

NOT GUILTY BY REASON OF INSANITY DEFENSE

I. WHAT'S GOING ON WITH DEFENDANT?

The defendant has entered a plea of “not guilty by reason of insanity” (NGRI) to any criminal charges. Defendant may or may not be competent to stand trial. A competency hearing is not mandated. NGRI is a defense to the criminal charges. It can be heard by the jury or the court.

II. QUESTION PRESENTED:

At a trial where this defense has been raised, the defendant must prove by a preponderance of evidence that severe mental disease or defect had so impaired the defendant's reason that, at the time of the criminal act charged, defendant was unable to know the wrongfulness of the act.

This is not a medical test. The insanity defense may be raised regardless of whether the crime charged requires a specific mental state (knowingly, recklessly, etc.)

III. RELEVANT STATUTES/DOCUMENTS:

O.R.C. 2901.01(A)(14): In order to prove defendant is insane, the defense must prove, by a preponderance of the evidence that, at the time of the offense, as a result of **severe mental disease or defect**, he/she was **did not know the wrongfulness of the act**.

O.R.C. 2945.391: Proof that a person's reason at the time of the commission of the offense was so impaired that the person did not have the ability to refrain from doing the person's act or acts does NOT constitute a defense.

The Diagnostic and Statistical Manual of Mental Disorders (“DSM-IV):

The Diagnostic and Statistical Manual of Mental Disorders (DSM-IV), published by the American Psychiatric Association, is a comprehensive classification of officially recognized psychiatric disorders used most often by doctors in diagnosing mental disorders in the United States. It is frequently used to determine whether a defendant's condition qualifies as a severe mental illness or defect.

O.R.C. 2945.40(A): If a person is found NGRI, the verdict shall state that finding and the trial court shall thereafter conduct a full hearing to determine whether the defendant is a mentally ill/retarded person subject to hospitalization/institutionalization. See **Defendant Found NGRI; Does the Court Commit?** *infra*.

IV. EVIDENCE NEEDED FOR DEFENDANT TO PROVE NGRI:

- A. Defendant has severe mental illness or defect:
 - 1. Diagnosis from doctor or opinion of doctor or other licensed professional that has contact with defendant (social workers, probation officers, etc.) that defendant has a severe mental disease or defect.
 - 2. Defendant's behavior: (includes appearance, statements and actions) that fit the symptoms of any disorder.

- B. Defendant did not know the wrongfulness of the act:
1. Objectively: Did defendant know the act was illegal?
 - i. What does defendant say?
 - ii. Did defendant try to flee from the scene of the crime?
 - iii. Did defendant try to cover up what he had done for reasons not in line with his disorder?
 - iv. Did defendant know he could get in trouble for the act?
 2. Subjectively: Even if the Defendant knew the act was illegal, did he still believe it was morally right?
 - i. Defendant's opinion: Why did he do it when he knew he could get in trouble for it?
 - ii. How was defendant acting when he was either caught doing the act or apprehended thereafter?

V. FORM OF EVIDENCE:

1. Doctor's Reports/Testimony: Did the defendant have a severe mental disease or defect (probably explain the disorder defendant has/had as listed in the DSM and why this defendant, in particular, qualifies for a diagnosis of having this particular disorder) at the time of the offense? If defendant did have a mental disease or defect, did it render the defendant unable to know the wrongfulness of the act at the time it was committed? Doctor will have to testify about what defendant has stated in interviews and also as to the opinion he has formed based on his interviews with defendant and evaluations.

See **Common Evidentiary Issues**, *supra*.

2. Police Testimony/Report: The arresting officer may have observed if defendant was acting in a bizarre manner and may have some knowledge of defendant's appearance that was/was not consistent with any sort of mental illness. The officer will be the best person to testify as to whether defendant tried to flee, resist or act in any other manner indicating whether defendant knew the act was wrong.
 - a. Note: Pursuant to the rules of evidence, *only if* the officer testifies inconsistently with his report, *then* the report can be used. If the officer says the defendant did try to flee, but his written report says otherwise, the report can then be provided to the judge. The judge reads it and decides whether the report and testimony are, in fact, conflicting. The defense could then cross examine the officer about the inconsistencies between his testimony and his report.

See **Common Evidentiary Issues**, *supra*.

3. Other Witnesses: Other witnesses that were present at the time of the crime can shed light on defendant's behavior and appearance. Those who are in close contact with the defendant (family, friends, spouse, etc.) can testify as to how defendant was acting around the time of the crime to indicate whether the

defendant was or was not suffering from a mental disorder. They can also testify to what defendant did or said after committing the act if not taken into custody right away. Did his/her statements show he knew the wrongfulness of his/her crime?

See **Common Evidentiary Issues**, *supra*.

4. Medical History: Does defendant have a history of mental illness?

See **Common Evidentiary Issues**, *supra*.