



## Insanity Defense

©2009 eNotes.com, Inc. or its Licensors. Please see [copyright information](#) at the end of this document.

- [Background](#)
- [The M'Naghten Rule](#)
- [The Irresistible Impulse Test](#)
- [The Durham Rule](#)
- [The American Law Institute's Model Penal Code Test](#)
- [The Hinckley Trial and Its Aftermath](#)
- [Current Status of the Insanity Defense among the States](#)
- [Additional Resources](#)
- [Organizations](#)

### Background

Probably the most controversial of all criminal defense strategies, the [INSANITY DEFENSE](#) is also, ironically, one of the least used. On many occasions when it has been used, particularly in the much-publicized 1984 [ACQUITTAL](#) of John W. Hinckley for an attempted assassination of a president, the insanity defense has tended to provoke public debate.

Put simply, the insanity defense asserts that the criminal [DEFENDANT](#) is not guilty by reason of insanity. The theory behind the defense is persons who are insane cannot have the intent required to perform a criminal act because they either do not know that act is wrong or cannot control their actions even when they understand the act is wrong. But this theory is controversial because insanity itself is difficult to define, and the circumstances in which insanity can be used to excuse criminal responsibility are difficult to define.

The insanity defense has existed since the twelfth century, but initially it was not considered an argument for the defendant to be found not guilty. Instead, it was a way for a defendant to receive a [PARDON](#) or a way to mitigate a sentence. The idea that insanity could bar the [CONVICTION](#) of a defendant arose in the early nineteenth century, in the writings of an influential scholar Isaac Ray, whose treatise, *The Medical JURISPRUDENCE of Insanity*, and in the decision in a seminal case in England called M'Naghten (or sometimes McNaughtan).

### The M'Naghten Rule

In 1843, Daniel M'Naghten, an Englishman who was apparently a paranoid schizophrenic under the delusion he was being persecuted, shot and killed Edward Drummond, Secretary to British Prime Minister Sir Robert Peel. M'Naghten was under the delusion that Drummond was Peel. To the surprise of the nation, M'Naghten was found not guilty on the grounds he was insane at the time of his act. The subsequent public outrage convinced the English House of Lords to establish standards for the defense of insanity, the results subsequently referred to as the **M'NAGHTEN RULE**.

The M'Naghten rule states: "Every man is to be presumed to be sane, and . . . that to establish a defense on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party

## Encyclopedia of Everyday Law: Insanity Defense

**ACCUSED** was laboring under such a defect of reason, from disease of 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 test to determine if defendants can distinguish right from wrong is based on the idea that they must know the difference in order to be convicted of a crime. Determining defendants' ability to do so may seem straightforward enough, but in practice in cases in which the M'Naghten standard is used dilemmas often arise. One of these is what constitutes the defendants' "knowledge." Some questions concern defendants' knowledge that their criminal acts are wrong and their knowledge that laws exist which prohibit these acts.

Criticism of the M'Naghten test focuses on the test's concentration on defendants' cognitive abilities. Then, too, questions occur about how to treat defendants who know their acts are against the law but who cannot control their impulses to commit them. Similarly, the courts need to determine how to evaluate and assign responsibility for emotional factors and compulsion. Finally, because of the rule's inflexible cognitive standard, it tends to be very difficult for defendants to be found not guilty by reason of insanity. Despite these complications, M'Naghten survives and is currently the rule in a majority of states in regard to the insanity defense (sometimes combined with the irresistible impulse test, discussed below).

### The Irresistible Impulse Test

In response to criticisms of M'Naghten, some legal commentators began to suggest expanding the definition of insanity to include more than a cognitive element. Such a test would encompass not only whether defendants know right from wrong but also whether they could control their impulses to commit wrong-doing. The irresistible impulse test was first adopted by the Alabama Supreme Court in the 1887 case of *Parsons v. State*. The Alabama Court stated that even though the defendant could tell right from wrong, he was subject to "the **DURESS** of such mental disease [that] he had... lost the power to choose between right and wrong" and that "his free agency was at the time destroyed," and thus, "the alleged crime was so connected with such mental disease, in the relation of cause and effect, as to have been the product of it solely." In so finding, the court assigned responsibility for the crime to the mental illness despite the defendant's ability to distinguish right from wrong.

The irresistible impulse test gained acceptance in various states as an appendage to M'Naghten, whose test of right versus wrong was still considered a vital part of any definition of insanity. In some cases, irresistible impulse was considered a variation on M'Naghten; in others it was considered a separate test. Though the Irresistible Impulse test was considered an important corrective on M'Naghten's cognitive **BIAS**, it still came under some criticism of its own. For example, it seemed to make the definition of insanity too broad, failing to take into account the impossibility of determining which acts were uncontrollable rather than merely uncontrolled, and also making it easier to fake insanity. The test was also criticized as being too narrow: like M'Naghten, the test seemed to exclude all but those totally unable to control their actions. Nevertheless, several states currently use this test along with the M'Naghten rule to determine insanity, and the American Law Institute in its Model Penal Code definition of insanity adopted a modified version of it.

### The Durham Rule

The **DURHAM RULE**, originally adopted in New Hampshire in 1871, was embraced by the Circuit Court of Appeals for the District of Columbia in the 1954 case of *Durham v. United States*. The Durham Rule, sometimes referred to as the "product test," provides the defendant is not "criminally responsible if his unlawful act is the product of a mental disease or defect."

## Encyclopedia of Everyday Law: Insanity Defense

The Durham Rule was originally seen as a way of simplifying the M'Naghten Rule and the Irresistible Impulse test by making insanity and its relation to the crime a matter of objective diagnosis. Unfortunately, such a diagnosis proved to be harder to make in practice than in theory. The test was criticized because the Circuit Court had provided no real definition of mental disease or defect and no definition of product either. The Durham Rule proved very difficult to apply, and the Circuit Court abandoned it in 1972. Currently, only the state of New Hampshire still uses the Durham Rule as a way to define insanity.

### **The American Law Institute's Model Penal Code Test**

In response to the criticisms of the various tests for the insanity defense, the American Law Institute (ALI) designed a new test for its Model Penal Code in 1962. Under this 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 of his conduct or to conform his conduct to the requirements of the law."

The penal code test is much broader than the M'Naghten Rule and the Irresistible Impulse test. It asks whether defendants have a substantial incapacity to appreciate the criminality of their conduct or to conform their conduct to the law rather than the absolute knowledge required by M'Naghten and the absolute inability to control conduct required by the Irresistible Impulse test.

The ALI test also requires that the mental disease or defect be a medical diagnosis. In this way, it manages to incorporate elements of all three of its predecessors: the knowledge of right and wrong required by M'Naghten, the prerequisite of lack of control in the Irresistible Impulse test, and the diagnosis of mental disease and defect required by Durham.

Such a broad based rule received wide acceptance, and by 1982 all federal courts and a majority of state courts had adopted the ALI test. While some states have since dropped the ALI test, and it no longer applies at a federal level, 18 states still use the ALI test in their definitions of insanity.

### **The Hinckley Trial and Its Aftermath**

In 1982, John W. Hinckley, who had attempted in 1981 to assassinate President Ronald Reagan, was acquitted by a District of Columbia court by reason of insanity. The enormous outrage after Hinckley's acquittal led three states to drop the insanity defense entirely (Montana, Utah, and Idaho, joined by a fourth, Kansas, in 1995). Other states reformed their insanity defense statutes, by adopting the M'Naghten standard over the ALI standard, by shifting the burden of proof from the state to the defense, by changing their commitment and release procedures, or adopting a "Guilty but Mentally Ill" defense. In addition, the federal courts shifted from the ALI standard to a new law eliminating the irresistible impulse test for insanity defenses in federal crimes.

#### ***Burden of Proof***

The question of who has the burden of proof with an insanity defense has been a source of controversy. Before the Hinckley verdict, a majority of states had the burden of proof rest with the state; that is, the [PROSECUTOR](#) had to prove the defendant was insane. After the Hinckley verdict, the vast majority of states required the defense to prove affirmatively insanity. In states where the burden is on the defense to prove insanity, the defense is required to show either clear and convincing [EVIDENCE](#) or a preponderance of the evidence that the defendant is insane. In states where the burden is still on prosecutors to prove sanity, they are required to prove it [BEYOND A REASONABLE DOUBT](#).

### ***Commitment and Release Procedures***

Contrary to uninformed opinion, defendants found not guilty by reason of insanity are not simply released from [CUSTODY](#). They are generally committed to a mental hospital where they can be confined for longer than their prison terms would have been. In the case of *Jones v. United States*, the Supreme Court in 1983 backed this proposition, ruling that the sentence that criminal defendants would have received had they been convicted should have no bearing on how long they could be committed to a mental hospital.

After *Hinckley*, many states changed their commitment policies to ensure that a defendant found not guilty by reason of insanity would be required to stay in a mental hospital for a certain period of time for evaluation following acquittal. Previously, no time was specified. Also, several states changed the burden of proof for release from the state to defendants.

### ***The Federal Insanity Defense Reform Act***

The Federal Insanity Defense Reform Act, codified at 18 U.S.C. s. 17, holds: "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." This act, a response to the *Hinckley* verdict, eliminated the irresistible impulse test from the insanity defense under federal law. The act also provided that "the defendant has the burden of proving the defense of insanity by clear and convincing evidence." Previously under federal law, the government had the burden of proving sanity.

### ***Guilty but Mentally Ill***

Finally, the *Hinckley* verdict accelerated the [ADOPTION](#) of "guilty but mentally ill" verdicts by states. "Guilty but mentally ill" verdict allows mentally ill defendants to be found criminally liable and requires them to receive psychiatric treatment while incarcerated, or, alternatively, to be placed in a mental hospital and then when they are well enough to be moved to a prison to serve their sentences. Laws allowing pleas and verdicts of guilty but mentally ill were first adopted in Michigan in 1975, and concurrent with or subsequent to the *Hinckley* trial were adopted by 12 more states.

## **Current Status of the Insanity Defense among the States**

The following list gives the status of the insanity defense in all 50 states, describes the test used, the party on whom the burden of proof lies, and whether the state uses the guilty but mentally ill verdict.

ALABAMA: M'Naghten Rule, burden of proof on defendant.

ALASKA: M'Naghten Rule, burden of proof on defendant, guilty but mentally ill verdicts allowed.

ARIZONA: M'Naghten Rule, burden of proof on defendant.

ARKANSAS: ALI Model Penal Code standard, burden of proof on defendant.

CALIFORNIA: M'Naghten Rule, burden of proof on defendant.

COLORADO: M'Naghten Rule with irresistible impulse test, burden of proof on state.

## Encyclopedia of Everyday Law: Insanity Defense

CONNECTICUT: ALI Model Penal Code standard, burden of proof on defendant.

DELAWARE: M'Naghten Rule, burden of proof on defendant, guilty but mentally ill verdicts allowed.

DISTRICT OF COLUMBIA: ALI Model Penal Code standard, burden of proof on defendant.

FLORIDA: M'Naghten Rule, burden of proof on state.

GEORGIA: M'Naghten Rule with irresistible impulse test, burden of proof on defendant, guilty but mentally ill verdicts allowed.

HAWAII: ALI Model Penal Code standard, burden of proof on defendant.

IDAHO: Abolished insanity defense.

ILLINOIS: ALI Model Penal Code standard, burden of proof on defendant, guilty but mentally ill verdicts allowed.

INDIANA: M'Naghten Rule, burden of proof on defendant, guilty but mentally ill verdicts allowed.

IOWA: M'Naghten Rule, burden of proof on defendant.

KANSAS: Abolished insanity defense.

KENTUCKY: ALI Model Penal Code standard, burden of proof on defendant, guilty but mentally ill verdicts allowed.

LOUISIANA: M'Naghten Rule, burden of proof on defendant.

MAINE: ALI Model Penal Code standard, burden of proof on defendant.

MARYLAND: ALI Model Penal Code standard, burden of proof on defendant.

MASSACHUSETTS: ALI Model Penal Code standard, burden of proof on state.

MICHIGAN: ALI Model Penal Code standard, burden of proof on state, guilty but mentally ill verdicts allowed.

MINNESOTA: M'Naghten Rule, burden of proof on defendant.

MISSISSIPPI: M'Naghten Rule, burden of proof on state.

MISSOURI: M'Naghten Rule, burden of proof on defendant.

MONTANA: Abolished insanity defense, guilty but mentally ill verdicts allowed.

NEBRASKA: M'Naghten Rule, burden of proof on defendant.

NEVADA: M'Naghten Rule, burden of proof on defendant.

NEW HAMPSHIRE: Durham standard, burden of proof on defendant.

## Encyclopedia of Everyday Law: Insanity Defense

NEW JERSEY: M'Naghten Rule, burden of proof on state.

NEW MEXICO: M'Naghten Rule with irresistible impulse test, burden of proof on state, guilty but mentally ill verdicts allowed.

NEW YORK: M'Naghten Rule (modified), burden of proof on defendant.

NORTH CAROLINA: M'Naghten Rule, burden of proof on defendant.

NORTH DAKOTA: ALI Model Penal Code standard (modified), burden of proof on state.

OHIO: ALI Model Penal Code standard, burden of proof on defendant.

OKLAHOMA: M'Naghten Rule, burden of proof on state.

OREGON: ALI Model Penal Code standard, burden of proof on defendant.

PENNSYLVANIA: M'Naghten Rule, burden of proof on defendant, guilty but mentally ill verdicts allowed.

RHODE ISLAND: ALI Model Penal Code standard, burden of proof on defendant.

SOUTH CAROLINA: M'Naghten Rule, burden of proof on defendant, guilty but mentally ill verdicts allowed.

SOUTH DAKOTA: M'Naghten Rule, burden of proof on defendant, guilty but mentally ill verdicts allowed.

TENNESSEE: ALI Model Penal Code standard, burden of proof on state.

TEXAS: M'Naghten Rule with irresistible impulse test, burden of proof on defendant.

UTAH: Abolished insanity defense, guilty but mentally ill verdicts allowed.

VERMONT: ALI Model Penal Code standard, burden of proof on defendant.

VIRGINIA: M'Naghten Rule with irresistible impulse test, burden of proof on defendant.

WASHINGTON: M'Naghten Rule, burden of proof on defendant.

WEST VIRGINIA: ALI Model Penal Code standard, burden of proof on state.

WISCONSIN: ALI Model Penal Code standard, burden of proof on defendant.

WYOMING: ALI Model Penal Code standard, burden of proof on defendant.

### **Additional Resources**

*American Jurisprudence*. 2nd Edition, ss. 47-91, 281, 483. West Group, 1998.

*Before and After Hinckley: Evaluating Insanity Defense Reform*. Harry Steadman et al., The Guilford Press,

1993.

*Mental Health and Disability Law*. Donald H. J. Hermann, West Group, 1997.

*Model Penal Code and Commentaries*. American Law Institute, 1985.

*Parsons v. State*. Supreme Court of Alabama, July 28, 1887.

"*Those Crazy Kids, Providing the Insanity Defense in Juvenile Courts*." Emily Pollock, *Minnesota Law Review*, June 2001.

"*Toward A New Test for The Insanity Defense: Incorporating the Discoveries of Neuroscience into Moral and Legal Theories*." Laura Reider, *UCLA Law Review*, Oct. 1998.

*U. S. Code, Title 18: Crimes and Criminal Procedure, Part I: Crimes, Chapter 1: General Provisions*. U. S. House of Representatives, 2001. Available at [http://uscode.house.gov/title\\_18.htm](http://uscode.house.gov/title_18.htm).

## Organizations

### ***American Bar Association Criminal Justice Section***

740 15th Street, NW, 10th Floor

Washington, DC 20005-1009 USA

Phone: (202) 662-1500

Fax: (202) 662-1501

URL: <http://www.abanet.org/crimjust/contact.html>

Primary Contact: Thomas Smith, Section Director

### ***American Psychological Association (APA)***

750 First Street, NE,

Washington, DC 20002-4242 USA

Phone: (202) 336-5510

URL: <http://www.apa.org/>

Primary Contact: Raymond D. Fowler, Chief Executive Officer

### ***Association of Federal Defense Attorneys***

8530 Wilshire Blvd, Suite 404

Beverly Hills, CA 90211 USA

Phone: (310) 397-1001

E-Mail: AFDA2@AOL.com

URL: <http://www.afda.org/>

Primary Contact: Gregory Nicolaysen, President

## Copyright Notice

©2009 eNotes.com, Inc.

ALL RIGHTS RESERVED.

No part of this work covered by the copyright hereon may be reproduced or used in any form or by any means graphic, electronic, or mechanical, including photocopying, recording, taping, Web distribution or information

## Encyclopedia of Everyday Law: Insanity Defense

storage retrieval systems without the written permission of the publisher.

For complete copyright information, please see the online version of this work:  
<http://www.enotes.com/everyday-law-encyclopedia>