State of New Jersey

Insanity Defense Study Commission

FINAL REPORT

1985

Honorable Edward T. O'Connor, Jr.
Chair

Honorable Joseph Charles, Jr.
Vice Chair

Barbara M. Silver, Esq.
Secretary to the Commission
Office of Legislative Services

State of New Jersey

INSANITY DEFENSE STUDY COMMISSION

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1985

Governor Thomas H. Kean
President of the Senate
Speaker of the General Assembly
Members of the Legislature

Ladies and Gentlemen:

The Insanity Defense Study Commission, created pursuant to P.L. 1983, Joint Resolution No. 9 (approved June 15, 1983), herewith respectfully submits its findings and recommendations in compliance with the terms of P.L. 1983, Joint Resolution No. 9.

Respectfully submitted,

Edward T. O'Connor, Chair

Joseph Charles, Jr., Vice Chair

John McCarthy, Esq.

Senator Lee B. Laskin

Linda Rosenzweig, Esq.

Assemblyman Thomas Shusted

John G. Holl, Esq.

Alfred DeCotiis, Esq.

Dr. Susan Furnari

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I. INTRODUCTION

A. Creation of the Commission

On March 30, 1981 John Hinckley shot President Reagan in an attempt to assassinate him. In June, 1982 a jury found Hinckley not guilty by reason of insanity of attempted homicide. In the wake of that decision, legislation was introduced in Congress and many states to reduce the availability of the insanity defense. In New Jersey, several legislative proposals to restrict the use of the insanity plea were considered by the Legislature and a resolution creating a commission to study the insanity defense was passed. On June 15, 1983 Governor Kean approved P.L. 1983, Joint Resolution No. 9, creating the Insanity Defense Study Commission to study the insanity defense and determine whether it should be revised to place a greater degree of responsibility on a criminal defendant suffering from or claiming to suffer from a mental disease or defect. This Commission was charged to examine: the appropriate statutes in other states and their judicial interpretation; the treatment of persons committed after acquittal by reason of insanity; and possible sentencing disparities when the defense is unsuccessfully raised.

B. Meetings and Research

On February 14, 1985, the commission organized, elected

Senator Edward O'Connor as chair and Assemblyman Joseph Charles, Jr. as vice-chair and planned the course of its study. Two other work sessions were conducted; on April 1, 1985, and September 19, 1985.

In addition, the Commission invited three noted psychiatrists to a meeting on April 24, 1985 to discuss New Jersey's insanity defense standard, degrees and classifications of mental illness which would qualify as a defense under the law and the dispositional, commitment and release hearings of those acquitted.

Simultaneously, the Commission requested and received empirical data on the use of the insanity defense from the Department of Health, Division of Mental Health; the Department of Law and Public Safety, Division of Criminal Justice; and the Department of the Public Advocate, Public Defender's Office. Legislative revisions enacted in other states, as well as on the federal level, were also reviewed.

II. SUMMARY OF RECOMMENDATIONS

1. The insanity defense should be retained in New Jersey and the M'Naghten standard for determining insanity, now the standard in New Jersey, should continue to be used.

2. An alternative verdict of "guilty but mentally ill" should not be adopted.

3. The verdict "not guilty by reason of insanity" should be changed to "not responsible by reason of insanity" to reflect the actual wording of the statute.

4. The Legislature should review whether the State or the defendant should bear the burden of proof at subsequent release hearings or whether the burden of continued commitment should be based on a different standard from the present "dangerousness" of the defendant.

5. The Criminal Disposition Commission should consider the problems of mental illness within the correctional system and the present absence of any on-site mental health treatment at correctional facilities for mentally ill prisoners.

6. There should be established an Institute of Law and Psychiatry, affiliated with a university or hospital located within New Jersey to consider the issues relating to the insanity defense, provide continuing education for legal and medical professionals who deal with these issues and conduct on-going research in this field.

III. DISCUSSION OF ISSUES

A. Introduction

Under our legal system, to establish criminal liability the following elements must be proven:

1. Actus reus - a guilty act by the defendant;
2. Mens rea - the defendant's state of mind at the time of the act;
3. A concurrence of both the guilty act and the requisite state of mind;
4. Harmful result and causation (by the defendant's act).

The mens rea element is necessary to distinguish between inadvertent or accidental acts and those intentionally done. The New Jersey Criminal Code requires a certain state of mind before liability can be imposed for the commission of an offense. For example, N.J.S.A. 2C:11-3 defines murder as purposely causing death or serious bodily injury resulting in death. "Purposely" is the requisite state of mind, or mens rea.

The insanity defense is based on both the legal doctrine of mental nonresponsibility and the moral determination that punishment cannot be imposed where there is no legal culpability, that is, the law will not find a defendant responsible for his otherwise guilty acts if he is incapable of having the requisite state of mind. In law, "insanity" is used to denote the degree of mental illness which negates an individual's legal responsibility or capacity.

It was the consensus of the Insanity Defense Study Commission that a defense based upon mental nonresponsibility be retained. As stated by Judge Bazelon of the United States Court of Appeals, "Our collective conscience does not allow punishment where it cannot impose blame." Durham v. United States, 214 F2d 862 (D.C. Cir. 1954). From its roots in early religious philosophy and teachings, the distinction between willful acts, for which responsibility will be imposed, and unwillful acts, which under certain circumstances will be excused, has become ingrained in legal thought and practice. The first recorded jury acquittal by reason of insanity was in 1505.

In New Jersey, the insanity defense is an "affirmative defense" resulting, if successful, in acquittal. The defendant is held to be not criminally responsible for his conduct.

Evidence of a defendant's mental condition is admissible when relevant to prove the absence of the necessary "state of mind" or mens rea which can result in a conviction of a lesser offense or acquittal. Procedurally, a defendant can simultaneously claim insanity and/or the absence of a required specific state of mind.

A number of different tests for insanity have been developed over the years. These are basically of two types. One focuses only on the mental or cognitive condition of the

defendant. The other goes beyond a defendant's cognitive ability and considers whether or not a defendant suffering from a mental defect can control his behavior, i.e., the degree of volitional impairment of the defendant.

B. Insanity Defense Standards

"A person is not criminally responsible for conduct if at the time . . . he was laboring under . . . 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." N.J.S.A. 2C:4-1. In New Jersey a criminal defendant bears the burden of proving that this standard of insanity is met before being relieved of responsibility. The State may present testimony to rebut a defendant's evidence but it does not have to prove a defendant was sane at the time of the offense.

This test of insanity used in New Jersey is based upon the M'Naghten standard which was formulated in England in 1843 and takes into account only a defendant's cognitive ability: whether the defendant knew the "nature and quality" of the act, or that he did not know the act was wrong. Of all the recognized standards of insanity, it is the most stringent. Some variation of the M'Naghten test is utilized in about one-third of the states. Other jurisdictions have modified it with an "irresistible impulse" test which permits some focus on a defendant's volitional impairment. It is significant to note that the Comprehensive Crime Control Act

of 1984, signed by President Reagan on October 12, 1984, provided a new Federal insanity defense test for Federal cases based on the M'Naghten standard, which parallels existing New Jersey law. Previously, the Federal law included the volitional criteria relating to a defendant's ability to control his behavior. John Hinckley was tried under the former federal standard which placed the burden of proof of sanity on the government once the issue was raised It is not improbable that had Hinckley been tried here in New Jersey, he would have been convicted.

In the course of its study the Commission found that there was not an abuse of the insanity defense or the standard under which it is determined. Three psychiatrists who actively practice in New Jersey and who have testified in court for both the prosecution and defense stated before the Commission that the M'Naghten standard of insanity is the most difficult standard to prove and that relatively few mental diseases would so affect a defendant as to permit a finding of insanity.

Statistics on the number of cases involving psychiatric testimony provided to the Commission show that the insanity defense is rarely raised and even more rarely successful. Acquittals are few and represent less than 0.1% of the total criminal cases handled each year.

Defendants acquitted under an insanity defense are immediately and automatically committed for a period of 60 days, at which time a hearing is held to determine the

existence of mental illness and the dangerous character of an individual. A person's confinement will continue if it is found that he is a danger to himself or society. Procedurally, the same judge and prosecutor who were initially involved in the insanity acquittal remain involved throughout the history of the case. The number of persons presently committed as a result of an insanity acquittal is small. As of July 21, 1985, there were 161 "not guilty, insane" patients committed to a psychiatric facility in New Jersey.

It should also be noted that the release procedure is a gradual process consisting of a series of hearings leading to less restrictive commitment before a person is unconditionally released. This substantially minimizes the risk of erroneous determinations of non-dangerousness and protects the safety of society. State v. Fields, 77 N.J. 282, 303 (1978). The New Jersey Supreme Court in State v. Fields, explained the task of the reviewing judge is to "mold" an appropriate order of the level of restraint based upon the patient's present condition.

> The mere failure of the State to prove the necessity of continuing the prevailing restraint does not entitle the committee to relaxation to any extent he might desire. The new order should provide for the least restrictive restraints which are found . . . to be consistent with the well-being of the community and the individual . . . even where the committee's condition shows marked improvement, only the most extraordinary case would justify modification in any manner other than by a gradual de-escalation of the restraints . . . where the State is unable to justify the continuance of an order for restrictive confinement, the outright release . . . without the use of any intermediate levels of restraint . . . would normally constitute a manifestly mistaken exercise

> of the reviewing court's discretion . . . . The relaxation of the restraints . . . must proceed in gradual stages. Id. at 303.

C. Guilty but Mentally Ill

The Commission recommends that a guilty but mentally ill (GBMI) verdict not be adopted in New Jersey. Some jurisdictions have sought to avoid the conflict between mens rea (state of mind) and sanity by enacting statutes which establish a verdict of "guilty, but mentally ill." The new plea and verdict is in addition to that of "not guilty by reason of insanity." Defendants may be adjudged: guilty; not guilty; guilty but mentally ill; or not guilty by reason of insanity. The new plea and verdict allows jurors to find that a defendant who possessed the requisite mens rea for guilt at the time of an unlawful act was mentally ill, but that the mental illness fell short of that needed under the insanity test to relieve the defendant of criminal responsibility for that act. In GBMI jurisdictions psychiatric treatment is either provided by the Department of Corrections or the defendant is transferred to the custody of the Department of Health.

A major criticism of this plea is that it has no practical impact on the punishment and/or treatment of a convicted individual. Mentally ill persons convicted of criminal offenses are subject to treatment and commitment regardless of the wording of the verdict. In fact, if GBMI works properly,

defendants who would have been acquitted would continue to be acquitted. The alternative verdict simply creates a new class of mentally ill offenders.

Additionally, in jurisdictions where it has been enacted, there has been no decrease in the use of the insanity defense, the number of acquittals, and it has not served to clarify which cases merit the defense. An evaluation of the Michigan system after the adoption of the GBMI verdict concluded that the new verdict has completely failed, that insanity acquittals continue, and that defendants found guilty but mentally ill would probably have been convicted anyway.

An alternative "guilty but mentally ill" verdict creates a legal fiction. If a defendant is mentally ill to the extent that his illness has deprived him of his sanity for M'Naghten standard purposes, then he ought to be found not responsible by reason of insanity because the law will not permit a finding of guilt absent the requisite criminal intent. Absent that degree of mental nonresponsibility, a defendant ought to be found guilty. If he is suffering from a mental illness, he is entitled to treatment within the correctional system.

D. Burden of Proof at Release Hearings

Presently, a defendant must prove, by a preponderance of the evidence, that he was legally insane at the time of the offense in order to be acquitted by reason of insanity.

If successful, the court then orders an immediate commitment and psychiatric examination. At the subsequent release hearing the process is reversed. The State must prove that the defendant is mentally ill and dangerous to warrant further commitment.

The Commission questions who should bear the burden of proof and what that burden should be at the subsequent release hearings of a defendant acquitted by reason of insanity. It may be more appropriate to place a less stringent burden than "dangerousness" on the State, or to place the burden on the defendant to show an absence of "dangerousness." Since the defendant has advanced insanity as a defense, and must establish this by a preponderance of the evidence at the underlying criminal proceeding, it seems reasonable to require that person to bear the burden of establishing an entitlement to release. The constitutionality of any proposal in this area should be considered.

Ordinarily, to restrict a person's civil liberty, the State must demonstrate a constitutionally adequate purpose for the confinement. It is not incumbent on the person to prove the absence of that need. Furthermore, it has been held that a person acquitted by reason of insanity is entitled to substantially the same due process safeguards guaranteed to <u>other civil</u> commitments. There is precedence, however, for reversing the burden of proof.

The United States Supreme Court decision in Jones v. United States, 103 S. Ct. 3043 (1983) provides some constitutional support for shifting this burden of proof. There the court treated insanity acquittees as a different classification to justify the District of Columbia's automatic commitment procedure.

> We hold that when a criminal defendant establishes by a preponderance of the evidence that he is not guilty of a crime by reason of insanity, the Constitution permits the Government, on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society. This holding accords with the widely and reasonably held view that insanity acquittees constitute a special class that should be treated differently from other candidates for commitment. Id. at 103 S. Ct. 3043, 3054-3055 (1983).

The Connecticut commitment procedure of insanity acquittees places the burden of proof on the person to establish by a preponderance of the evidence that he is "not mentally ill to the extent that his release would constitute a danger to himself or others." Conn. Gen. Stat. Ann. §53a-47(a)(4).

Additionally, the District of Columbia code puts the burden of proof on the defendant to show by a preponderance of the evidence that he is entitled to release. D.C. Code Ann. §24-301(d)(2)(B).

E. Wording of Verdict

The insanity defense is raised when a defendant laboring under a mental disease does not know that what he is doing is wrong. Therefore, the law declares he is "not responsible" for his conduct.

Presently, the term "not guilty by reason of insanity" is used by the courts, media and general public despite the actual wording of the statute. It is the recommendation of the Commission that the verdict should always be "not responsible by reason of insanity." This will avoid any confusion that results from the use of "not guilty," particularly because part of the adjudication process requires a finding of fact that the defendant committed the act before finding that the defendant was insane at the time.

F. Mental Health Treatment for Criminal Offenders

During its investigation into the use of the insanity defense in New Jersey, the Commission became aware of the inadquate, if not total absence of, mental health treatment for persons within the correctional system. The Commission believes that formal mental health treatment within the correctional system is necessary to deal with mentally ill prisoners. Inmates or parolees are often not identified, evaluated or treated as mentally ill. This situation poses a threat to themselves and society when they are finally unconditionally discharged. The Commission recommends that the Criminal Disposition Commission should review this problem and consider the establishment of on-site mental health treatment programs at correctional facilities.

G. Further Study

The relationship between mental illness and criminal

conduct is in need of serious on-going study. The insanity defense is only a small part of the total problem. Throughout its study the Commission struggled with the lack of clarity in this area. It is the belief of the Commission that there is a need for an in-depth and continuing assessment of the legal principles which are used to distinguish between those who are to be characterized as "insane" from those who are not. The Commission believes that a permanent Institute of Law and Psychiatry should be established and affiliated with an educational or medical institution within New Jersey. (The University of Virginia has an Institute of Law, Psychiatry and Public Policy.) In addition to providing on-going research into insanity defense issues throughout the country, continuing education would be available for our professionals who must deal with these problems.

IV. MINORITY STATEMENT

NEW JERSEY SENATE

LEE B. LASKIN
SENATOR, 6TH DISTRICT
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January 14, 1986

Insanity Defense Study Commission
Room 347, State House Annex
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Attention: Honorable Edward T. O'Connor, Chairman

Dear Senator O'Connor:

As you know, I've been a member of the Insanity Defense Study Commission since its inception. Throughout the investigation procedure, I found the members to be quite sincere, concerned, properly motivated and industrious. I was impressed with the responsibility exhibited by each of the members.

The Commission concluded that the insanity defense of New Jersey be maintained. I respectfully disagree. The defense should be abolished. I think that the mental condition of the defendant should be taken into account at the time of his sentencing, but not during the actual criminal trial. I've introduced legislation which would require the Court and/or jury to first determine whether or not a defendant is guilty or innocent of committing a criminal act. If convicted, the state of mind of the defendant would then be considered by the Judge at the time of sentencing. Those offenders found to be insane or mentally ill would be referred to a medical facility for treatment. In other words, at the time of the trial, the jury will determine guilt or innocence for the crime and that will determine how long the state is mandated to take control of the defendant's life. All offenders, including the mentally ill, would be held responsible for intentional acts. Once the defendant is found guilty, however, he would then have the right to show his mental condition at the time of the sentencing.

I don't believe that the Courts should forfeit jurisdiction over offenders found innocent through the insanity defense. An acquittal on the grounds of insanity severely limits how the Court can handle an offender. Experience tells me that the decision of continued incarceration should not be totally at the discretion of physicians. At the time of sentencing, that's when we will see consideration for appropriate treatment for the mentally disabled. I think it is so obvious that the mental condition of a defendant should only be considered at the time of sentencing and not on the issue of whether or not he is guilty or innocent.

My proposed solution seeks to provide assurance to victims, their families and the public at large that the Court, as well as the medical authorities, will require that a convicted defendant (though mentally ill) will be maintained within the criminal justice system for so long as the requisite sentence. Under my proposal, the need for mercy can be shown at the sentencing after guilt has been established at the trial. The statutory length of sentence will be made proportionate to the severity of the offense. Those offenders who are mentally ill will be identified in the criminal justice system. The state will consider the mental illness and set less punitive conditions for sentence, but, the period of control over the life of the defendant will not be shortened. In my opinion, this will be the ideal solution.

Respectfully submitted,

Lee B. Laskin

LBL/d

TABLE OF SOURCES

Cases

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N.J.S.A. 2C:4-1 through 4-11.

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Publications

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Herman, Assault on the Insanity Defense: Limitations on the Effectiveness and Effect of the Defense of Insanity, 14 Rutgers L. J. 241 (1983).

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Smith & Hall, Evaluating Michigan's Guilty But Mentally Ill Verdict: An Empirical Study, 16 Journal of Law Reform 77 (1982).

Studies

The Insanity Defense in Massachusetts (1984).

Myths and Realities: A Report of the National Commission on the Insanity Defense (1983).

Proposed Criminal Justice Mental Health Standards, American Bar Association Standing Committee on Association Standards for Criminal Justice (1984).

Report of Governor's Task Force to Review the Defense of Insanity, (Maryland, 1983).

JR 9–1

P. L. 1983, Joint Resolution No. 9, *approved June 15, 1983*

1982 Senate Joint Resolution No. 28 (*Official Copy Reprint*)

A JOINT RESOLUTION *[crating]* *creating* a commission to study the insanity defense and determine whether it *[can]* *should* be revised *[to place a greater degree of responsibility on a criminal defendant suffering from or claiming to suffer from a mental disease or defect]*.

WHEREAS, Current law does not impose any criminal responsibility on a defendant for acts committed while the defendant was suffering from a mental disease or defect which prevented him from knowing the nature and quality of the act or that the act was wrong; and

[WHEREAS, A defendant acquitted of a crime by reason of insanity may be released into the community immediately after acquittal or after limited treatment at a mental health facility; and]

WHEREAS, Current law prohibits a defendant acquitted of a crime by reason of insanity from being confined within any penal or correctional institution or undergoing any other criminal sanctions*[; and]*

*[WHEREAS, Defendants acquitted of a crime by reason of insanity and released into the community pose a great danger to the inhabitants of this State; and

WHEREAS, The defense of insanity appears to be routinely invoked in certain types of criminal trials as a method of avoiding criminal responsibility]*; now, therefore,

BE IT RESOLVED *by the Senate and General Assembly of the State of New Jersey:*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted September 23, 1982.

1. There is created a commission to be known as the Insanity Defense Study Commission. The commission shall consist of nine members, two to be appointed from the membership of the Senate by the President thereof, who shall not be of the same political party; two to be appointed from the membership of the General Assembly by the Speaker thereof, who shall not be of the same political party; the Attorney General or his designee; the Public Defender or his designee; the Chief Justice of the Supreme Court or his designee; and two public members qualified by their education and experience in the areas of criminal justice or the psychological aspects of human behavior, one appointed by the President of the Senate and one appointed by the Speaker of the General Assembly. Vacancies in the membership shall be filled in the manner provided for the original appointments. Members of the commission shall serve without compensation, but shall be reimbursed for their expenses actually incurred in the performance of their duties.

2. The commission shall organize as soon as may be after the appointment of its members and shall select a chairman from among its members and a secretary who need not be a member of the commission.

3. It shall be the duty of the commission to study the insanity defense and determine whether it *[can]* *should* be revised in this State to place a greater degree of responsibility on a criminal defendant suffering from or claiming to suffer from a mental disease or defect. As part of its study the commission shall examine the appropriate statutes in other states and review how these statutes may have been interpreted by the courts*; the treatment of persons committed after acquittal by reason of insanity and possible sentencing disparities when insanity is unsuccessfully raised as a defense*. The commission shall make recommendations for legislation which it determines to be desirable and appropriate.

4. The commission is entitled to the assistance and services of the employees of any State, county or municipal department, board, bureau, commission or agency which it may require and which may be available to it for these purposes, and to employ stenographic and clerical assistants and incur traveling and other miscellaneous expenses necessary to perform its duties, within the limits of funds appropriated or otherwise made available to it for these purposes.

5. The commission may meet and hold hearings at the place or places it designates during the sessions or recesses of the Legislature and shall report its findings and recommendations to the

Governor and the Legislature no later than *[1 year]* *six months* following the organization of the commission, with any legislative bills it desires to recommend for adoption by the Legislature.

6. This joint resolution shall take effect immediately and shall expire upon the submission by the commission of its report pursuant to section 5 hereof.

N.J.S.A. 2C:4-1

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.

L.1978, c. 95, § 2C:4-1, eff. Sept. 1, 1979. Amended by L.1979, c. 178, § 11A, eff. Sept. 1, 1979.

TABLE ON CURRENT TESTS FOR INSANITY, ALLOCATION OF BURDEN AND QUANTUM OF PROOF WITHIN FEDERAL JURISDICTIONS AND THE SEVERAL STATES

FEDERAL

JURISDICTION	INSANITY TEST USED	ALLOCATION OF BURDEN	QUANTUM OF PROOF
All Circuits	Cognitive Test	defendant	clear and convincing (P.L. 98-473)

STATES

JURISDICTION	INSANITY TEST USED	ALLOCATION OF BURDEN	QUANTUM OF PROOF
Alabama	ALI	defendant	reasonable satisfaction of jury
Alaska*	ALI modified	state	beyond reasonable doubt
Arizona	M'Naghten	state	beyond reasonable doubt
Arkansas	ALI	defendant	beyond reasonable doubt (1982)
California	ALI (81)	defendant	preponderance of evidence - bifurcated trial
Colorado	M'Naghten/irresistible impulse	state	beyond reasonable doubt - bifurcated trial
Connecticut*	ALI	state	beyond reasonable doubt
Delaware*	ALI/irresistible impulse	defendant	preponderance of evidence
Dist. Columbia	ALI	defendant	preponderance of evidence - upheld Jones v. U.S
Florida	M'Naghten modified	state	beyond reasonable doubt
Georgia*	M'Naghten	defendant	preponderance of evidence
Hawaii	ALI modified	defendant	proponderance of evidence
Idaho	No affirmative defense "Mens Rea" only	state	beyond reasonable doubt (1982)
Illinois*	ALI	state	beyond reasonable doubt
Indiana*	ALI	defendant	preponderance of evidence (1978)
Iowa	M'Naghten	state	beyond reasonable doubt
Kansas	M'Naghten	state	beyond reasonable doubt
Kentucky*	ALI	defendant	preponderance of evidence

JURISDICTION	INSANITY TEST USED	ALLOCATION OF BURDEN	QUANTUM OF PROOF
Louisiana	M'Naghten modified	defendant	preponderance of evidence
Maine	ALI modified	defendant	preponderance of evidence
Maryland	ALI modified	state	beyond reasonable doubt
Massachusetts	ALI (§1)	state	beyond reasonable doubt
Michigan*	ALI modified	state	beyond reasonable doubt
Minnesota	M'Naghten	defendant	preponderance of evidence
Mississippi	M'Naghten	state	beyond reasonable doubt
Missouri	ALI modified	defendant	preponderance of greater weight of evidence
Montana	No affirmative defense	state	beyond reasonable doubt (1969)
Nebraska	M'Naghten	state	beyond reasonable doubt
Nevada	M'Naghten	defendant	preponderance of evidence
New Hampshire	product	defendant	preponderance of evidence
New Jersey	M'Naghten	defendant	preponderance of evidence
New Mexico*	M'Naghten/irresistible impulse	defendant	preponderance of evidence
New York	M'Naghten modified	state	beyond reasonable doubt
North Carolina	M'Naghten	defendant	satisfaction of jury
North Dakota	unique	state	beyond reasonable doubt
Ohio	ALI (§1)	defendant	preponderance of evidence
Oklahoma	M'Naghten	state	beyond reasonable doubt
Oregon*	ALI	defendant	preponderance of evidence
Pennsylvania*	M'Naghten	defendant	preponderance of evidence
Rhode Island	ALI modified	defendant	preponderance of evidence
South Carolina	M'Naghten modified	defendant	preponderance of evidence

JURISDICTION	INSANITY TEST USED	ALLOCATION OF BURDEN	QUANTUM OF PROOF
South Dakota	M'Naghten modified	state	beyond reasonable doubt
Tennessee	ALI	state	beyond reasonable doubt
Texas	ALI	defendant	preponderance of evidence
Utah	No affirmative defense, "mens rea" only	state	beyond reasonable doubt
Vermont	ALI modified	state	beyond reasonable doubt
Virginia	M'Naghten/irresistible impulse	state	beyond reasonable doubt
Washington	M'Naghten	defendant	preponderance of evidence
West Virginia	ALI	state	beyond reasonable doubt
Wisconsin	ALI	defendant	reasonable certainty by greater weight of credible evidence - bifurcated trial
Wyoming	No affirmative defense, "mens rea" only	state	beyond reasonable doubt

*States which also have "Guilty But Mentally Ill" verdict.

Connecticut added a "Guilty But Mentally Ill" verdict in 1981 and repealed it in 1983.