped the volitional prong and "substantial capacity" of ALI
Iowa	I.C.A. § 701.4 (1984)	No conviction if "the person suffers from such a disease or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act."	C	Strict M'Naghten	
Kansas	K.S.A. 21-5209 (2011) Upheld in: State v. Bethel, 66 P.3d 840 (Kan. 2003)	ABOLISHED DEFENSE IN 1995 "Mental disease or defect is a defense if as a result the defendant lacked the culpable mental state required as an element of the crime charged."	n/a	n/a	n/a
Kentucky	KRS § 504.020 (1988)	Not responsible if "as a result of mental illness or retardation, [actor] lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."	C, V	Strict ALI	
Louisiana	LSA-R.S. 14:14 (1942)	Exempt from criminal responsibility if "because of a mental disease or mental defect the offender was incapable of distinguishing right from wrong with reference to the conduct in question."	C	M'Naghten Variant	No M'Naghten "nature and quality" language
Maine	17-A M.R.S.A. § 39 (1985)	Not criminally responsible if "as a result of mental disease or defect, [actor] lacked substantial capacity to appreciate the wrongfulness of his conduct."	C	ALI Variant	Dropped volitional prong of ALI

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
Maryland *(This section is the same as it was in 1984; it has only been moved to a different part of the Maryland code.)*	MD Code, Criminal Procedure, § 3-109 (2001)	Not criminally responsible if "the defendant, because of a mental disorder or mental retardation, lacks substantial capacity: (1) To appreciate the criminality of that conduct; or (2) To conform that conduct to the requirements of the law."	C, V	Strict ALI	
Massachusetts *(Still not part of MA code)*	Case law, e.g., Commonwealth v. McHoul, 226 N.E.2d 556 (Mass. 1967)	Not responsible if "as a result of mental disease or defect [actor] lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law."	C, V	Strict ALI	
Michigan	M.C.L.A. 768.21a (1994)	"[T]hat person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law."	C, V	Strict ALI	No
Minnesota *(The latest version is 1986, not 1971 as was listed in the previous AAPL Guidelines.)*	M.S.A. § 611.026 (1986)	Excused from criminal liability if "the person was laboring under such a defect of reason from [mental illness or mental deficiency], as not to know the nature of the act, or that it was wrong."	C	Strict M'Naghten	
Mississippi	Case law, e.g., Laney v. State, 421 So. 2d 1216 (1982)	Test is "ability of the accused to realize and appreciate the nature and quality of his deeds when committed and the ability to distinguish between right and wrong."	C	M'Naghten Variant	Substitutes "realize" and "appreciate" for know
Missouri *(replaced mentally retarded or mentally ill individuals with persons with "an intellectual disability or developmental disability or mental illness")*	V.A.M.S. 552.030 (2011)	Not responsible for criminal conduct if "as a result of mental disease or defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct."	C	M'Naghten Variant	Adds "appreciate" to M'Naghten
Montana	MCA 46-14-102 (2003) Upheld in: State v. Korell 690 P.2d 992 (Mont. 1984)	ABOLISHED DEFENSE IN 1979 Evidence of "mental disease, defect, or developmental disability admissible only to prove that defendant did not have state of mind that is element of the offense."	n/a	n/a	n/a

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
Nebraska *(addresses the defense procedurally, but does not list elements of the defense; also the citation for* State v. Hurst *begins with 594, not 592 as was stated in the 2002 AAPL Guidelines.)*	Neb.Rev.St. § 29-2203 (2011) addresses the defense procedurally; Case law, e.g., *State v. Hurst*, 594 N.W.2d 303 (Neb. 1999) describes the elements of the defense.	"Not responsible by reason of insanity if the defendant had mental disease and did not understand the nature and consequences of his actions or did not know the difference between right and wrong with respect to what he was doing."	C	Strict M'Naghten	
Nevada *(Added "disease" to "disease or defect of the mind." In* Finger v. State*, 2001, 27 P.3d 66, 117 Nev. 548, the court held that abolishing the defense violated due process as expressed in the U.S. and State Constitution Since an individual cannot be convicted of criminal offense without possessing requisite criminal intent to commit crime.) also holding that all prior versions of statutes amended or repealed by S.B. 314 remain in full force and effect)*	*Finger v. State*, 117 Nev. 548, 27 P.3d 66 (2001) (en banc) cert. denied, 534 U.S. 1127 (2002). and the legislature has reinstated an insanity defense. 2003 Nevada Laws Ch. 284; Nev. Stat. §§ 174.035(5ab)	Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and Due to the delusional state, the defendant either did not: (1) Know or understand the nature and capacity of his or her act; or (2) Appreciate that his or her conduct was wrong, meaning not authorized by law.	C	Strict M'Naghten	Restricts to delusional states
New Hampshire *(still no statute)*	Case law, e.g., *Abbott v. Cunningham*, 766 F. Supp. 1218 (D.N.H. 1991)	No definition of insanity; jury decides whether defendant was insane. "Whether the defendant was insane and whether the crimes were the product of such insanity are questions of fact for you (the jury) to decide."	No	"Product" test	
New Jersey	N.J.S.A. 2C:4-1 (1979)	Not criminally responsible if "laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know, that he did not know what he was doing was wrong."	C	Strict M'Naghten	
New Mexico *(still no statute)*	Case law, e.g., *State v. White*, 270 P.2d 727 (N.M. 1954)	No criminal responsibility if "as a result of disease of the mind [the defendant] (a) did not know the nature and quality of the act or (b) did not know that it was wrong or was incapable of preventing himself from committing it"	C, V	M'Naghten Variant	Adds irresistible impulse to M'Naghten

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
New York	McKinney's Penal Law § 40.15 (1984) Case law, e.g., *State v. Bonney*, 405 S.E.2d 145 (N.C. 1991)	No criminal responsibility if "as a result of disease or defect, he lacked substantial capacity to know or appreciate either (1) the nature and consequences of such conduct or (2) that such conduct was wrong"	C	ALI Variant	Dropped volitional prong of ALI
North Carolina *(still no statute)*	Case law, e.g., *State v. Bonney*, 405 S.E.2d 145 (N.C. 1991)	Not criminally responsible if "laboring under such a defect of reason, from disease or deficiency of the mind as to be incapable of knowing the nature and quality of his act, or if he did know this, of distinguishing between right and wrong in relation to such act."	C	Strict M'Naghten	
North Dakota	NDCC, 12.1-04.1-01 (1985)	Not criminally responsible if "as a result of mental disease or defect…[t]he individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality, and it is an essential element of the crime that the individual act willfully."	C	ALI Variant	Substantially different from M'Naghten and ALI, but broadly, and includes a mens rea element
Ohio *(most recently updated in 2011, but changes did not impact this definition)*	R.C. § 2901.01 (2011); R.C. § 2945.391 (1990)	Not guilty only if "the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's act."	C	M'Naghten Variant	No M'Naghten "nature and quality" language.
Oklahoma *(previous version does not exist in the code)*	21 Okl.St.Ann. § 152 (1998)	Not guilty of committing a crime if the person is, "Mentally ill persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness."	C	Strict M'Naghten, M'Naghten Variant	No M'Naghten "nature and quality" language
Oregon *(The law was updated in 1983, not 1971 as was stated in the 2002 guidelines.)*	O.R.S. § 161.295 (1983)	Guilty except for insanity if "as a result of mental disease or defect...The person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of the law."	C, V	Strict ALI	
Pennsylvania	18 Pa.C.S.A. § 315	Insane if "laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know what he was doing was wrong."	C	Strict M'Naghten	

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
Rhode Island *(still no statute)*	Case law, e.g., *State v. Johnson*, 399 A.2d 469 (R.I. 1979)	Not responsible if "as a result of mental disease or defect, his capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law is so substantially impaired that he cannot justly be held responsible."	C, V	Strict ALI, ALI Variant	Similar language to ALI but adopts British "justly responsible."
South Carolina *(latest version was in 1989, not 1984 as was listed in the 2002 AAPL Guidelines.)*	Code 1976 § 17-24-10 (1989)	Affirmative defense if the defendant "as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act changed as morally or legally wrong."	C	M'Naghten Variant	No M'Naghten "nature and quality" language, uses language of moral wrongfulness
South Dakota *(instead of "charged against him" it was replaced with "the person")*	SDCL § 22-1-2 (2005)	Insanity is "the condition of a person temporarily or partially deprived of reason, upon proof that...he was incapable of knowing the wrongfulness of the act."	C	M'Naghten Variant	No M'Naghten "nature and quality" language
Tennessee	T. C. A. § 39-11-501 (1995)	Affirmative defense that "the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of such defendant's acts."	C	M'Naghten Variant	Substitutes "appreciate" for "know"
Texas *(1994 is the latest statute)*	V.T.C.A., Penal Code § 8.01 (1994)	Affirmative defense that "the actor, as a result of mental disease or defect, did not know that his conduct was wrong."	C	M'Naghten Variant	No M'Naghten "nature and quality" language
Utah	U.C.A. 1953 § 76-2-305 (2003) Upheld in: *State v. Herrera*, 895 P.2d 359 (Utah 1995)	ABOLISHED DEFENSE IN 1983 Defense that defendant "as a result of mental illness, lacked the mental state required as an element of the offense charged"; mental illness not otherwise a defense.	n/a	n/a	n/a
Vermont *(last updated in 1983, not 1957 as was listed in the 2002 AAPL Guidelines)*	13 V.S.A. § 4801 (1983)	Not responsible for criminal conduct if "as a result of mental disease or defect [the actor] lacks adequate capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law."	C, V	ALI Variant	"Adequate capacity" substituted for "substantial capacity"

Table 1. Continued.

State	Source of Law	Standard	Cognitive/ Volitional Prong	Type	Variation
Virginia *(still no statutory law)*	Case law, e.g., *Bennett v. Commonwealth* 511 S.E.2d 439 (Va. 1999)	Insane if "the accused's mind has become so impaired by disease that he is totally deprived of the mental power to control or restrain his act." or "he or she did not understand the nature, character, and consequences of his or her act, or was unable to distinguish right from wrong."	C, V	M'Naghten Variant	M'Naghten plus irresistible impulse
Washington *(only change involved adding pronouns so females were included in the definition)*	West's RCWA 9A.12.010 (2011)	Defense of insanity if "as a result of mental disease or defect, the mind of the actor was affected to such an extent that: (a) He was unable to perceive the nature and quality of the act with which he is charged; or (b) He was unable to tell right from wrong with reference to the particular act charged."	C	Strict M'Naghten	
West Virginia *(still no statute)*	Case law, e.g., *State v. Grimm*, 19 S.E.2d 637 (W. Va. 1973). This case was overruled as to jury instruction, but not as to elements of the defense.	Not held criminally responsible if, because of a mental disorder, the defendant lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.	C, V	Strict ALI	
Wisconsin *(1994, not 1969 as was listed in the 2002 AAPL Guidelines)*	W.S.A. 971.15 (1994)	Not responsible for criminal conduct if "as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of law."	C, V	Strict ALI	
Wyoming *(1985, not 1975 as was listed in the 2002 AAPL Guidelines)*	W.S.1977 § 7-11-305 (1985)	Defense if defendant "as a result of mental illness or deficiency...lacked capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law."	C, V	ALI Variant	No "substantial" capacity
U.S. Military	10 U.S.C.A. § 850a (1986)	Affirmative defense that the defendant "as a result of severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts."	C	M'Naghten Variant	Substitutes "appreciate" for "know"

The Insanity Defense: Additional Data

After identifying the relevant statute or common law language, any exclusions or exemptions were identified. The terms used to describe "insanity" through statutes or common law language was identified. To determine whether the defense was "affirmative" and also what legal burden was necessary to satisfy the defense, the statutory language was addressed first. If it was not located there, the state's annotated code was reviewed and relevant cases were identified. If the defense was considered "abolished," any relevant information to aid in the understanding of the jurisdiction's conceptualization of the criminal insanity defense was identified.

Table 2. The Insanity Defense: Additional Data.

State	Exclusions	Terminology Describing Insanity	Burden of Proof / Name of Defense
Alabama	Does not include repeated criminal or antisocial conduct	Mental disease or defect	Affirmative defense and D must show by clear and convincing that he is guilty
Alaska	Does not include repeated criminal or antisocial conduct	Mental disease or defect	Affirmative defense that the D will be found not guilty by reason of insanity if he shows by a preponderance of the evidence
Arizona	Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.	Mental disease or defect	Affirmative defense and the D must show that he is guilty except insane by clear and convincing evidence
Arkansas	Does not include repeated criminal or antisocial conduct	Mental disease or defect	Affirmative defense to be raised by the D and be proven by a preponderance of evidence

Table 2. Continued.

State	Exclusions	Terminology Describing Insanity	Burden of Proof / Name of Defense
California	Excludes a personality or adjustment disorder, a seizure disorder, or an addiction to, or abuse of, intoxicating substances.	Mention of evidence of diminished capacity or mental disorder	Affirmative defense and a defendant is guilty by reason of insanity when the D proves the insanity by a preponderance of evidence
Colorado	Care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions; not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.	Mental disease or defect	Affirmative defense and a D is not guilty by reason of insanity if he shows by a preponderance of the evidence
Connecticut	Does not include repeated antisocial or criminal conduct; not be a defense under this section if such mental disease or defect was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or any combination thereof, unless such drug was prescribed for the defendant by a prescribing practitioner	Mental disease or defect	Affirmative defense that the D must show by a preponderance of evidence
Delaware	Does not include antisocial conduct or repeated criminal acts; not be a defense under this section if the alleged insanity or mental illness was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health care practitioner	Mental illness or mental defect	Affirmative defense that the D must prove he is not guilty by reason of insanity by a preponderance of evidence
District of Columbia	Does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.	Mental disease or defect	Affirmative defense that defendant must prove by preponderance of the evidence
Florida	Not listed	Mental infirmity, disease, or defect	Affirmative defense that the defendant must show by clear and convincing evidence
Georgia	Not listed	Mental disease, injury, or congenital deficiency	Affirmative defense that the D must show guilty by reason of insanity by a preponderance of evidence
Hawaii	Does not include an abnormality manifested only by repeated penal or otherwise anti-social conduct	Mental disorder, disease, or defect	Affirmative defense that the D must show he is not responsible by a preponderance of the evidence
Idaho	Abolished defense	n/a	n/a
Illinois	Does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct	Mental disease or mental defect	Affirmative defense that the D must show he is not criminally responsible by clear and convincing evidence

Table 2. Continued.

State	Exclusions	Terminology Describing Insanity	Burden of Proof / Name of Defense
Indiana	Does not include an abnormality manifested only by repeated unlawful or antisocial conduct	Mental disease or defect	Affirmative defense that the D must show he is not criminally responsible by a preponderance of the evidence
Iowa	Not listed	Diseased or deranged condition of mind	Affirmative defense that results in no conviction if D proves the "disease or deranged condition" by a preponderance of the evidence
Kansas	Abolished defense: Only goes towards lacking the culpable mental state to commit the offense	Mental disease or defect	Affirmative defense to be shown by the D by the preponderance of the evidence
Kentucky	Does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct	Mental illness or retardation	Affirmative defense to be shown by the D that he is not responsible by a preponderance of the evidence
Louisiana	Not listed	Mental disease or mental defect	Affirmative defense that D must prove by a preponderance of the evidence to be exempt from criminal responsibility
Maine	An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect	Mental disease or defect	Affirmative defense that the D is not criminally responsible by reason of insanity must be proven by a preponderance of the evidence
Maryland	Does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct	Mental disorder or mental retardation	Affirmative defense that the D is not criminally responsible must be shown by the D by a preponderance of evidence
Massachusetts	Not explicitly listed	Mental disease or defect	Affirmative defense that the D must show he is not responsible must be proven by a preponderance of the evidence
Michigan	An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances.	Mental illness	Affirmative defense that the D must show he is not responsible must be proven by a preponderance of the evidence
Minnesota	Not listed	Mental illness or mental deficiency	Affirmative defense and the D is excused from criminal liability if he proves by a preponderance of evidence

Table 2. Continued.

State	Exclusions	Terminology Describing Insanity	Burden of Proof / Name of Defense
Mississippi	Not listed	Ability of the accused to realize	Affirmative defense that the D must show by clear and convincing evidence
Missouri	Not listed	Mental disease or defect	Affirmative defense that the D is not guilty by reason of mental disease or defect means D must show by preponderance of the evidence
Montana	Abolished defense	n/a	n/a
Nebraska	Not addressed specifically	Mental disease or mental defect are most commonly used	Affirmative defense that the D is not responsible by reason of insanity must be proven by the D by a preponderance of evidence
Nevada		Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense	Affirmative defense that the D must prove by a preponderance of the evidence
New Hampshire	n/a	n/a	Affirmative defense that the D must prove and the jury must decide by a preponderance of the evidence
New Jersey	Not listed	Defect of reason, from disease of the mind	Affirmative defense that the D must show by preponderance of the evidence
New Mexico	Not listed	Diseased mind	Affirmative defense that the D must show by a preponderance of the evidence
New York	Not listed	Disease or defect	Affirmative defense that the D must show by a preponderance of the evidence
North Carolina	Statutory	Defect of reason, from disease or deficiency of the mind	Affirmative defense that the D must show he is not criminally responsible by preponderance of the evidence
North Dakota	Repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense	Mental disease or defect	Affirmative defense that the D must show he is not criminally responsible by a preponderance of the evidence
Ohio	Not listed	Severe mental disease or defect	Affirmative defense that the D must prove by a preponderance of the evidence

Table 2. Continued.

State	Exclusions	Terminology Describing Insanity	Burden of Proof / Name of Defense
Oklahoma	Not listed	Mentally ill persons, and all persons of unsound mind	Affirmative defense that the D must show he is not guilty due to mental illness by a preponderance of the evidence
Oregon	Abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do they include any abnormality constituting solely a personality disorder	Mental disease or defect	Affirmative defense that the D must show he is guilty except insane by a preponderance of the evidence
Pennsylvania	Nothing listed	Defect of reason, from disease of the mind	Affirmative defense that the D must show insanity by a preponderance of the evidence
Rhode Island	Do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct	Mental disease or defect	Affirmative defense that the D must prove he is not responsible by a preponderance of the evidence
South Carolina	Does not include repeated criminal or other antisocial conduct	Mental disease or defect	Affirmative defense that the D must prove by a preponderance of the evidence
South Dakota	Abnormality manifested only by repeated unlawful or antisocial behavior	Partially deprived of reason	Affirmative defense that the D must show by clear and convincing evidence
Tennessee	Abnormality manifested only by repeated criminal or otherwise antisocial conduct	Mental disease or defect	Affirmative defense that the D must prove defense by clear and convincing evidence
Texas	Abnormality manifested only by repeated criminal or otherwise antisocial conduct	Mental disease or defect	Affirmative defense that the D must prove by a preponderance of the evidence
Utah	Abolished defense	n/a	n/a
Vermont	Does not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct	Mental disease or defect	Affirmative defense that the D must show by a preponderance of the evidence
Virginia	Not listed	Mind impaired by disease	Affirmative defense that the D must show by a preponderance of the evidence
Washington	Not listed	Mental disease or defect	Affirmative defense that the D must show by a preponderance of the evidence
West Virginia	Not listed	Mental disease or defect	Affirmative defense that the D must show by a preponderance of the evidence

Table 2. Continued.

State	Exclusions	Terminology Describing Insanity	Burden of Proof / Name of Defense
Wisconsin	Does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct	Mental disease or defect	Affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence
Wyoming	Not listed	Mental illness or deficiency	Affirmative defense that the D must prove by a preponderance of the evidence
U.S. Military	Not listed	Severe mental disease or defect	Affirmative defense that the D must show by clear and convincing evidence
U.S. Federal	Not listed	Severe mental disease or defect	Affirmative defense that the D must show by clear and convincing evidence

MEMORANDUM TO TABLE 3

The Insanity Defense: Standard Terms Defined

Steps Taken

Major primary terms were chosen based on whether they required or had specific definitions, mimicked the ALI or M'Naghten language, or qualified other terms within the statute. These were placed in the "terms" column. There were several terms that were not defined through the steps taken as described below. This may be due to the fact that the information did not exist, or because only the most recent and most cited cases were reviewed. For the explanations found, the source immediately following the information in the "terms defined" column.

The statute or common law standard was reviewed first to see whether specific terms were defined. If the defense was listed in a statutory code, the surrounding codes were reviewed to see whether a "definitions" section existed to shed light on the terms of interest. Next the "Case Law" table was reviewed and cases were searched for key terms. Any information found was listed in the terms defined" column of this table. The states with abolished defenses were not listed in this table. If there were overlaps in terms listed in the "Variant" table as well as in the "Standard Terms" table, information was not repeated.

Table 3. AAPL NGRI Guidelines Standard Terms Defined.

State	Terms	Nature and Quality
Alabama	"Severe mental disease"	**Severe mental disease:**
	"Appreciate"	**Appreciate:**
	"Nature and quality"	**Nature and quality:**
Alaska	"Mental disease"	**Mental disease:** means a disorder of thought or mood that substantially impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life; "mental disease or defect" also includes mental retardation, which means a significantly below average general intellectual functioning that impairs a person's ability to adapt to or cope with the ordinary demands of life (AS § 12.47.130)
	"Appreciate"	**Appreciate:**
	"Nature and quality"	**Nature and quality:**
Arizona	"Mental disease of such severity"	**Mental disease of such severity:** Person did not know the criminal act was wrong (*State v. Roque*, 141 P.3d 368).
	"Afflicted"	**Afflicted:**
Arkansas	"Mental disease"	**Mental disease:** Substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgment, behavior, capacity to recognize reality, or ability to meet the ordinary demands of life; State of significantly subaverage general intellectual functioning existing concurrently with a defect of adaptive behavior that developed during the developmental period; or Significant impairment in cognitive functioning acquired as a direct consequence of a brain injury. (A.C.A. § 5-2-301)
	"Appreciate"	
	"Conform"	

(continues)

Table 3. Continued.

State	Terms	Nature and Quality
Arkansas *(continued)*		**Appreciate:** capacity for purposeful and knowing conduct (*Teater v. State*, 201 S.W.3d 442, 89 Ark. App. 215 [2005]) **Conform:** Refers to "conforming" to the requirements of law (Teater v. State, 201 S.W.3d 442, 89 Ark. App. 215 (2005)).
California	"Knowing or understanding" "Nature and quality"	**Knowing or understanding:** a defendant may be incapable of distinguishing what is morally right from what is morally wrong, even though he may understand the act is unlawful (People v. Torres, 26 Cal.Rptr.3d 518, (App. 2 Dist. 2005)). **Nature and quality:** refers to right v. wrong (*Hoover v. Carey*, 508 F.Supp.2d 775, [N.D.Cal.2007]).
Colorado	"Mental disease" "Culpable mental state"	**Mental disease:** only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (C.R.S.A. § 16-8-102) **Culpable mental state:** The defendant must possess the ability to form the intent at the time of the act. (*People v. Sommers*, 200 P.3d 1089 [App.2008]). The culpable mental state includes both intent, and after deliberation. (*People v. Grant*, 174 P.3d 798 [App.2007]).
Connecticut	"Substantial capacity" "Mental disease" "Appreciate"	**Substantial capacity:** A defendant lacks substantial capacity to appreciate the wrongfulness of his conduct if he knows his act to be criminal but commits it because of a delusion. (*State v. Cole*, 755 A.2d 202 [2000]). **Mental disease:** **Appreciate:** Lacks substantial capacity to understand both intellectually and emotionally that his actions were wrong. (*State v. Cole*, 755 A.2d 202 [2000]).
Delaware	"Mental illness" "Substantial capacity"	**Mental illness:** **Substantial capacity:**
District of Columbia	"Mental Disease or Defect"	**Mental disease or defect:** "Any abnormal condition of the mind which substantially affects mental or emotional processes and substantially impairs behavior controls." (*United States v. Brawner*, 471 F.2d 969 [D.C. Cir. 1972])
Florida	"Mental infirmity or disease"	**Mental infirmity or disease:**
Georgia	"Mental capacity" "Mental disease, injury, or congenital deficiency"	**Mental capacity:** **Mental disease, injury, or congenital deficiency:** Defendant acted under a delusional compulsion (*Jackson v. State*, 251 Ga.App. 448 [2001]).
Hawaii	"Physical or mental disease or disorder" "Substantial capacity" "Appreciate"	**Physical or mental disease or disorder:** **Substantial capacity:** The phrase "lack of substantial capacity" does not mean a total lack of capacity. It means capacity which has been impaired to such a degree that only an extremely limited amount remains. (*State v. Uyesugi*, 60 P.3d 843 [2002]). **Appreciate:** Broader sense of understanding than simple cognition (*State v. Uyesugi*, 60 P.3d 843 [2002]).

Table 3. Continued.

State	Terms	Nature and Quality
Illinois	"Mental disease" "Substantial capacity" "Appreciate"	**Mental disease:** DSM–IV is certainly one of the most significant standard evaluating tools used in the psychiatric and psychological profession (*People v. Houseworth*, 327 Ill.Dec. 904, App. 1 Dist. [2008]); a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior (720 ILCS 5/6–2(d)) **Substantial capacity:** **Appreciate:**
Indiana	"Mental disease" "Appreciate"	**Mental disease:** severely abnormal mental condition that grossly and demonstrably impairs a person's perception (IC 35-41-3-6) **Appreciate:**
Iowa	"diseased or deranged condition of the mind" "Nature and quality"	**Diseased or deranged condition of the mind:** **Nature and quality:**
Kentucky	"Mental illness or retardation" "Substantial capacity" "Appreciate"	**Mental illness or retardation:** substantially impaired capacity to use self-control, judgment, or discretion in the conduct of one's affairs and social relations, associated with maladaptive behavior or recognized emotional symptoms where impaired capacity, maladaptive behavior, or emotional symptoms can be related to physiological, psychological, or social factors. (KRS § 504.060) **Substantial capacity:** **Appreciate:**
Louisiana	"Mental disease"	**Mental disease:** The determination of sanity is a factual matter. All the evidence, including expert and lay testimony, along with the defendant's conduct and actions before and after the crime, should be reserved for the fact finder to establish whether the defendant has proven by a preponderance of the evidence that he was insane at the time of the offense. (State v. Williams, 804 So.2d 932, App. 1 Cir.2001)).
Maine	"mental disease" "substantial capacity"	**Mental disease:** only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality (17-A M.R.S.A. § 39) **Substantial capacity:**
Maryland	"mental disorder" "appreciate" "substantial capacity"	**Mental disorder:** A behavioral or emotional illness that results from a psychiatric or neurological disorder. This also includes a mental illness that so substantially impairs the mental or emotional functioning of a person as to make care or treatment necessary or advisable for the welfare of the person or for the safety of the person or property of another. (MD Code, Criminal Procedure, § 3-101) **Appreciate:** **Substantial capacity:** To lack the power or ability to a material or substantial degree (Buck v. State, 956 A.2d 884, 181 Md.App. 585 (2008)).
Massachusetts	"mental disease" "mental illness" "substantial capacity"	**Mental disease:** Experts experienced in the study and treatment of the mentally ill may testify fully as to the nature and extent of impairment of defendants' mental faculties as well as their observations or other bases for their conclusions. (Com. v. McHoul, 352 Mass. 544 (1967)). **Mental Illness:** A substantial disorder of thought, mood, perception, orientation, or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but shall not include alcoholism or substance abuse which is defined in M.G.L. c. 123, § 35. (104 CMR 27.05) *(continues)*

Table 3. Continued.

State	Terms	Nature and Quality
Massachusetts *(continued)*		**Substantial capacity**: By employing the telling word 'substantial' the rule emphasizes that 'any' incapacity is not sufficient , but that 'total' incapacity is also unnecessary (Com. v. McHoul, 352 Mass. 544 (1967)).
Michigan	"mental illness"	**Mental illness:** a substantial disorder of thought or mood that significantly impairs judgment, behavior, capacity to recognize reality, or ability to cope with the ordinary demands of life (MCL 330.1400(g)).
Minnesota	"mentally ill or mentally deficient"	**Mentally ill or mentally deficient:**
Mississippi	"realize and appreciate" "nature and quality"	**Realize and appreciate:** **Nature and Quality:**
Missouri	"mental disease" "knowing or appreciating"	**Mental disease:** include congenital and traumatic mental conditions as well as disease (V.A.M.S. 552.010) **Knowing and/ or appreciating:**
Nebraska	"mental disease"	**Mental disease:**
Nevada	"mental disease"	**Mental disease:** Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense;
New Hampshire	"product test"	**Product test:** Crimes were the product of such insanity (Abbott v. Cunningham, 766 F. Supp. 1218 (D.N.H. 1991)).
New Jersey	"disease of the mind" "nature and quality	**Disease of the mind:** **Nature and quality:**
New Mexico	"diseased mind" "nature and quality"	**Diseased mind:** **Nature and quality:**
New York	"mental disease" "substantial capacity" "appreciate"	**Mental disease:** **Substantial capacity:** **Appreciate:**
North Carolina	"defect of reason from disease or deficiency of mind" "nature and quality"	**Defect of reason from disease or deficiency of mind:** **Nature and Quality:**
North Dakota	"mental disease" "substantial capacity"	**Mental disease:** **Substantial capacity:**
Ohio	"severe mental illness"	**Severe mental disease:** Mental illnesses come in many forms; different illnesses may affect a defendant's moral responsibility or deterrability in different ways and to different degrees. (State v. Hancock, 840 N.E.2d 1032, (2006)).
Oklahoma	"Mentally ill persons, and all persons of unsound mind"	**Mentally ill persons:**
Oregon	"mental disease" "substantial capacity" "appreciate"	**Mental disease**: Must interpret according to their "plain, natural, and ordinary meaning (Tharp v. Psychiatric Sec. Review Bd., 110 P.3d 103, 338 Or. 413. (2005)); Mental disease is defined as any diagnosis of mental disorder which is a significant behavioral or psychological syndrome or pattern that is associated with distress or disability causing symptoms or impairment in at least one important area of an individual's functioning and is defined in the current Diagnostic and Statistical Manual of Mental Disorders (DSM–IV) of the American Psychiatric Association. (Beiswenger v. Psychiatric Sec. Review Bd., 84 P.3d 180, 192 Or.App. 38 (2004)).

(continues)

Table 3. Continued.

State	Terms	Nature and Quality
Oregon *(continued)*		**Substantial capacity:** **Appreciate:**
Pennsylvania	"Disease of the mind" "Nature and quality"	**Disease of the mind:** **Nature and quality:**
Rhode Island	"Mental disease" "Subsequently impaired"	**Mental disease:** **Subsequently impaired:**
South Carolina	"Mental disease"	**Mental disease:**
South Dakota	"Mental illness"	**Mental Illness:** any substantial psychiatric disorder of thought, mood or behavior which affects a person at the time of the commission of the offense and which impairs a person's judgment (SDCL § 22-1-2). The distinction between sanity and mental illness rests upon a finding of knowledge or intent. "Insane people are legally incapable of committing crimes, but those people who are merely 'mentally ill' may be held criminally responsible. (State v. Calin, 692 N.W.2d 537,(2005 S.D. 13)).
Tennessee	"Severe mental disease" "Appreciate"	**Severe mental disease:** **Appreciate:**
Texas	"Mental disease"	**Mental disease:**
Vermont	"Mental disease" "Adequate capacity" "Appreciate"	**Mental disease:** shall include congenital and traumatic mental conditions as well as disease (13 V.S.A. § 4801). **Adequate capacity:** **Appreciate:**
Virginia	"Impaired by disease" "Nature, character, and consequences"	**Impaired by disease:** **Nature, character, and consequences:**
Washington	"Mental disease" "Nature and quality"	**Mental disease:** the presence of a "mental disease or defect" is necessary to establish the defense, it has only been on rare occasion that we have ascribed the term any significant independent meaning (State v. Klein, 156 Wash.2d 103, 124 P.3d 644 (2005)). The American Psychiatric Association publishes the Diagnostic and Statistical Manual of Mental Disorders, which is a compilation of mental disorders that 'reflect[s] a consensus of current formulations of evolving knowledge' in the mental health field." ((State v. Klein 156 Wash.2d 103, 124 P.3d 644 (2005)). Mental disease is a severe illness that distorts the perception of reality to the extent that the person is psychotic. (State v. Monaghan, 2012 WL 384827). Nature and quality: the DSM undoubtedly contains mental disorders that do not prevent individuals from perceiving the nature and quality of their acts or telling right from wrong. (State v. Klein, 156 Wash.2d 103, 124 P.3d 644 (2005)).
West Virginia	"Mental disorder" "Substantial capacity" "Appreciate"	**Mental disorder:** The DSM-IV's "Cautionary Statement," while warning against the manual's use in reaching legal conclusions as to what constitutes mental disease, disorder, or disability, or legal determinations regarding responsibility or competency, nevertheless expressly states that its criteria and classifications of mental disorders "reflect a consensus of current formulations of evolving knowledge in our field." DSM-IV at xxvii. (State v. Lockhart, 542 S.E.2d 443 (W.V a.,2000)).

(continues)

Table 3. Continued.

State	Terms	Nature and Quality
West Virginia *(continued)*		**Substantial capacity:** **Appreciate:**
Wisconsin	"Mental disorder" "Substantial capacity" "Appreciate"	*No case law from the 1990's and on*
Wyoming	"Mental illness" "Capacity" "Appreciate"	*No case law from the 1990's and on*
U.S. Military	"Severe mental disease" "Appreciate" "Nature and quality"	**Severe mental disease:** **Appreciate:** **Nature and quality:**
U.S. Federal	"Severe mental disease" "Appreciate" "Nature and quality"	**Severe mental disease:** The "disease" need not be one defined by medical terminology. It may be a medically defined disease or one you as laypersons would call a disease. The "defect" need not be one defined by medical terminology. It may be a medically defined defect or one you as laypersons would call a defect. (U.S. v. Polizzi, 545 F.Supp.2d 270 (E.D.N.Y.2008)). When the law speaks about a mental disease or defect, it does not refer to any particular medical term. (U.S. v. Polizzi, 545 F.Supp.2d 270 (E.D.N.Y.2008)). The inquiry into what is a mental disease or defect and what is severe requires an expert opinion. (U.S. v. Sanchez-Ramirez, 432 F.Supp.2d 145 (D.Me.2006)). Appreciate: refers to one's understanding of what he or she was doing (U.S. v. Polizzi, 545 F.Supp.2d 270 (E.D.N.Y.2008)). A lack of awareness of what he is doing or a failure to apprehend the significance of his actions in some deeper sense. (U.S. v. Polizzi, 545 F.Supp.2d 270 (E.D.N.Y.2008)). American case law applying it establish that a defendant's ability to appreciate right and wrong has consistently been determined by reference to societal, not personal, standards of morality. (U.S. v. Ewing, 494 F.3d 607). **Nature and quality:**

MEMORANDUM TO TABLE 4

The Insanity Defense: Variant Interpretation

This table was created to offer a better understanding as to how the variants, as opposed to the standard tests for the M'Naghten and ALI insanity defenses, are best interpreted according to case law. Each jurisdiction which had a variant on either the ALI or M'Naghten standard identified on the updated Guidelines chart was reviewed.

Table 4. AAPL Guidelines Variant Interpretation.

State	Variant Type	Variant Language	Interpretation
Alabama	M'Naghten	Addition of "severe" and "appreciate"	Substance-induced psychosis does not qualify as severe mental disease or defect. *Albarran v. State*, 2011 WL 3211525. Unusual or weird behavior does not mean that the defendant necessarily can't appreciate the nature and quality of his act. *Albarran v. State*, 2011 WL 3211525.
Alaska	M'Naghten	No M'Naghten wrongfulness language; Addition of the term "appreciate"	n/a
Arizona	M'Naghten	No M'Naghten "nature and quality" language	n/a
Arkansas	ALI	No "substantial capacity."	n/a
Colorado	M'Naghten	No M'Naghten "nature and quality" language and includes a mens rea element as part of insanity."	Mens rea element: The defendant must possess the ability to form the intent at the time of the act. *People v. Sommers*, 200 P.3d 1089. "Mental slowness" may qualify as possessing a lack of the qualified mental state to commit a crime. *People v. Vanrees*, 125 P.3d 403 (2005). The culpable mental state includes both intent, and after deliberation. *People v. Grant*, 174 P.3d 798.

Table 4. Continued.

State	Variant Type	Variant Language	Interpretation
Connecticut	ALI	Uses "control" instead of "conform"	"Control" refers to a person's inhibitions to control his conduct. *State v. Quinet*, 752 A.2d 490 (2000).
Delaware	ALI	Dropped the volitional prong of ALI	n/a
District of Columbia	ALI	Uses "recognize" instead of "appreciate." Uses "wrongfulness" instead of "criminality."	"…while the semantic differences between "appreciate", "know", and "recognize" may be relatively slight, we find the word "appreciate" to be undesirable because of its multiple connotations — including, for example, to enjoy. We believe that "recognize" will be more readily understood by jurors." *Bethea v. United States*, 365 A.2d 64 (1976) "As both witnesses and jurors almost invariably are laymen with respect to the law, it appears to us that an attempt to subdivide the accused's cognitive capacity into awareness of criminality as distinct from wrongfulness risks confusion and may detract from the proper inquiry of whether the defendant had the general capacity to appreciate the nature and quality of his acts." *Bethea v. United States*, 365 A.2d 64 (1976)
Georgia	M'Naghten	M'Naghten plus volitional prong variant	n/a
Illinois	ALI	Dropped the volitional prong of ALI	n/a
Indiana	ALI	Dropped the volitional prong and "substantial capacity" of ALI	n/a
Louisiana	M'Naghten	No M'Naghten "nature and quality" language	n/a
Maine	ALI	Dropped volitional prong of ALI	n/a
Mississippi	M'Naghten	Substitutes "realize" and "appreciate" for know	"Appreciate" refers to knowing the difference between right and wrong. Hawthorne v. State, 883 So.2d 86.
Missouri	M'Naghten	Adds "appreciate" to M'Naghten	"Appreciate" means whether the defendant knew right from wrong at time of commission of act. *Taylor v. State*, 262 S.W.3d 231 (2008).
Nevada	M'Naghten	Restricted to delusional states	State Supreme Court found the elimination of the insanity defense invalid under the state and federal constitutions, because it allowed conviction where the mens rea elements of crimes were not present (*Finger v. State*, 117 Nev. 548 [2001])
New Hampshire	neither	"Product" test	Crime charged must be a "product" of the illness. *State v. Labranche*, 156 N.H. 740 (2008).
New Mexico	M'Naghten	Adds irresistible impulse to M'Naghten	n/a
New York	ALI	Dropped volitional prong of ALI	n/a
North Dakota	ALI	Substantially different from M'Naghten and ALI, but broadly speaking includes a mens rea element	Act must have occurred as a result of either a loss or a serious distortion of one's capacity to recognize reality. *State v. Klose*, 657 N.W.2d 276 (2003).
Ohio	ALI	No M'Naghten "nature and quality" language	n/a

Table 4. Continued.

State	Variant Type	Variant Language	Interpretation
Oklahoma	M'Naghten	No M'Naghten "nature and quality" language	n/a
Rhode Island	ALI	Similar language to ALI but adopts British "justly responsible."	One is not "justly responsible" for his acts if there existed a sufficient relationship between the mental abnormality and the condemned behavior. State v. Johnson, 399 A.2d 469 (R.I. 1979).
South Carolina	M'Naghten	No M'Naghten "nature and quality" language, uses language of "moral wrongfulness."	"Moral wrongfulness" refers to either moral or legal right or wrong. State v. Pittman, 647 S.E.2d 144.
South Dakota	M'Naghten	No M'Naghten "nature and quality" language	n/a
Tennessee	M'Naghten	Substitutes "appreciate" for "know"	"Appreciate" refers to one's judgment. State v. Holton, 126 S.W.3d 845 (2004). "Appreciate" refers to one's perception of the events. State v. Flake, 114 S.W.3d 487 (2003). "Appreciate" refers to understanding one's actions. State v. Smith, 151 S.W.3d 533.
Texas	M'Naghten	No M'Naghten "nature and quality" language	n/a
Vermont	ALI	"Adequate capacity" substituted for "substantial capacity"	?
Virginia	M'Naghten	M'Naghten plus irresistible impulse	n/a
Wyoming	ALI	No "substantial" capacity	n/a
U.S. Military	M'Naghten	Substitutes "appreciate" for "know"	"Appreciate" refers to one's capacity to understand. U.S. v. McGuire, 63 M.J. 678 (Army Ct. Crim. App. 2006).
U.S. Federal	M'Naghten	Substitutes "appreciate" for "know"	"Appreciate" means that the defendant was unable to understand what he was doing or understand what he was doing was wrong. U.S. v. Polizzi, 545 F.Supp.2d 270.

MEMORANDUM TO TABLE 5

The Insanity Defense: Case Law Table

The annotated code for the statute from each jurisdiction was reviewed. Relevant cases published after 2000 were identified. When determining which cases were most relevant, careful attention was paid to whether the summary at the beginning of the case addressed the meaning and applicability of the statutory or common law language, as opposed to focusing heavily on procedural issues.

Additionally, if the insanity defense was not codified, but was instead described at common law, relevant cases were identified by referring to the leading case.

If a jurisdiction had previously abolished the defense, case law was located which addressed the lack of the defense or interpreted a similar defense, such as that of "diminished capacity."

Table 5. Case Law Table.

State	Cases
Alabama	*Ex parte Vaughn*, 869 So.2d 1090.
	Knight v. State, 907 So.2d 470.
	Albarran v. State, 2011 WL 3211525.
Alaska	*Lewis v. State*, 195 P.3d 622 (2008).
Arizona	*State v. Heartfield*, 196 Ariz. 407, 998 P.2d 1080 (App. Div.2 2000).
	State v. Moody, 208 Ariz. 424, 94 P.3d 1119 (2004).
	State v. Roque, 141 P.3d 368.
Arkansas	*Arkansas Dept. of Correction v. Bailey*, 247 S.W.3d 851, 368 Ark. 518 (2007).
	Teater v. State, 201 S.W.3d 442, 89 Ark. App. 215 (2005).
California	*People v. Anderson*, 122 Cal.Rptr.2d 587, 28 Cal.4th 767, 50 P.3d 368 (2002).
	People v. Dobson, 75 Cal.Rptr.3d 238, 161 Cal.App.4th 1422 (App. 5 Dist. 2008).
	People v. Hernandez, 93 Cal.Rptr.2d 509 (2000).
(continued)	*People v. Severance*, 41 Cal.Rptr.3d 397 (App. 3 Dist. 2006).
	People v. Torres, 26 Cal.Rptr.3d 518 (App. 2 Dist. 2005).
	People v. Padilla, 126 Cal.Rptr.2d 889 (App. 5 Dist. 2002).
	Hoover v. Carey, 508 F.Supp.2d 775 (N.D.Cal.2007).
	People v. Phillips, 99 Cal.Rptr.2d 448, 83 Cal. App.4th 170 (App. 2 Dist. 2000).
	People v. Coddington, 97 Cal.Rptr.2d 528, 23 Cal.4th 529, 2 P.3d 1081 (2000).
	People v. Mejia-Lenares, 38 Cal.Rptr.3d 404.
	People v. Ferris, 30 Cal.Rptr.3d 426.
Colorado	*People v. Sommers*, 200 P.3d 1089 (2008).
	People v. Vanrees, 125 P.3d 403 (2005).
	People v. Grant, 174 P.3d 798 (2007).
	People v. Anderson, 70 P.3d 485 (2002).
	People v. Garcia, 113 P.3d 775.

Table 5. Continued.

State	Cases
Connecticut	*State v. Cole*, 755 A.2d 202 (2000).
	State v. Quinet, 752 A.2d 490 (2000)
	State v. Zubrowski, 921 A.2d 667 (2007).
	State v. Lavigne, 749 A.2d 83, 57 Conn.App. 463 (2000).
	State v. Madigosky, 966 A.2d 730.
Delaware	*Cooke v. State*, 977 A.2d 803.
	Taylor v. State, 28 A.3d 399.
District of Columbia	*Howard v. United States*, 954 A.2d 415 (2008).
	Pegues v. United States, 415 A. 2d 1374 (1980).
	Bethea v. United States, 365 A.2d 64 (1976)
	United States v. Brawner, 471 F.2d 969 (1972)
Florida	*Brown v. State*, App. 1 Dist., 994 So.2d 480 (2008).
Georgia	*Mincey v. Head*, 206 F.3d 1106 (2000).
	Lawrence v. State, 265 Ga. 310, 454 S.E.2d 446 (1995).
	Foster v. State, 283 Ga. 47 (2008).
	Wallin v. State, 285 Ga.App. 377 (2007).
	Jackson v. State, 251 Ga.App. 448, 554 S.E.2d 592 (2001).
	Robinson v. State, 272 Ga.App. 87, 611 S.E.2d 759 (2005).
	Hicks v. Head, 333 F.3d 1280 (2003).
	State v. Abernathy, 2011 WL 2610389.
	Perry v. State, 603 S.E.2d 526.
	Osterhout v. State, 596 S.E.2d 766.
	Serritt v. State, 582 S.E.2d 507.
	Freeman v. State, 132 Ga. App. 742, (1974)
Hawaii	*State v. Plichta*, 172 P.3d 512, 116 Hawai'i 200 (2007).
	State v. Young, 999 P.2d 230, 93 Hawai'i 224 (2000).
	State v. Uyesugi, 60 P.3d 843 (2002).
	State v. Young, 999 P.2d 230, 93 Hawai'i 224 (2000).
Idaho	*State v. Leach*, 20 P.3d 709, 135 Idaho 525 (2001).
Illinois	*People v. Ramsey*, 248 Ill.Dec. 882, 192 Ill.2d 154, 735 N.E.2d 533 (2000).
	People v. Clay, 297 Ill.Dec. 141, 361 Ill.App.3d 310, 836 N.E.2d 872 (App. 1 Dist.2005).
	People v. Teran, 289 Ill.Dec. 75, 353 Ill.App.3d 720, 818 N.E.2d 1278 (App. 2 Dist.2004).
	People v. Dwight, 307 Ill.Dec. 189, 368 Ill.App.3d 873, 859 N.E.2d 189 (App. 1 Dist.2006).
	People v. Houseworth, 327 Ill.Dec. 904, 388 Ill.App.3d 37, 903 N.E.2d 1 (App. 1 Dist.2008).
	People v. Trotter, 864 N.E.2d 281.
	People v. Frank-McCarron, 934 N.E.2d 76.
	People v. McCullum, 897 N.E.2d 787.
	People v. Hulitt, 838 N.E.2d 148.
Indiana	*Marley v. State*, 747 N.E.2d 1123 (2001).
	Carson v. State, 807 N.E.2d 155 (App.2004).
	Baird v. Davis, 388 F.3d 1110 (2004).
	Galloway v. State, 938 N.E.2d 699.
	Fernbach v. State, 954 N.E.2d 1080.
	Berry v. State, 950 N.E.2d 821.
	Baer v. State, 942 N.E.2d 80.
	Schmid v. State, 804 N.E.2d 174.
Iowa	*Forsyth v. Ault*, 537 F.3d 887 (2008).
	State v. Lorence, 669 N.W.2d 261 (App.2003).
	State v. Thomas, 674 N.W.2d 683.
Kansas	*State v. Jorrick*, 4 P.3d 610, 269 Kan. 72 (2000).
	State v. Pennington, 132 P.3d 902, 281 Kan. 426 (2006).
	In re D.A., 197 P.3d 849, 40 Kan.App.2d 878 (2008).
	State v. Bethel, 66 P.3d 840.
	State v. White, 109 P.3d 1199.
	State v. Davis, 85 P.3d 1164.
	State v. Van Hoet, 89 P.3d 606.
Kentucky	*Welborn v. Com.*, 157 S.W.3d 608 (Ky. 2005).
	Nationwide Mut. Fire Ins. Co. v. Pelgen, 241 S.W.3d 814 (Ky.App. 2007).
	Murphy v. Com., WL 21355879 (Ky. 2003).
	Oliver v. Com., 2008 WL 4291434.

Table 5. Continued.

State	Cases
Louisiana	*State v. George,* 768 So.2d 748, (La.App. 2 Cir. 9/27/00).
	State v. Dressner, 45 So.3d 127, (La. 7/6/10).
	State v. Williams, 804 So.2d 932, 2001-0944 (1 Cir. 12/28/01).
	State v. Edwards, 17 So.3d 1037, 44,552 (App. 2 Cir. 8/19/09).
	State v. Holmes, 5 So.3d 42, 2006-2988 (La. 12/2/08)
Maine	*State v. Okie,* 987 A.2d 495 (2010).
Maryland	*Buck v. State,* 956 A.2d 884, 181 Md.App. 585 (2008).
	State v. Garnett, 863 A.2d 1007 (2004)
Massachusetts	*Com. v. McHoul,* 352 Mass. 544 (1967).
	Com. v. Keita, 429 Mass. 843 (Mass 1999).
	Com. v. Conaghan, 433 Mass. 105, (Mass. 2000).
	Com. v. Lacava, Not Reported in N.E.2d, 1998 WL 374925.
	Com. v. DiPadova, Mass.
	Com. v. Mercado, 896 N.E.2d 1262.
	Com. v. Cutts, 831 N.E.2d 1279.
	Com. v. Urrea, 822 N.E.2d 1192.
Michigan	*People v. Carpenter,* 627 N.W.2d 276, 464 Mich. 223 (2001).
	People v. Smith, 326 N.W.2d 434, 119 Mich. App. 91 (1982).
	People v. Linzey, 315 N.W.2d 550, 112 Mich. App. 374 (1981).
	People v. Drossart, 297 N.W.2d 863, 99 Mich. App. 66 (1980).
	People v. Crawford, 279 N.W.2d 560, 89 Mich. App (1979).
	People v. Mangiapane, 271 N.W.2d 240, 85 Mich.App. 379 (1978).
Minnesota	*State v. Schleicher,* 672 N.W.2d 550 (2003).
	State v. Odell, 676 N.W.2d 646 (2004).
	State v. McLaughlin, 725 N.W.2d 703 (2007).
	State v. Odell, 676 N.W.2d 646 (2004).
	State v. McLaughlin, 725 N.W.2d 703 (2007).
	State v. Peterson, 764 N.W.2d 816 (2009).
Mississippi	*Laney v. State,* 421 So.2d 1216 (Miss.,1982).
	Hearn v. State, 3 So.3d 722.
	Hawthorne v. State, 883 So.2d 86.
	Nolan v. State, 61 So.3d 887.
	Garcia v. State, 828 So.2d 1279.
	Sanders v. State, 9 So.3d 1132.
Missouri	*Taylor v. State,* 262 S.W.3d 231 (Sup. 2008).
	Compton v. State, 172 S.W.3d 927 (App. S.D. 2005).
	State v. Moore, 264 S.W.3d 657 (App. E.D. 2008).
	State v. Walkup, 220 S.W.3d 748.
	State v. Lewis, 188 S.W.3d 483.
Montana	*State v. Sandrock,* 95 P.3d 153, 322 Mont. 231 (2004).
	State v. Meckler, 190 P.3d 1104.
	State v. Korell, 690 P.2d 992 (Mont. 1984)
Nebraska	*State v. Hurst,* 594 N.W.2d 303 (1999).
	State v. Johnson, 551 N.W.2d 742 (1996).
	State v. Rowe, 210 Neb. 419, 315 N.W.2d 250 (1982).
	State v. Segura, Not Reported in N.W.2d, 2011 WL 4635169, Neb.App.,2011.
	State v. Hotz, 795 N.W.2d 645 (2011).
	State v. France, 776 N.W.2d 510 (2009).
	State v. Harms, 650 N.W.2d 481 (2002).
	State v. Clark, 637 N.W.2d 671 (2002).
	State v. Carr, 435 N.W.2d 194 (1989).
	State v. McGhee, 742 N.W.2d 497, 274 Neb. 660 (2007).
	State v. Canbaz, 705 N.W.2d 221, 270 Neb. 559 (2005).
Nevada	*Finger v. State,* 27 P.3d 66, 117 Nev. 548 (2001).
	O'Guinn v. State, 259 P.3d 488, 118 Nev. 849 (2002).
	Blake v. State, 121 P.3d 567.
New Hampshire	*Abbott v. Cunningham,* 766 F. Supp. 1218 (D.N.H. 1991).
	State v. Labranche, 156 N.H. 740 (2008).
	State v. Fichera, 153 N.H. 588 (2006).
	State v. Plante, 134 N.H. 456 (1991).
	State v. Rullo, 120 N.H. 149, 152, 412 A.2d 1009 (1980).

Table 5. Continued.

State	Cases
New Jersey	*State v. Winder*, 200 N.J. 231, 979 A.2d 312 (2009).
	State v. Jimenez, 188 N.J. 390, 908 A.2d 181 (2006).
	State v. Handy, 25 A.3d 1140.
	State v. Singleton, 12 A.3d 728.
New Mexico	*State v. White*, 270 P.2d 727 (N.M. 1954).
	State v. Balderama, 135 N.M. 329 (2004).
	State v. Berry, Not Reported in P.3d, 2009 WL 6670327 (2009).
	State v. Mireles, 136 N.M. 337 (2004).
New York	*People v. Hendrie*, 24 A.D.3d 871, 805 N.Y.S.2d 464 (3 Dept. 2005).
	People v. Han, 200 A.D.2d 780, 607 N.Y.S.2d 365 (2 Dept. 1994).
	People v. Goldstein, 14 A.D.3d 32, 786 N.Y.S.2d 428 (1 Dept. 2004).
	People v. Trojan, 900 N.Y.S.2d 405.
	People v. MacFarlane, 928 N.Y.S.2d 755.
	People v. Schrock, 900 N.Y.S.2d 804.
North Carolina	*State v. Bonney*, 405 S.E.2d 145 (N.C. 1991).
	State v. Sellars, 664 S.E.2d 45.
	State v. Staten, 616 S.E.2d 650.
	State v. Hornsby, 567 S.E.2d 449.
	State v. Evangelista, 319 N.C. 152 (1987)
North Dakota	*State v. Klose*, 2003, 657 N.W.2d 276.
	State v. Dahl, 783 N.W.2d 41.
Ohio	*Richardson v. Lebanon*, 384 Fed.Appx. 479, 2010 WL 2711319.
	State v. Tibbetts, 92 Ohio St.3d 146, 749 N.E.2d 226.
	State v. Hancock, 840 N.E.2d 1032.
Oklahoma	*Jones v. Gibson*, 206 F.3d 946 (2000).
	Kiser v. Boone, 4 Fed.Appx. 736, 2001 WL 193876 (2001).
Oregon	*Tharp v. Psychiatric Sec. Review Bd.*, 110 P.3d 103, 338 Or. 413 (2005).
	Beiswenger v. Psychiatric Sec. Review Bd., 84 P.3d 180, 192 Or.App. 38 (2004).
	Sandgathe v. Maass, 314 F.3d 371 (2002).
	State v. Peverieri, 84 P.3d 1125, 192 Or.App. 229 (2004).
Pennsylvania	Stevens v. Horn, 319 F.Supp.2d 592.
	Com. v. Rabold, 920 A.2d 857.
	Com. v. Hughes, 865 A.2d 761.
	Com. v. Yasipour, 957 A.2d 734.
	Com. v. B.C., 936 A.2d 1070.
Rhode Island	*State v. Johnson*, 399 A.2d 469 (R.I. 1979)
	State v. Collazo, 967 A.2d 1106.
	State v. Fuller-Balletta, 996 A.2d 133.
South Carolina	*State v. Pittman*, 647 S.E.2d 144.
	State v. Senter, 2011 WL 6821339.
	Monahan v. State, 616 S.E.2d 422.
South Dakota	*State v. Calin*, 692 N.W.2d 537.
	State v. Martin, 683 N.W.2d 399.
	State v. Tiegen, 744 N.W.2d 578.
Tennessee	*State v. Holton*, 126 S.W.3d 845 (2004).
	State v. Thompson, 151 S.W.3d 434 (2004).
	State v. Kennedy, 152 S.W.3d 16 (2004).
	State v. Flake, 114 S.W.3d 487 (2003).
	State v. Smith, 151 S.W.3d 533.
Texas	*Nutter v. State*, 93 S.W.3d 130 (App. 14 Dist. 2001).
	Ruffin v. State, 270 S.W.3d 586 (Cr.App. 2008).
	Rhoten v. State, 299 S.W.3d 349.
	Reyna v. State, 116 S.W.3d 362.
	Dashield v. State, 110 S.W.3d 111.
Utah	*State v. Lafferty*, 20 P.3d 342, (2001).
	State v. Mace, 921 P.2d 1372.
	State v. Jones, 44 P.3d 658.
	State v. Herrera, 895 P.2d 359 (Utah 1995)
Vermont	*State v. Sexton*, 904 A.2d 1092 (2006).
	State v. Tribble, 892 A.2d 232.
	In re Combs, 27 A.3d 318.
Virginia	*Bennett v. Commonwealth*, 511 S.E.2d 439 (Va. 1999).
	White v. Com., 636 S.E.2d 353.
	Morgan v. Com., 646 S.E.2d 899.
	Eastlack v. Com., 710 S.E.2d 723.
	Orndorff v. Com., 691 S.E.2d 177.

Table 5. Continued.

State	Cases
Washington	*Greene v. Lambert,* 288 F.3d 1081 (2002).
	Pirtle v. Morgan, 313 F.3d 1160 (2002).
	State v. Klein, 156 Wash.2d 103, 124 P.3d 644 (2005).
	State v. Monaghan, 2012 WL 384827.
	State v. Chanthabouly, 262 P.3d 144.
	State v. Greene, 136 Wash.App. 1002.
West Virginia	*State v. Lockhart,* 542 S.E.2d 443.
Wisconsin	No case law from the 1990's
Wyoming	No case law from the 1990's
U.S. Military	*Gardner v. Shinseki,* 22 Vet.App. 415 (Vet. App.2009).
	U.S. v. Savage, 67 M.J. 656 (Army Ct. Crim. App. 2009).
	U.S. v. Mackie, 66 M.J. 198.
	U.S. v. McGuire, 63 M.J. 678 (Army Ct. Crim. App. 2006).
U.S. Federal	*U.S. v. Ringer,* 139 Fed.Appx. 969, 2005 WL 1666105.
	U.S. v. Shelton, 490 F.3d 74 (2007).
	U.S. v. Long, 562 F.3d 325 (2009).
	U.S. v. Polizzi, 545 F.Supp.2d 270 (E.D.N.Y.2008).
	U.S. v. Sanchez-Ramirez, 432 F.Supp.2d 145 (D.Me.2006).
	U.S. v. Ewing, 494 F.3d 607 (2007).
	Pirtle v. Morgan, 313 F.3d 1160.
	U.S. v. Wattleton, 296 F.3d 1184.

MEMORANDUM TO TABLE 6

The Insanity Defense: Statute Compilation

This table was created so that all statutes and common law standards can be quickly and easily accessed. The table contains only the most relevant portions of each statute or common law standard. Only the most relevant language was included since many of the statutes were quite lengthy. Additionally, if there was no statute, the leading court case was identified and relevant language provided.

Table 6. Statute compilation.

State	Cases
Alabama	**§ 13A-3-1. Mental disease or defect.** (a) It is an affirmative defense to a prosecution for any crime that, at the time of the commission of the acts constituting the offense, the defendant, as a result of severe mental disease or defect, was unable to appreciate the nature and quality or wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense. (b) "Severe mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (c) The defendant has the burden of proving the defense of insanity by clear and convincing evidence.
Alaska	**§ 12.47.010. Insanity as affirmative defense** (a) In a prosecution for a crime, it is an affirmative defense that when the defendant engaged in the criminal conduct, the defendant was unable, as a result of a mental disease or defect, to appreciate the nature and quality of that conduct. (c) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the affirmative defense under (a) of this section.
(continued)	(d) The affirmative defense specified in (a) of this section is the affirmative defense of insanity. A defendant who successfully raises the affirmative defense of insanity shall be found not guilty by reason of insanity and the verdict shall so state.
Arizona	**§ 13-502. Insanity test; burden of proof; guilty except insane verdict** A. A person may be found guilty except insane if at the time of the commission of the criminal act the person was afflicted with a mental disease or defect of such severity that the person did not know the criminal act was wrong. A mental disease or defect constituting legal insanity is an affirmative defense. Mental disease or defect does not include disorders that result from acute voluntary intoxication or withdrawal from alcohol or drugs, character defects, psychosexual disorders or impulse control disorders. Conditions that do not constitute legal insanity include but are not limited to momentary, temporary conditions arising from the pressure of the circumstances, moral decadence, depravity or passion growing out of anger, jealousy, revenge, hatred or other motives in a person who does not suffer from a mental disease or defect or an abnormality that is manifested only by criminal conduct.

Table 6. Continued.

State	Cases
(continued)	C. The defendant shall prove the defendant's legal insanity by clear and convincing evidence.
Arkansas	**§ 5-2-312. Mental disease as defense** (a)(1) It is an affirmative defense to a prosecution that at the time the defendant engaged in the conduct charged he or she lacked capacity as a result of mental disease or defect to: (A) Conform his or her conduct to the requirements of law; or (B) Appreciate the criminality of his or her conduct. (2) When the affirmative defense of mental disease or defect is presented to a jury, prior to deliberations the jury shall be instructed regarding the disposition of a defendant acquitted on a ground of mental disease or defect pursuant to § 5-2-314. (b) As used in the Arkansas Criminal Code, "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (c) When a defendant is acquitted on a ground of mental disease or defect, the verdict and judgment shall state that the defendant was acquitted on a ground of mental disease or defect.
California	**§ 25. Diminished capacity; insanity; evidence; amendment of section** (a) The defense of diminished capacity is hereby abolished. In a criminal action, as well as any juvenile court proceeding, evidence concerning an accused person's intoxication, trauma, mental illness, disease, or defect shall not be admissible to show or negate capacity to form the particular purpose, intent, motive, malice aforethought, knowledge, or other mental state required for the commission of the crime charged. (b) In any criminal proceeding, including any juvenile court proceeding, in which a plea of not guilty by reason of insanity is entered, this defense shall be found by the trier of fact only when the accused person proves by a preponderance of the evidence that he or she was incapable of knowing or understanding the nature and quality of his or her act and of distinguishing right from wrong at the time of the commission of the offense.
Colorado	**§ 16-8-101.5. Insanity defined—offenses committed on and after July 1, 1995** (1) The applicable test of insanity shall be: (a) A person who is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act is not accountable; except that care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions, for, when the act is induced by any of these causes, the person is accountable to the law; or (b) A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged, but care should be taken not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when the act is induced by any of these causes, the person is accountable to the law. (2) As used in subsection (1) of this section: (a) "Diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (b) "Mental disease or defect" includes only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (3) This section shall apply to offenses committed on or after July 1, 1995.
Connecticut	**§ 53a-13. Lack of capacity due to mental disease or defect as affirmative defense** (a) In any prosecution for an offense, it shall be an affirmative defense that the defendant, at the time he committed the proscribed act or acts, lacked substantial capacity, as a result of mental disease or defect, either to appreciate the wrongfulness of his conduct or to control his conduct within the requirements of the law. (b) It shall not be a defense under this section if such mental disease or defect was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor or any drug or substance, or any combination thereof, unless such drug was prescribed for the defendant by a prescribing practitioner, as defined in subdivision (22) of section 20-571, and was used in accordance with the directions of such prescription.

Table 6. Continued.

State	Cases
Delaware	**§ 401. Mental illness or psychiatric disorder** (a) In any prosecution for an offense, it is an affirmative defense that, at the time of the conduct charged, as a result of mental illness or mental defect, the accused lacked substantial capacity to appreciate the wrongfulness of the accused's conduct. If the defendant prevails in establishing the affirmative defense provided in this subsection, the trier of fact shall return a verdict of "not guilty by reason of insanity." (b) Where the trier of fact determines that, at the time of the conduct charged, a defendant suffered from a mental illness or mental defect which substantially disturbed such person's thinking, feeling or behavior and/or that such mental illness or mental defect left such person with insufficient willpower to choose whether the person would do the act or refrain from doing it, although physically capable, the trier of fact shall return a verdict of "guilty, but mentally ill." (c) It shall not be a defense under this section if the alleged insanity or mental illness was proximately caused by the voluntary ingestion, inhalation or injection of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof, unless such substance was prescribed for the defendant by a licensed health care practitioner and was used in accordance with the directions of such prescription. As used in this chapter, the terms "insanity" or "mental illness" do not include an abnormality manifested only by repeated criminal or other antisocial conduct.
District of Columbia	*Bethea v. United States, 365 A.2d 64 (1976)* (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of a mental disease or defect he lacked substantial capacity either to recognize the wrongfulness of his conduct or to conform his conduct to the requirements of law. (2) As used in this standard, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
Florida	**775.027. Insanity defense** **(1) Affirmative defense.** All persons are presumed to be sane. It is an affirmative defense to a criminal prosecution that, at the time of the commission of the acts constituting the offense, the defendant was insane. Insanity is established when: (a) The defendant had a mental infirmity, disease, or defect; and (b) Because of this condition, the defendant: 1. Did not know what he or she was doing or its consequences; or 2. Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong. Mental infirmity, disease, or defect does not constitute a defense of insanity except as provided in this subsection. **(2) Burden of proof**. The defendant has the burden of proving the defense of insanity by clear and convincing evidence.
Georgia	**§ 16-3-2. Mental capacity; insanity** A person shall not be found guilty of a crime if, at the time of the act, omission, or negligence constituting the crime, the person did not have mental capacity to distinguish between right and wrong in relation to such act, omission, or negligence. **§ 16-3-3. Delusional compulsion** A person shall not be found guilty of a crime when, at the time of the act, omission, or negligence constituting the crime, the person, because of mental disease, injury, or congenital deficiency, acted as he did because of a delusional compulsion as to such act which overmastered his will to resist committing the crime.
Hawaii	**§ 704-400. Physical or mental disease, disorder, or defect excluding penal responsibility** (1) A person is not responsible, under this Code, for conduct if at the time of the conduct as a result of physical or mental disease, disorder, or defect the person lacks substantial capacity either to appreciate the wrongfulness of the person's conduct or to conform the person's conduct to the requirements of law. (2) As used in this chapter, the terms "physical or mental disease, disorder, or defect" do not include an abnormality manifested only by repeated penal or otherwise anti-social conduct.

Table 6. Continued.

State	Cases
Idaho	**§ 18-207. Mental condition not a defense—Provision for treatment during incarceration—Reception of evidence—Notice and appointment of expert examiners** (1) Mental condition shall not be a defense to any charge of criminal conduct. (2) If by the provisions of section 19-2523, Idaho Code, the court finds that one convicted of crime suffers from any mental condition requiring treatment, such person shall be committed to the board of correction or such city or county official as provided by law for placement in an appropriate facility for treatment, having regard for such conditions of security as the case may require. In the event a sentence of incarceration has been imposed, the defendant shall receive treatment in a facility which provides for incarceration or less restrictive confinement. In the event that a course of treatment thus commenced shall be concluded prior to the expiration of the sentence imposed, the offender shall remain liable for the remainder of such sentence, but shall have credit for time incarcerated for treatment.
Illinois	**§ 6-2. Insanity.** (a) A person is not criminally responsible for conduct if at the time of such conduct, as a result of mental disease or mental defect, he lacks substantial capacity to appreciate the criminality of his conduct. (b) The terms "mental disease or mental defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (c) A person who, at the time of the commission of a criminal offense, was not insane but was suffering from a mental illness, is not relieved of criminal responsibility for his conduct and may be found guilty but mentally ill. (d) For purposes of this Section, "mental illness" or "mentally ill" means a substantial disorder of thought, mood, or behavior which afflicted a person at the time of the commission of the offense and which impaired that person's judgment, but not to the extent that he is unable to appreciate the wrongfulness of his behavior.
Illinois *(continued)*	(e) When the defense of insanity has been presented during the trial, the burden of proof is on the defendant to prove by clear and convincing evidence that the defendant is not guilty by reason of insanity. However, the burden of proof remains on the State to prove beyond a reasonable doubt each of the elements of each of the offenses charged, and, in a jury trial where the insanity defense has been presented, the jury must be instructed that it may not consider whether the defendant has met his burden of proving that he is not guilty by reason of insanity until and unless it has first determined that the State has proven the defendant guilty beyond a reasonable doubt of the offense with which he is charged.
Indiana	**35-41-3-6 Mental disease or defect** Sec. 6. (a) A person is not responsible for having engaged in prohibited conduct if, as a result of mental disease or defect, he was unable to appreciate the wrongfulness of the conduct at the time of the offense. (b) As used in this section, "mental disease or defect" means a severely abnormal mental condition that grossly and demonstrably impairs a person's perception, but the term does not include an abnormality manifested only by repeated unlawful or antisocial conduct.
Iowa	**701.4. Insanity** A person shall not be convicted of a crime if at the time the crime is committed the person suffers from such a diseased or deranged condition of the mind as to render the person incapable of knowing the nature and quality of the act the person is committing or incapable of distinguishing between right and wrong in relation to that act. Insanity need not exist for any specific length of time before or after the commission of the alleged criminal act. If the defense of insanity is raised, the defendant must prove by a preponderance of the evidence that the defendant at the time of the crime suffered from such a deranged condition of the mind as to render the defendant incapable of knowing the nature and quality of the act the defendant was committing or was incapable of distinguishing between right and wrong in relation to the act.
Kansas	**21-5209. Defense of lack of mental state** It shall be a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, lacked the culpable mental state required as an element of the crime charged. Mental disease or defect is not otherwise a defense.

Table 6. Continued.

State	Cases
Kentucky	**504.020 Mental illness or retardation** (1) A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental illness or retardation, he lacks substantial capacity either to appreciate the criminality of his conduct or to conform his conduct to the requirements of law. (2) As used in this chapter, the term "mental illness or retardation" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
Louisiana	**§ 14. Insanity** If the circumstances indicate that because of a mental disease or defect the offender was incapable of distinguishing between right and wrong with reference to the conduct in question, the offender shall be exempt from criminal responsibility.
Maine	**§ 39. Insanity** 1. A defendant is not criminally responsible by reason of insanity if, at the time of the criminal conduct, as a result of mental disease or defect, the defendant lacked substantial capacity to appreciate the wrongfulness of the criminal conduct. 2. As used in this section, "mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality. An abnormality manifested only by repeated criminal conduct or excessive use of alcohol, drugs or similar substances, in and of itself, does not constitute a mental disease or defect. 3. Lack of criminal responsibility by reason of insanity is an affirmative defense.
Maryland	**§ 3-109. Criminal responsibility for criminal conduct** Lack of capacity to appreciate criminality of conduct or conform conduct to law (a) A defendant is not criminally responsible for criminal conduct if, at the time of that conduct, the defendant, because of a mental disorder or mental retardation, lacks substantial capacity to: (1) appreciate the criminality of that conduct; or (2) conform that conduct to the requirements of law.
Maryland *(continued)*	**Mental disorders** (b) For purposes of this section, "mental disorder" does not include an abnormality that is manifested only by repeated criminal or otherwise antisocial conduct.
Massachusetts	*Com. v. McHoul,* 352 Mass. 544 (Mass. 1967). A person is not responsible for criminal conduct if at time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality (wrongfulness) of his conduct or to conform his conduct to the requirements of law.' **Mental Illness:** Regulatory Definition used in practice: 104 CMR 27.05 A substantial disorder of thought, mood, perception, orientation ,or memory which grossly impairs judgment, behavior, capacity to recognize reality or ability to meet the ordinary demands of life, but shall not include alcoholism or substance abuse which is defined in M.G.L. c. 123, § 35.
Michigan	**768.21a. Legal insanity; defined, affirmative defense; under the influence of alcohol or controlled substances; burden of proof** Sec. 21a. (1) It is an affirmative defense to a prosecution for a criminal offense that the defendant was legally insane when he or she committed the acts constituting the offense. An individual is legally insane if, as a result of mental illness as defined in section 400a of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1400a of the Michigan Compiled Laws, or as a result of being mentally retarded as defined in section 500(h) of the mental health code, Act No. 258 of the Public Acts of 1974, being section 330.1500 of the Michigan Compiled Laws, that person lacks substantial capacity either to appreciate the nature and quality or the wrongfulness of his or her conduct or to conform his or her conduct to the requirements of the law. Mental illness or being mentally retarded does not otherwise constitute a defense of legal insanity. (2) An individual who was under the influence of voluntarily consumed or injected alcohol or controlled substances at the time of his or her alleged offense is not considered to have been legally insane solely because of being under the influence of the alcohol or controlled substances. *(continues)*

Table 6. Continued.

State	Cases
Michigan *(continued)*	(3) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence.
Minnesota	**611.026. Criminal responsibility of mentally ill or deficient** No person shall be tried, sentenced, or punished for any crime while mentally ill or mentally deficient so as to be incapable of understanding the proceedings or making a defense; but the person shall not be excused from criminal liability except upon proof that at the time of committing the alleged criminal act the person was laboring under such a defect of reason, from one of these causes, as not to know the nature of the act, or that it was wrong.
Mississippi	*Laney v. State,* 421 So.2d 1216, (Miss. 1982). Thus the test in this state remains the ability of the accused to realize and appreciate the nature and quality of his deeds when committed and his ability to distinguish between right and wrong…
Missouri	**552.030. Mental disease or defect, not guilty plea based on—evidence—notice of defense—examination, reports confidential—statements not admissible, exception—presumption of competency—verdict contents** 1. A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct.
Montana	**46-14-102. Evidence of mental disease or defect or developmental disability admissible to prove state of mind** Evidence that the defendant suffered from a mental disease or defect or developmental disability is admissible to prove that the defendant did or did not have a state of mind that is an element of the offense.
Nebraska	**29-2203. Defense of not responsible by reason of insanity; how pleaded; burden of proof; notice before trial; examination of defendant; acquittal; further proceedings** (1) Any person prosecuted for an offense may plead that he or she is not responsible by reason of insanity at the time of the offense and in such case the burden shall be upon the defendant to prove the defense of not responsible by reason of insanity by a preponderance of the evidence. No evidence offered by the defendant for the purpose of establishing his or her insanity shall be admitted in the trial of the case unless notice of intention to rely upon the insanity defense is given to the county attorney and filed with the court not later than sixty days before trial. (2) Upon the filing of the notice the court, on motion of the state, may order the defendant to be examined at a time and place designated in the order, by one or more qualified experts, appointed by the court, to inquire into the sanity or insanity of the defendant at the time of the commission of the alleged offense. The court may order that the examination be conducted at one of the regional centers or at any appropriate facility. The presence of counsel at the examination shall be within the discretion of the court. The results of such examination shall be sent to the court and to the prosecuting attorney. In misdemeanor or felony cases, the defendant may request the court to order the prosecuting attorney to permit the defendant to inspect and copy the results of such examination pursuant to the procedures set forth in sections 29-1912 to 29-1921. In the interest of justice and good cause shown the court may waive the requirements provided in this section. (4) For purposes of this section, insanity does not include any temporary condition that was proximately caused by the voluntary ingestion, inhalation, injection, or absorption of intoxicating liquor, any drug or other mentally debilitating substance, or any combination thereof.

Table 6. Continued.

State	Cases
Nevada	**NRS 174.035** found unconstitutional in *Finger v. State,* 117 Nev. 548, 27 P.3d 66 (2001) (en banc) *cert. denied,* 534 U.S. 1127 (2002). Law reverted to prior statutory and case law: *Finger* also clarifies that: " To qualify as being legally insane, a defendant must be in a delusional state such that he cannot know or understand the nature and capacity of his act, or his delusion must be such that he cannot appreciate the wrongfulness of his act, that is, that the act is not authorized by law. So, if a jury believes he was suffering from a delusional state, and if the facts as he believed them to be in his delusional state would justify his actions, he is insane and entitled to acquittal. If, however, the delusional facts would not amount to a legal defense, then he is not insane. Persons suffering from a delusion that someone is shooting at them, so they shot back in self-defense are insane under M'Naghten. Persons who are paranoid and believe that the victim is going to get them some time in the future, so they hunt down the victim first, are not." The Nevada legislature subsequently reinstated an insanity defense. 2003 Nevada Laws Ch. 284; Nev. Stat. §§ 174.035(5): *Due to a disease or defect of the mind, the defendant was in a delusional state at the time of the alleged offense; and Due to the delusional state, the defendant either did not: (1) Know or understand the nature and capacity of his or her act; or (2) Appreciate that his or her conduct was wrong, meaning not authorized by law.*
New Hampshire	Abbott v. Cunningham, 766 F. Supp. 1218 (D.N.H. 1991). Now in this state, jury, there are no legal rules which define either insanity or its effect on the accused. These are both questions of fact for you, the jury, to decide. Insanity is a question of fact to be decided by you, based on all of the evidence that has been presented to you that you will consider. Furthermore, insanity is not, under our law, limited to any clinical designations or to certain types of diseases. The New Hampshire rule on insanity was established over one hundred years ago and still stands as valid law. *(continues)*

State	Cases
New Hampshire *(continued)*	Neither delusions, nor knowledge of right or wrong, nor design or cunning in planning and executing the crimes and escaping or avoiding detection, nor ability to recognize acquaintances or to labor or transact business or manage affairs is, as a matter of law, a test of insanity, but all symptoms and all tests of insanity are purely matters of fact to be determined by the jury. Whether the defendant was insane and whether the crimes were the product of such insanity are questions of fact for you to decide. You may presume that the defendant was sane. Sanity is inherent in human nature and is the natural and normal condition of mankind. Upon this issue the defendant himself has the burden of proof, as I have indicated. In other words, the defendant must establish for you more probably than not that he was insane in order to support his contention of insanity.
New Jersey	**2C:4-1. Insanity defense** A person is not criminally responsible for conduct if at the time of such conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong. Insanity is an affirmative defense which must be proved by a preponderance of the evidence.
New Mexico	*State v. White*, 270 P.2d 727 (N.M. 1954). 'The present rule in this jurisdiction respecting the defense of insanity in criminal cases always presupposes substantial evidence of a diseased mind in the first instance, plus substantial evidence '1. That such diseased mind rendered the accused incapable of knowing the nature and quality of his act; or '2. That such diseased mind rendered the accused incapable of distinguishing between right and wrong; or '3. That such diseased mind rendered the accused incapable of exercising the normal governing power of the will so as to control his actions under the compulsion of an insane impulse to act.'
New York	**§ 40.15 Mental disease or defect** In any prosecution for an offense, it is an affirmative defense that when the defendant engaged in the proscribed conduct, he lacked criminal responsibility by reason of mental disease or defect. *(continues)*

Table 6. Continued.

State	Cases
New York *(continued)*	Such lack of criminal responsibility means that at the time of such conduct, as a result of mental disease or defect, he lacked substantial capacity to know or appreciate either: 1. The nature and consequences of such conduct; or 2. That such conduct was wrong.
North Carolina	*State v. Bonney, 405 S.E.2d 145 (N.C. 1991).* Under that test of insanity as a defense to a criminal charge, a defendant is insane if, at the time of the crime, he was laboring under such a defect of reason from disease or deficiency of mind as to be incapable of knowing the nature and quality of his act or, if he did know this, of distinguishing between right and wrong in relation to such act.
North Dakota	**§ 12.1-04.1-01. Standard for lack of criminal responsibility** 1. An individual is not criminally responsible for criminal conduct if, as a result of mental disease or defect existing at the time the conduct occurs: a. The individual lacks substantial capacity to comprehend the harmful nature or consequences of the conduct, or the conduct is the result of a loss or serious distortion of the individual's capacity to recognize reality; and b. It is an essential element of the crime charged that the individual act willfully. 2. For purposes of this chapter, repeated criminal or similar antisocial conduct, or impairment of mental condition caused primarily by voluntary use of alcoholic beverages or controlled substances immediately before or contemporaneously with the alleged offense, does not constitute in itself mental illness or defect at the time of the alleged offense. Evidence of the conduct or impairment may be probative in conjunction with other evidence to establish mental illness or defect.
Ohio	**2901.01 Definitions** (14) A person is "not guilty by reason of insanity" relative to a charge of an offense only if the person proves, in the manner specified in section 2901.05 of the Revised Code, that at the time of the commission of the offense, the person did not know, as a result of a severe mental disease or defect, the wrongfulness of the person's acts.
Oklahoma	**§ 152. Persons capable of committing crimes—Exceptions—Children—Idiots—Lunatics—Ignorance—Commission without consciousness—Involuntary subjection** All persons are capable of committing crimes, except those belonging to the following classes: 1. Children under the age of seven (7) years; 2. Children over the age of seven (7) years, but under the age of fourteen (14) years, in the absence of proof that at the time of committing the act or neglect charged against them, they knew its wrongfulness; 3. Persons who are impaired by reason of mental retardation upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness; 4. Mentally ill persons, and all persons of unsound mind, including persons temporarily or partially deprived of reason, upon proof that at the time of committing the act charged against them they were incapable of knowing its wrongfulness; 5. Persons who committed the act, or made the omission charged, under an ignorance or mistake of fact which disproves any criminal intent. But ignorance of the law does not excuse from punishment for its violation; 6. Persons who committed the act charged without being conscious thereof; and 7. Persons who committed the act, or make the omission charged, while under involuntary subjection to the power of superiors.
Oregon	**161.295. Mental disease or defect** (1) A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law. (2) As used in chapter 743, Oregon Laws 1971, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct, nor do they include any abnormality constituting solely a personality disorder.

Table 6. Continued.

State	Cases
Pennsylvania	**§ 315. Insanity** **(a) General rule.—**The mental soundness of an actor engaged in conduct charged to constitute an offense shall only be a defense to the charged offense when the actor proves by a preponderance of evidence that the actor was legally insane at the time of the commission of the offense. **(b) Definition.—**For purposes of this section, the phrase **"legally insane"** means that, at the time of the commission of the offense, the actor was laboring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing or, if the actor did know the quality of the act, that he did not know that what he was doing was wrong.
Rhode Island	*State v. Johnson*, 399 A.2d 469 (R.I. 1979). Because of our overriding concern that the jury's function remain inviolate, we today adopt the following formulation of the Model Penal Code test: A person is not responsible for criminal conduct if at the time of such conduct, as a result of mental disease or defect, his capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of law is so substantially impaired that he cannot justly be held responsible. The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
South Carolina	**§ 17-24-10. Affirmative defense.** (A) It is an affirmative defense to a prosecution for a crime that, at the time of the commission of the act constituting the offense, the defendant, as a result of mental disease or defect, lacked the capacity to distinguish moral or legal right from moral or legal wrong or to recognize the particular act charged as morally or legally wrong. (B) The defendant has the burden of proving the defense of insanity by a preponderance of the evidence. (C) Evidence of a mental disease or defect that is manifested only by repeated criminal or other antisocial conduct is not sufficient to establish the defense of insanity.
South Dakota	**22-1-2. Definition of terms** (20) "Insanity," the condition of a person temporarily or partially deprived of reason, upon proof that at the time of committing the act, the person was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated unlawful or antisocial behavior
Tennessee	**§ 39-11-501. Insanity** (a) It is an affirmative defense to prosecution that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature or wrongfulness of the defendant's acts. Mental disease or defect does not otherwise constitute a defense. The defendant has the burden of proving the defense of insanity by clear and convincing evidence. (b) As used in this section, mental disease or defect does not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct. (c) No expert witness may testify as to whether the defendant was or was not insane as set forth in subsection (a). Such ultimate issue is a matter for the trier of fact alone.
Texas	**§ 8.01. Insanity** (a) It is an affirmative defense to prosecution that, at the time of the conduct charged, the actor, as a result of severe mental disease or defect, did not know that his conduct was wrong. (b) The term "mental disease or defect" does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
Utah	**§ 76-2-305. Mental illness—Use as a defense—Influence of alcohol or other substance voluntarily consumed—Definition** (1) (a) It is a defense to a prosecution under any statute or ordinance that the defendant, as a result of mental illness, lacked the mental state required as an element of the offense charged. *(continues)*

Table 6. Continued.

State	Cases
Utah (continued)	(b) Mental illness is not otherwise a defense, but may be evidence in mitigation of the penalty in a capital felony under Section 76-3-207 and may be evidence of special mitigation reducing the level of a criminal homicide or attempted criminal homicide offense under Section 76-5-205.5. (2) The defense defined in this section includes the defenses known as "insanity" and "diminished mental capacity." (3) A person who asserts a defense of insanity or diminished mental capacity, and who is under the influence of voluntarily consumed, injected, or ingested alcohol, controlled substances, or volatile substances at the time of the alleged offense is not excused from criminal responsibility on the basis of mental illness if the alcohol or substance caused, triggered, or substantially contributed to the mental illness. (4) (a) "Mental illness" means a mental disease or defect that substantially impairs a person's mental, emotional, or behavioral functioning. A mental defect may be a congenital condition, the result of injury, or a residual effect of a physical or mental disease and includes, but is not limited to, mental retardation. (b) "Mental illness" does not mean an abnormality manifested primarily by repeated criminal conduct. (5) "Mental retardation" means a significant subaverage general intellectual functioning, existing concurrently with deficits in adaptive behavior, and manifested prior to age 22.
Vermont	**§ 4801. Test of insanity in criminal cases** (a) The test when used as a defense in criminal cases shall be as follows: (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law. (2) The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. The terms "mental disease or defect" shall include congenital and traumatic mental conditions as well as disease.
Vermont (continued)	(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence.
Virginia	*Bennett v. Commonwealth*, 511 S.E.2d 439 (Va. 1999). Virginia law recognizes two tests by which an accused can establish criminal insanity, the M'Naghten Rule and the irresistible impulse doctrine. The irresistible impulse defense is available when "the accused's mind has become 'so impaired by disease that he is totally deprived of the mental power to control or restrain his act. Under the M'Naghten Rule, an accused is insane if he or she did not understand the nature, character, and consequences of his or her act, or was unable to distinguish right from wrong.
Washington	**9A.12.010. Insanity** To establish the defense of insanity, it must be shown that: (1) At the time of the commission of the offense, as a result of mental disease or defect, the mind of the actor was affected to such an extent that: (a) He or she was unable to perceive the nature and quality of the act with which he or she is charged; or (b) He or she was unable to tell right from wrong with reference to the particular act charged. (2) The defense of insanity must be established by a preponderance of the evidence.
West Virginia	*State v. Grimm*, 19 S.E.2d 637 (W. Va. 1973). It is the law in this state that a plea of not guilty by reason of insanity is an affirmative defense, and the defendant has the burden of proof on the issue of insanity and must prove it by a preponderance of the evidence. We would approve of an instruction to the effect that an accused is not responsible for his act if, at the time of the commission of the act, it was the result of a mental disease or defect causing the accused to lack the capacity either to appreciate the wrongfulness of his act, or to conform his act to the requirements of the law.

(continues)

Table 6. Continued.

State	Cases
Wisconsin	**971.15. Mental responsibility of defendant** (1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect the person lacked substantial capacity either to appreciate the wrongfulness of his or her conduct or conform his or her conduct to the requirements of law. (2) As used in this chapter, the terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct. (3) Mental disease or defect excluding responsibility is an affirmative defense which the defendant must establish to a reasonable certainty by the greater weight of the credible evidence.
Wyoming	**§ 7-11-305. Pleas of not guilty and not guilty by reason of mental illness or deficiency; burden of proof; expert witnesses** When a defendant couples a plea of not guilty with a plea of not guilty by reason of mental illness or deficiency, proof shall be submitted before the same jury in a continuous trial on whether the defendant in fact committed the acts charged, on the remaining elements of the alleged criminal offense and on the issue of mental responsibility of the defendant. In addition to other forms of verdict submitted to the jury, the court shall submit a verdict by which the jury may find the defendant not guilty by reason of mental illness or deficiency excluding responsibility.
U.S. Military	**§ 850a. Art. 50a. Defense of lack of mental responsibility** (a) It is an affirmative defense in a trial by court-martial that, at the time of the commission of the acts constituting the offense, the accused, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of the acts. Mental disease or defect does not otherwise constitute a defense. (b) The accused has the burden of proving the defense of lack of mental responsibility by clear and convincing evidence.
U.S. Federal	**§ 17. Insanity defense** **(a) Affirmative defense.—**It is an affirmative defense to a prosecution under any Federal statute that, at the time of the commission of the acts constituting the offense, the defendant, as a result of a severe mental disease or defect, was unable to appreciate the nature and quality or the wrongfulness of his acts. Mental disease or defect does not otherwise constitute a defense. **(b) Burden of proof.—**The defendant has the burden of proving the defense of insanity by clear and convincing evidence.