



REQUEST FOR EXPERTS AND ISSUES OF
COMPETENCY, NGRI, DIMINISHED
CAPACITY, & INTOXICATION.

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MENTAL HEALTH FACTS

1 IN 5 ADULTS IN AMERICA EXPERIENCE A MENTAL ILLNESS;

1 IN 25 ADULTS IN AMERICA LIVE WITH A SERIOUS MENTAL ILLNESS;

1.2 MILLION INDIVIDUALS LIVING WITH MENTAL ILLNESS ARE IN CUSTODY;

IN 2014, THERE WERE 10 TIMES MORE INDIVIDUALS WITH SERIOUS MENTAL ILLNESS IN JAILS AND STATE PRISONS THAN THERE WERE IN STATE MENTAL HOSPITALS;

THERE ARE OVER 57,000 PEOPLE WITH MENTAL HEALTH CONDITIONS IN PRISON AND JAIL IN ALABAMA, MISSISSIPPI AND ARKANSAS. SOURCE:

WWW.MENTALHEALTHAMERICA.NET

FEATURES OF MODERN CRIMINAL JUSTICE

- INDIGENT POPULATION – JAILED FOR POVERTY
- SUBSTANCE ABUSE
- MENTAL HEALTH
- LACK OF RESOURCES (Housing, Transportation, Education, Employment)

CLIENT DECISIONS

GENERALLY, ATTORNEYS HAVE AN ETHICAL DUTY TO ABIDE BY THE CLIENT'S DECISIONS.

WHO TO HIRE AS AN ATTORNEY,

WHETHER TO WAIVE A JURY TRIAL,

WHETHER TO ACCEPT A PLEA AGREEMENT AND PLEAD GUILTY OR PROCEED TO TRIAL,

WHETHER TO TESTIFY OR NOT TESTIFY AT TRIAL.

ADMITTING CLIENT'S GUILT AT TRIAL? MCCOY V. LOUISIANA

ALL OTHER TACTICAL DECISIONS ARE GENERALLY MADE BY THE ATTORNEY.

MENTAL HEALTH COURT

- Individuals who are seriously mentally ill and involved in criminal justice system (felony). (Schizophrenia, Major Depression, Bi-Polar, PTSD, TBI)
- Implemented in March, 2015, MHC assists offenders in achieving long term stability by connecting them to treatment providers in the community.
- MHC includes case management, risk and needs assessments, mental health referrals, substance abuse treatment, medication assistance, disability enrollment, and assistance with housing and transportation.

CLIENT PATH THROUGH CRIMINAL JUSTICE SYSTEM

- Arrest-felony arrest generally prevents (civil commitment) process
- Jail Screening upon arrest
- Application to MHC (voluntary)
 - May consider forensic evaluation track to determine competency and mental state at the time of offense-
- Verification of serious mental health illness diagnosis
- Plea or deferred sentence
- Services continue
- Charge will be reduced or dismissed upon successful completion

MENTAL HEALTH COURT-BIRMINGHAM DIVISION (2021)

68 - NEW MENTAL HEALTH COURT APPLICANTS 2021

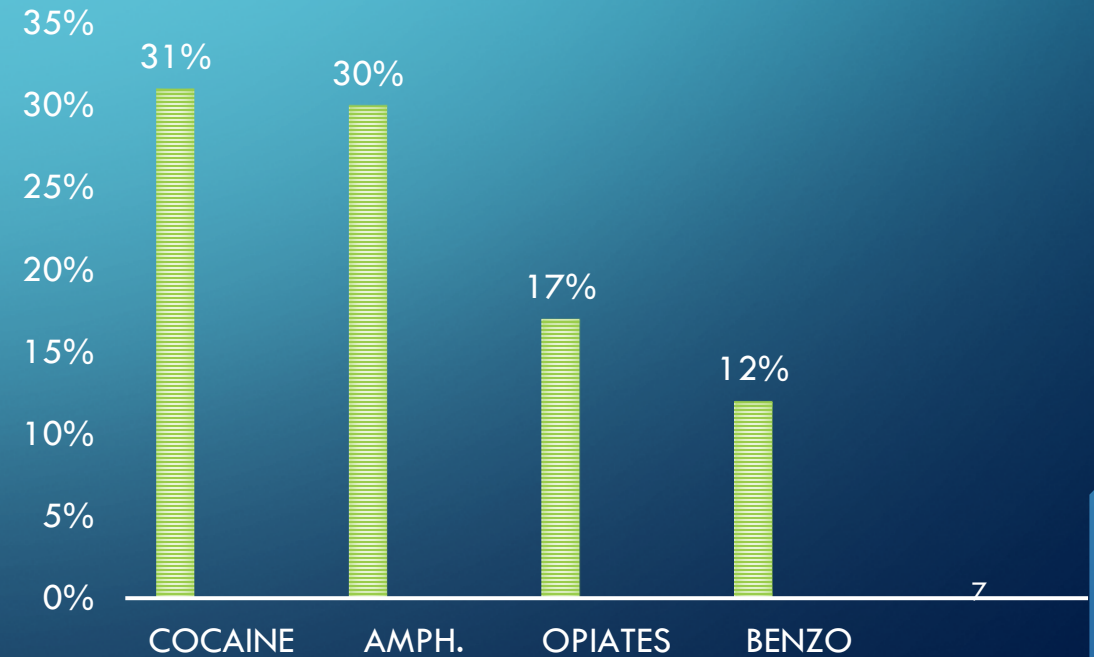
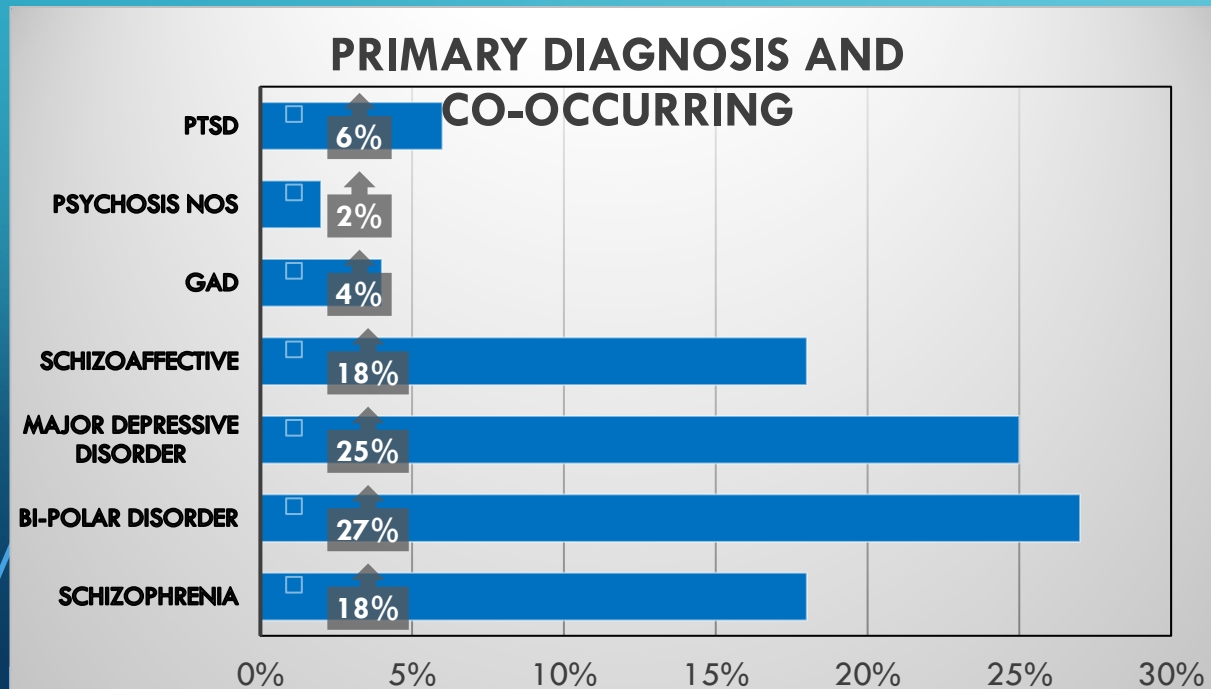
55 - DAILY MENTAL HEALTH COURT POPULATION 2021

117 - TOTAL NUMBER OF DEFENDANTS RECEIVING MENTAL HEALTH CT. SERVICES

97% - COMPLETION RATE

INCLUDES: CASE MANAGEMENT, RISK AND NEEDS ASSESSMENTS, MENTAL HEALTH REFERRALS, SUBSTANCE ABUSE ASSESSMENT, HOUSING, TRANSPORTATION, DISABILITY ENROLLMENT

MOST COMMON DRUG OTHER THAN THC



SEEKING FORENSIC EVALUATION

- Forensic Evaluations – PROVIDE RECORDS
 - Competence to Proceed-Competency to Stand Trial (CST) (Present)
 - Mental State at the time of the Offense (MSO) (Raised defense of Insanity
 - Past mental state
 - Reconstructing the defendants mental state at the time of the alleged offense. (Rule 11.2 & AL Code §13A-3-1)
 - **Risk Assessments, Atkins testing, Competency to waive Miranda**
 - Standardized measures of intellectual and cognitive functioning



COMPETENCY TO STAND TRIAL (CST)

- **The general assumption is that defendants are competent. Competency is a low legal bar.**
- The matter of “competency” considers a defendant’s current mental state and functional capacities.
- Competency defined (11.1): A defendant is incompetent to stand trial or to be sentenced for an offense if the defendant:
 - Lacks sufficient present ability to assist with planning his or her defense by consulting with counsel
 - Reasonable degree of rational understanding of the facts and the legal proceedings against the defendant.
- **The mere presence of a “mental disorder,” whatever its severity, is not a sufficient basis for finding someone incompetent.**
- The majority of defendants evaluated for competency are deemed competent to proceed. Research suggests that only around 25% to 30% of defendants evaluated are later deemed incompetent.



COMPETENCY TO STAND TRIAL (CST)

- Defendants with the following conditions are less likely to be restored to competency:
 - Schizophrenia Spectrum Disorder
 - Schizoaffective Disorder
 - Intellectual Disability (ID) or ID with a co-occurring Developmental Disability such as Autism Spectrum Disorder (ASD)
 - Dementia or a similar neurocognitive disorder
 - Severe Traumatic Brain Injury
 - Chronic refractory psychiatric condition that has necessitated multiple hospitalizations
- Competency is based on capacity or ability, not willingness to participate in the proceedings.
- Can be requested by court, defense counsel, or the state.
- Jury or Bench determination.



DEFENSE EXPERT ASSISTANCE

AKE V. OKLAHOMA, 470 U.S. 68 (1985)

- In the seminal case on **experts** and mental health **experts**, in particular, the Supreme Court, through Justice Marshall, held that when a defendant has made a preliminary showing that his sanity at the time of the offense is likely to be a significant factor at trial, due process requires that a state provide access to a psychiatrist's **assistance** on this issue, if a defendant cannot otherwise afford one.

REQUEST FOR EXPERT ASSISTANCE- DISCRETIONARY

“[D]EFENDANTS MAY BE ELIGIBLE TO RECEIVE FUNDS TO HIRE CERTAIN **EXPERTS** TO FACILITATE THE FORMULATION AND PRESENTATION OF A DEFENSE. AKE V. OKLAHOMA, 470 U.S. 68, 105 S. CT. 1087, 84 L.ED. 2D 53 (1985).” BECKWORTH V. STATE, 946 SO. 2D 490, 503 (ALA. CRIM. APP. 2005). BUT THOSE “FUNDS ... ARE NOT TO BE GRANTED AUTOMATICALLY UPON **REQUEST.**”

“RATHER, THE GRANT OR DENIAL OF SUCH FUNDS IS A MATTER FOR THE TRIAL COURT'S **DISCRETION** AND IS BASED ON THE ALLEGATIONS IN THE **REQUEST** FOR FUNDS TO HIRE THE **EXPERT.**” ID.

REQUEST FOR EXPERT ASSISTANCE – APPLIES TO BOTH PSYCHIATRIC AND NONPSYCHIATRIC

“[F]OR AN INDIGENT DEFENDANT TO BE ENTITLED TO **EXPERT ASSISTANCE** AT PUBLIC EXPENSE, HE MUST SHOW A **REASONABLE PROBABILITY (MORE THAN A MERE POSSIBILITY)** THAT THE **EXPERT** WOULD BE OF **ASSISTANCE** IN THE DEFENSE AND THAT THE DENIAL OF **EXPERT ASSISTANCE** WOULD RESULT IN A **FUNDAMENTALLY UNFAIR** TRIAL.

TO MEET THIS STANDARD, THE INDIGENT DEFENDANT MUST SHOW, WITH REASONABLE SPECIFICITY, THAT THE **EXPERT** IS **ABSOLUTELY NECESSARY** TO ANSWER A SUBSTANTIAL ISSUE OR QUESTION RAISED BY THE STATE OR TO SUPPORT A CRITICAL ELEMENT OF THE DEFENSE. IF THE INDIGENT DEFENDANT MEETS THIS STANDARD, THEN THE TRIAL COURT CAN AUTHORIZE THE HIRING OF AN **EXPERT** AT PUBLIC EXPENSE.”

EXAMPLES – EXPERT ASSISTANCE – ABUSE OF DISCRETION

DEFENDANT WAS NOT ENTITLED TO **POLLING EXPERT** AT PUBLIC EXPENSE (VOIR DIRE WAS EXTENSIVE);

OR **BLOOD-SPATTER, CRIME SCENE INVESTIGATION** NOT ENTITLED TO MERELY SHOW POLICE INVESTIGATION FLAWED. FLOYD V. STATE, 289 SO.3D 337 (ALA. CRIM. 2017);

NOT ENTITLED TO **DNA EXPERT** BASED ON MERE POSSIBILITY THAT TESTING MAY REVEAL THAT A PIECE OF EVIDENCE CONTAINED THE DNA OF ANOTHER PERSON. D.B. V. STATE, 861 SO.2D 4, (ALA. CT. CRIM. 2003)

“ ‘ALTHOUGH [THE UNITED STATES] SUPREME COURT HAS NOT SPECIFICALLY STATED WHAT ‘THRESHOLD SHOWING’ MUST BE MADE BY THE INDIGENT DEFENDANT WITH THE REGARD TO THE NEED FOR AN **EXPERT**, THE COURT REFUSED TO REQUIRE THE STATE TO PAY FOR CERTAIN **EXPERTS** WHEN THE INDIGENT DEFENDANT ‘**OFFERED LITTLE MORE THAN UNDEVELOPED ASSERTIONS THAT THE REQUESTED ASSISTANCE** WOULD BE BENEFICIAL.’ CALDWELL V. MISSISSIPPI, 472 U.S. 320 AT 323, 105 S.CT. 2633 AT 2637, 86 L.ED.2D 231 (1985).; IN [*EX PARTE*] MOODY, [684 SO.2D 114 (ALA.1996),]

COURT ACTION FOLLOWING THE FORENSIC EXAMINATION: DEFENDANT IS CURRENTLY NOT COMPETENT BUT MAY BECOME COMPETENT

Incompetent to Stand
Trial

Substantial probability
that the defendant WILL
become competent within
a reasonable period of
time.

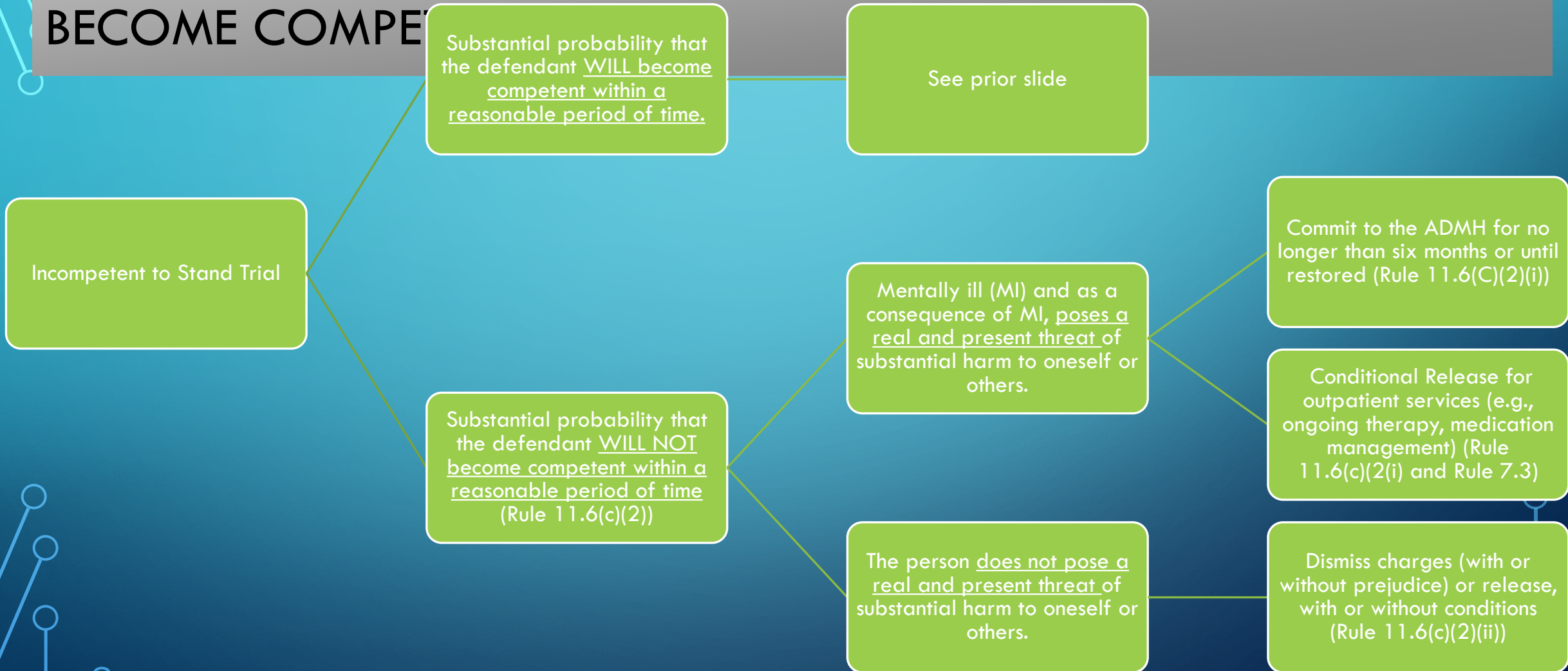
Commit to ADMH for
Competency Restoration
(Rule 11.6(c)(2)(i))

Conditional Release for
Outpatient Services (e.g.,
Mental Health Center for
medication management)
(Rule 11.6(c)(3)(ii))

Substantial probability
that the defendant WILL
NOT become competent
within a reasonable
period of time.

See next slide

COURT ACTION FOLLOWING THE FORENSIC EXAMINATION: DEFENDANT IS CURRENTLY NOT COMPETENT AND UNLIKELY TO BECOME COMPETENT



WHO IS THIS?



1981 – JOHN HINKLEY (TAXI DRIVER)

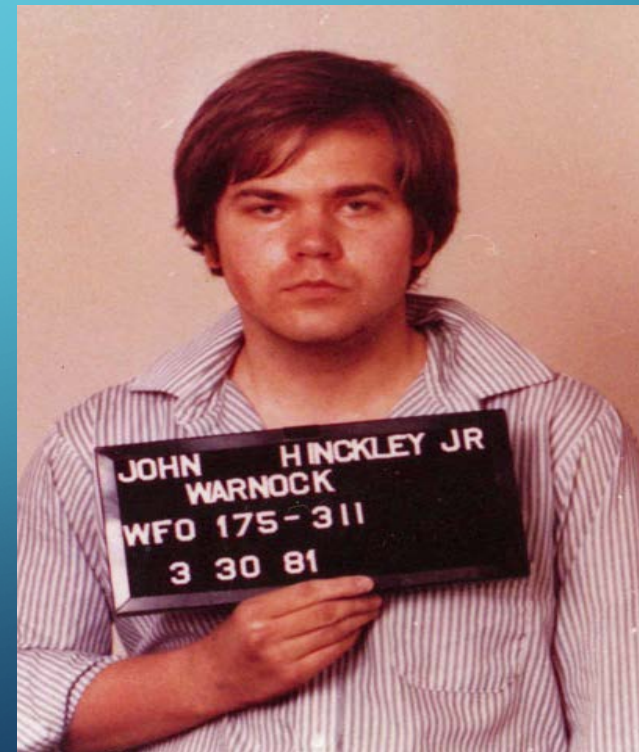


- Hinkley was charged with the attempted assassination of President Ronald Reagan. He wounded President Reagan, Press Secretary James Brady, along with a police officer and secret service agent.
- Hinkley became obsessed with the 1976 film Taxi Driver – about a disturbed man who planned to assassinate a presidential candidate. He also developed an infatuation with Jodie Foster and wanted to impress her. Hinkley even moved to New Haven, Connecticut to stalk Foster. At one point, he even considered assassinating President Jimmy Carter. Prior to event, significant history and evidence of Hinkley's mental

HINKLEY TRIAL

AT TRIAL, THE DEFENSE ARGUED THAT HE SHOULD NOT BE HELD RESPONSIBLE, AS HE WAS SUFFERING FROM DEPRESSIVE NEUROSIS AND SCHIZOPHRENIA. THE PROSECUTION CLAIMED HE WAS SANE AND WAS SUFFERING FROM ONLY PERSONALITY DISORDERS.

HINKLEY WAS FOUND NOT GUILTY BY MENTAL DISEASE OR DEFECT BASED ON THE MODEL PENAL CODE.





AFTERMATH —

THREE YEARS FOLLOWING HINKLEY'S ACQUITTAL, CONGRESS AND HALF OF THE STATES ENACTED CHANGES TO THE INSANITY DEFENSE, ALL LIMITING USE OF THE DEFENSE. CONGRESS AND NINE STATES LIMITED THE SUBSTANTIVE TEST OF INSANITY; CONGRESS AND SEVEN STATES SHIFTED THE BURDEN OF PROOF TO THE DEFENDANT, EIGHT STATES SUPPLEMENTED THE INSANITY VERDICT WITH A SEPARATE VERDICT OF GUILTY BUT MENTALLY ILL AND ONE STATE, UTAH, ABOLISHED THE DEFENSE OUTRIGHT. MONTANA, IDAHO, AND KANSAS ALSO LATER LIMITED ITS USE.

LIMITING THE USE OF EXPERT TESTIMONY, AS TO THE ULTIMATE ISSUE OF INSANITY.

SHIFTS INCLUDED MOVING AWAY FROM A PREPONDERANCE OF THE EVIDENCE TO CLEAR AND CONVINCING STANDARD.



INSANITY DEFENSE-BASICS

AFFIRMATIVE DEFENSE - ABSOLUTE DEFENSE.

USED LESS THAN 1% OF ALL CRIMINAL CASES AND RARELY SUCCESSFUL;

NO CONSTITUTIONAL RIGHT TO ASSERT DEFENSE – KAHLER V. KANSAS- IN 1995, KANSAS REVOKED THE TRADITIONAL INSANITY DEFENSE. INSTEAD, YOU MAY ARGUE THAT YOUR MENTAL ILLNESS PREVENTED YOU FROM FORMING THE SPECIFIC INTENT TO COMMIT THE CRIME. IN 2009, KAHLER ARRESTED AND CHARGED WITH MURDERING HIS WIFE, MOTHER-IN-LAW, AND HIS TWO TEENAGE DAUGHTERS. HE CLAIMED DEPRESSION, OCD, NARCISSISTIC, AND HISTRIONIC PERSONALITY. SENTENCED TO DEATH. JUSTICE KAGAN – UPHELD AND DEFERRED TO STATE LAW.

MENTAL STATE AT THE TIME OF THE OFFENSE (MSO); INSANITY

The defendant must prove by clear and convincing evidence each of the following elements:

(1) The defendant was suffering from a severe mental disease or defect at the time of the offense; **(AND)**

(2) As a result of the severe mental disease or defect, the defendant was:

(a) Unable to appreciate the nature and quality of his/her acts; **[OR]**

(b) Unable to appreciate the wrongfulness of his/her acts.

Appreciating the nature of his/her acts refers to the defendant's ability to know what he/she was doing – the physical aspects of his/her act.

Appreciating the quality of his/her acts refers to whether the defendant was aware of the consequences of his/her acts or understood the significance of his/her actions.

Being unable to appreciate the wrongfulness of his/her acts refers to the defendant's ability to understand that his/her act was morally or legally wrong.



MSO (CONTINUED)

THE PRESUMPTION THAT A PERSON HAS SUFFICIENT MENTAL CAPACITY TO APPRECIATE THE CRIMINAL NATURE OF CERTAIN CONDUCT AND TO APPRECIATE THE NATURE AND QUALITY OF HIS/HER ACTS IS A FACT IN THE CASE WHICH MUST BE CONSIDERED BY THE FACT FINDER ALONG WITH ALL THE EVIDENCE. THIS PRESUMPTION IS REBUTTABLE BY EVIDENCE TO THE CONTRARY.

THE DEFENDANT HAS THE BURDEN OF PROVING THAT HE/SHE HAS A SEVERE MENTAL DISEASE OR DEFECT BY CLEAR AND CONVINCING EVIDENCE. CLEAR AND CONVINCING EVIDENCE MEANS THAT IT IS HIGHLY PROBABLE THAT THE DEFENDANT HAD A SEVERE MENTAL DISEASE OR DEFECT AT THE TIME OF THE CRIME.

DIMINISHED CAPACITY

EVIDENCE OF AN ABNORMAL MENTAL CONDITION NOT AMOUNTING TO LEGAL INSANITY BUT TENDING TO PROVE THAT THE DEFENDANT COULD NOT OR DID NOT ENTERTAIN THE SPECIFIC INTENT ESSENTIAL SUCH AS INTOXICATION, ADDICTION, TRAUMA, OR MENTAL DISEASE OR DISABILITY.

RECOGNIZED IN SOME JURISDICTIONS, **BUT NOT IN ALABAMA;**

UNLIKE **DIMINISHED CAPACITY**, BATTERED-WOMAN SYNDROME HAS BEEN RECOGNIZED BY ALABAMA COURTS. SEE, E.G., HARRINGTON V. STATE, 858 SO. 2D 278, 294 (ALA. CRIM. APP. 2002); BONNER V. STATE, 740 SO. 2D 439 (ALA. CRIM. APP. 1998); EX PARTE HANEY, 603 SO. 2D 412 (ALA. 1992). THIS COURT ALSO HELD IN W.R.C. V. STATE, 69 SO. 3D 933 (ALA. CRIM. APP. 2010), TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ALLOWING EXPERT TESTIMONY THAT WAS “GENERAL IN NATURE” TO ASSIST THE JURY IN UNDERSTANDING POSSIBLE REASONS FOR A 10-YEAR DELAY IN REPORTING CHILD SEXUAL ABUSE. CARTWRIGHT V. STATE, 2020 WL 597420 (2020).



VOLUNTARY INTOXICATION

VOLUNTARY INTOXICATION DOES NOT EXCUSE A CRIME, BUT ITS EXCESSIVENESS MAY PRODUCE SUCH A MENTAL CONDITION AS TO RENDER THE INTOXICATED PERSON INCAPABLE OF FORMING A SPECIFIC INTENT.

FACT FINDER IS TO DETERMINE WHETHER THE PERSON WAS INTOXICATED AT THE TIME OF THE OFFENSE; AND SECOND, WHETHER THE DEFENDANT WAS INCAPABLE OF FORMING THE REQUIRED INTENT TO COMMIT SAID CRIME.

INTOXICATION BY ITSELF DOES NOT CONSTITUTE A MENTAL DISEASE OR DEFECT

The image features a blue gradient background with white circuit-like lines in the corners. These lines consist of straight paths that branch out and terminate in small circles, resembling a stylized PCB or network diagram. The lines are positioned in the top-left, top-right, bottom-left, and bottom-right corners, framing the central text.

THE END