

NOT GUILTY BY REASON OF INSANITY

Ray S. Kim, Ph.D.

WHAT DOES IT MEAN TO BE NOT GUILTY BY REASON OF INSANITY?



HISTORY OF INSANITY DEFENSE

- The idea of a defense to criminal responsibility based on mental disability can be traced back to the **13th century**.
- The premise of the insanity defense is that most criminal offenders choose to commit crime for rational reasons and of their own “free will” and are therefore deserving of punishment. However, some **mentally disturbed offenders** are so irrational or so unable to control their behavior that **treatment rather than imprisonment is warranted.**



THE INSANITY DEFENSE

- ◉ The insanity defense is considered one of the most **controversial** issues in criminal law.
- ◉ It is **rarely used**.
- ◉ It is **rarely successful**.
- ◉ **Famous cases** include John Hinckley, Jeffrey Dahmer, and Andrea Yates.



THE MCNAUGHTON RULE

- The McNaughton case in **1843** was the first famous legal test for insanity.
- “...the 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 what he was doing was wrong.**”
- Standard for insanity in almost half of the States.

THE DURHAM RULE

- In **1954**, a Judge tried to reform the McNaughton standard.
- “...that an accused is not criminally responsible if his unlawful act was the **product of mental disease** or mental defect.”
- The Durham standard drew criticism and was eventually rejected by the federal courts because its definition of insanity was **too broad** (much more lenient than the McNaughton standard).

AMERICAN BAR ASSOCIATION'S TEST FOR INSANITY

- In **1984**, the United States Congress adopted an insanity test based on a proposal by the American Bar Association.
- “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.”
- Returned to a **more strict** interpretation of insanity.



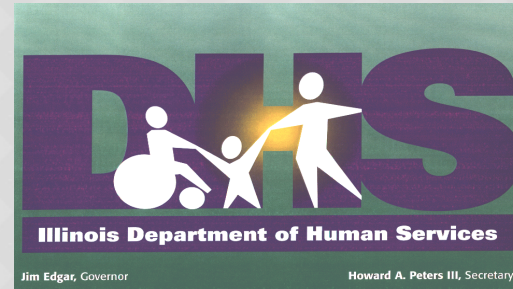
DEFINITION OF INSANITY IN ILLINOIS

- ◉ **720 ILCS 5/6-2. NOT GUILTY BY REASON OF INSANITY**
- ◉ **Section 6-2. Insanity.**
- ◉ **“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.”**



SECTION 5-2-4. PROCEEDINGS AFTER ACQUITTAL BY REASON OF INSANITY.

- After a finding or verdict of not guilty by reason of insanity, the defendant shall be ordered to the **Department of Human Services** for an evaluation as to whether he is in need of mental health services. The order shall specify whether the evaluation shall be conducted on an **inpatient or outpatient basis.**”



30 DAY REPORT

- “The Department of Human Services shall provide the court with a **report** of its evaluation within **30 days** of the date of this order. The Court shall hold a hearing as provided under the Mental Health and Developmental Disabilities Code to determine if the individual is: (a) in need of mental health services on an **inpatient basis**, (b) in need of mental health services on an **outpatient basis**, or (c) a person not in need of mental health services.”



INPATIENT TREATMENT

- “If the defendant is found to be in need of mental health services on an **inpatient care** basis, the court shall order the defendant to the Department of Human Services. The defendant shall be placed in a **secure setting** unless the court determines that there are compelling reasons why such placement is not necessary.”



OUTPATIENT TREATMENT

- “If the defendant is found to be in need of mental health services, but not on an inpatient care basis, the court shall **conditionally release** the defendant, under such conditions as will reasonably assure the defendant’s satisfactory progress and participation in treatment or rehabilitation and the safety of the defendant and others. Such conditional release shall be for a period of **five years.**”

NO TREATMENT

- “If the court finds the person not in need of mental health services, then the court shall order the defendant **discharged** from custody.”



TREATMENT PLAN REPORTS

- “Not more than **30 days** after admission and **every 60 days** thereafter so long as the initial order remains in effect, the facility director shall file a **treatment plan report** in writing with the court.”



COMMUNITY REINTEGRATION

- “The facility director shall give written notice to the court when:
 1. The defendant is **no longer in need of mental health services on an inpatient basis.**
 2. The defendant may be **conditionally released** because he is still in need of mental health services.
 3. The defendant may be **discharged** as not in need of any mental health services.
 4. The defendant **no longer requires placement in a secure setting.”**

DISCHARGE PLAN

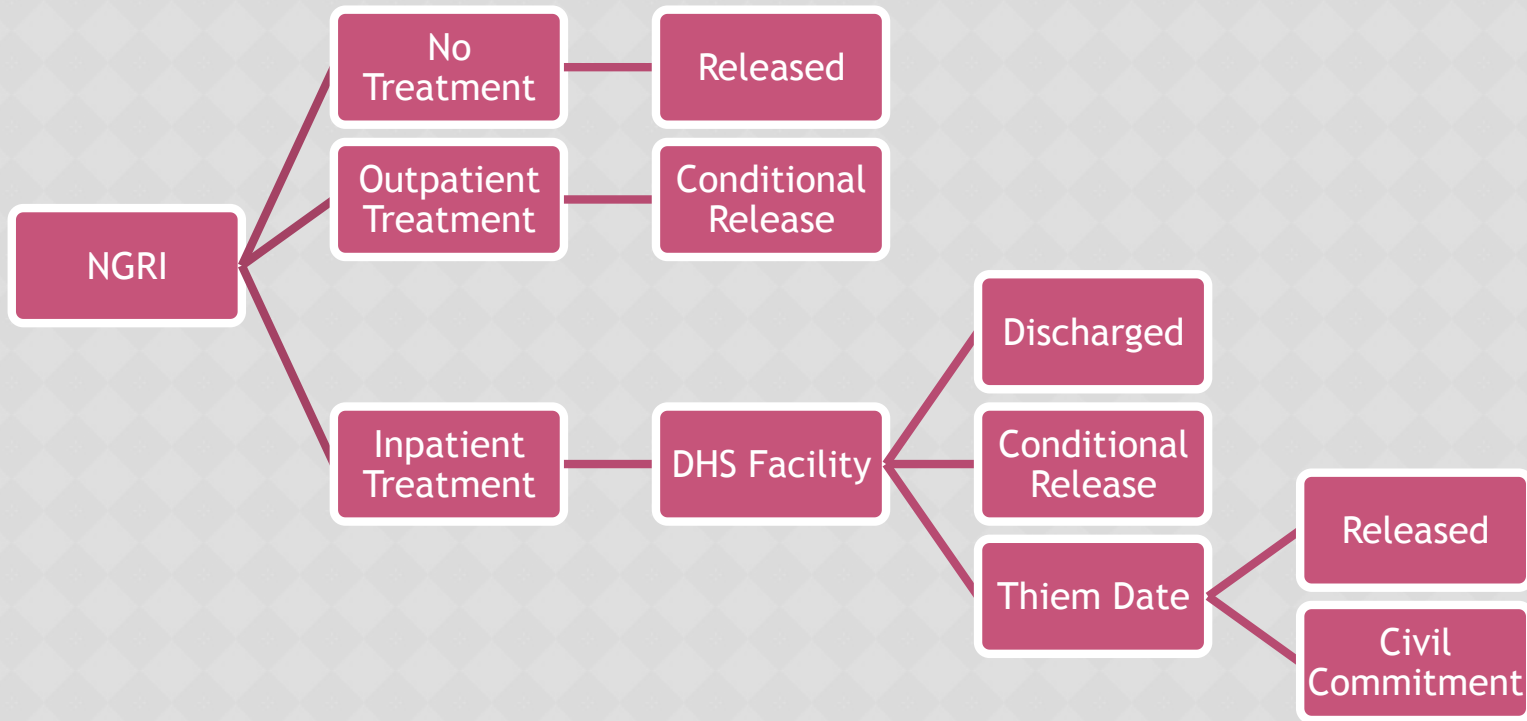
- “Upon receipt of a petition for treatment plan review, transfer to a non-secure setting, or discharge or conditional release, the court shall set a **hearing** to be held within 120 days.”
- “Before the court orders that the defendant be discharged or conditionally released, it shall order the facility director to establish a **discharge plan** that includes a plan for the defendant’s shelter, support, and medication.”

REVOCAION OF CONDITIONAL RELEASE

- “If within the period of the defendant’s conditional release the State’s Attorney determines that the defendant has not fulfilled the conditions of his release, the State’s Attorney may petition the court to **revoke or modify the conditional release** of the defendant. Upon the filing of such petition, the defendant may be remanded to the custody of the Department of Human Services pending the resolution of the petition.”



NOT GUILTY BY REASON OF INSANITY PROCEDURE



TYPES OF PRIVILEGES

- ◉ Supervised On-Grounds Pass Privileges
- ◉ Unsupervised On-Grounds Pass Privileges
- ◉ Supervised Off-Grounds Pass Privileges
- ◉ Unsupervised Off-Grounds Pass Privileges
- ◉ Transfer to a Non-Secure Setting
- ◉ Conditional Release
- ◉ Discharge



PRIVILEGE REVIEW CRITERIA

- ◉ **Risk factors** (i.e., managed adequately?).
- ◉ **Clinical stability** (i.e., extended period of stability?).
- ◉ **Compliance** with treatment (e.g., taking medication?, participating in counseling?, attending groups?).
- ◉ **Behavior** on the unit (e.g., aggressive?, cooperative?, compliant?).
- ◉ **Use of current privileges** (i.e., responsible use versus inappropriate use).

PRIVILEGE REVIEW CRITERIA (CONTINUED)

- ◉ **Insight** (i.e., aware of wrongfulness of crime, connection between mental illness and the crime, need for continued treatment).
- ◉ Nature of the **crime** (i.e., severity).
- ◉ Patient's current **perception of the criminal act** (e.g., personal responsibility, remorse, regret).
- ◉ Clarity of **connection** between the patient's mental illness and the crime (i.e., clear connection is a good predictor of future safety).
- ◉ Viable **aftercare plan** (i.e., structured residence, treatment services).

DISCHARGE PLANNING

- Comprehensive plan that focuses on **management of risk factors** (i.e., preventing violence).
- Structured and **stable living arrangement** (e.g., halfway houses, group homes).
- **Mental health services** (e.g., medication management, individual counseling, group therapy).
- **Substance abuse services** (e.g., chemical dependence groups, random drug tests).
- **Supervision and monitoring** (i.e., DHS monitors NGRIs while under court jurisdiction).
- **Other supportive services** (e.g., case management).

QUESTIONS AND DISCUSSION

