

I18 The Insanity Defense in the Contemporary Context

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Learning Overview: The goals of this presentation are to: (1) analyze how psychopathic disorders were favored and disfavored in the United States as conditions qualifying for the insanity defense and commitment; (2) describe Kansas' attempt to abolish the insanity defense and analyze the constitutional challenges posed by *Kahler*; (3) identify a group of individuals adjudicated Guilty Except Insane (GEI) in Arizona who are at risk of transfer from a state hospital to a correctional setting; and (4) understand the impact of *mens rea* insanity defenses on dispositions of mentally ill defendants.

Impact on the Forensic Science Community: This presentation will impact the forensic science community by informing attendees that a thorough understanding of recent changes in the jurisprudence of the insanity defense better prepares practitioners addressing mental illness defenses and policy makers striving for rational, fair, and effective procedures impacting mentally ill offenders.

The insanity defense is under attack. Since the trial of John Hinckley, Jr., state legislatures have enacted statutory changes attempting to place limits on the insanity defense by introducing processes designed to narrow who is eligible.¹ Despite this trend, insanity defenses are proposed for defendants with psychopathic disorders.

This presentation will discuss the *psychopathy paradox*, which recognizes that although psychopathic disorders per se do not qualify for extended insanity commitment, psychopathy contributes to risk assessments which disfavor hospital discharge from insanity commitment.^{2,3}

This presentation next explores statutory changes made between 1979 and 1996 that resulted in abandoning traditional insanity defenses in Montana, Idaho, Utah, and Kansas. Instead, these four states, adopted *mens rea* statutes that require an individual be unable to form the specific intent necessary to commit a crime in order to be found not guilty as a result of mental illness.

The presentation will review limited empirical data from each of the four *mens rea* states with a focus on the impact of these changes on individuals with severe mental illness who are involved in the criminal justice system.⁴⁻⁶ In light of this impact, this presentation will review the recent United States Supreme Court case of *Kahler v. Kansas*, which determined that the Kansas *mens rea* insanity defense was sufficient and that decision, by extension, would apply as well to the other three *mens rea* states.⁷

Yet another alternative to traditional insanity defenses, this presentation will explore Arizona's GEI verdict that provides a unique mechanism to address offenders with psychopathy. Arizona allows its Psychiatric Security Review Board to determine that an individual who is found GEI for certain crimes is dangerous, but no longer in need of psychiatric treatment.^{8,9}

The presentation will conclude with a plea for organized psychiatry and psychology to develop research programs that focus on the effects of statutory changes in these states and others that may adopt similar provisions. This research can inform debates about statutes and focus on what happens to severely mentally ill persons in these areas of the criminal justice system.

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Forensic Science, Insanity Defense, Psychopathy