

## 6.1: The Insanity Defense

### Learning Objectives

1. Identify four states that do not recognize an insanity defense.
2. Identify four versions of the insanity defense.
3. Ascertain the two elements required for the M’Naghten insanity defense.
4. Ascertain the two elements required for the irresistible impulse insanity defense.
5. Compare the M’Naghten, irresistible impulse, and substantial capacity tests.
6. Ascertain the basis of the Durham insanity defense.
7. Identify the various burdens of proof for the insanity defense.
8. Distinguish between diminished capacity and the insanity defense.
9. Compare the insanity defense with mental competence to stand trial.
10. Compare the insanity defense with the guilty but mentally ill verdict.
11. Compare different commitment procedures for an insane criminal defendant.
12. Distinguish temporary from permanent insanity.

With the exception of alibi and the expiration of the statute of limitations, Chapter 5 explored criminal defenses based on **justification**. This chapter reviews criminal defenses based on **excuse**, including the **insanity defense**. Remember that defenses based on excuse focus on the *defendant* and claim that the defendant should be excused from criminal responsibility for his or her conduct under the circumstances.

Although controversial, most states and the federal government recognize an **insanity defense**.<sup>18</sup> U.S.C. § 17, accessed November 28, 2010, [http://www.law.cornell.edu/uscode/18/usc\\_sec\\_18\\_00000017----000-.html](http://www.law.cornell.edu/uscode/18/usc_sec_18_00000017----000-.html). Montana, Utah, Kansas, and Idaho are the only states that do not. Findlaw.com, “The Insanity Defense among the States,” findlaw.com website, accessed November 29, 2010, <http://criminal.findlaw.com/crimes/more-criminal-topics/insanity-defense/the-insanity-defense-among-the-states.html>. The insanity defense is the subject of much debate because it excuses even the most evil and abhorrent conduct, and in many jurisdictions, legal insanity functions as a perfect defense resulting in *acquittal*. However, the insanity defense is rarely used and hardly ever successful. This is generally because of the difficulty in proving *legal* insanity.

Many criminal defendants suffer from mental illness and can produce evidence of this illness such as psychiatric or layperson testimony. Often, mental disturbance is apparent from the defendant’s conduct under the circumstances. However, legal insanity differs from *medical* insanity and is generally much more difficult to establish. The rationale behind creating a different standard for legal insanity is the goal of a criminal prosecution discussed in Chapter 1. Criminal prosecution should deter as well as incapacitate. While the purpose of a medical diagnosis is to eventually *cure* the defendant’s disorder, the purpose of criminal law is to *punish* the defendant. Thus the defendant’s conduct is not excused if the defendant or society can benefit from punishment.

The policy supporting the insanity defense is twofold. First, an insane defendant does not have *control* over his or her conduct. This is similar to a defendant who is hypnotized, or sleepwalking. Second, an insane defendant does not have the ability to *form criminal intent*. Without the ability to control conduct, or the understanding that conduct is evil or wrong by society’s standards, an insane defendant presumably will commit crimes again and again. Thus no deterrent effect is served by punishment, and treatment for the mental defect is the appropriate remedy.

Four variations of the insanity defense currently exist: M’Naghten, irresistible impulse, substantial capacity, and Durham.

### 6.1.1 M’Naghten Insanity Defense

The **M’Naghten insanity defense**, also called the **right-wrong test**, is the most common insanity defense in the United States. It is also the oldest and was created in England in 1843. The defense is named after Daniel M’Naghten. M’Naghten was under the paranoid delusion that the Prime Minister of England, Sir Robert Peel, was trying to kill him. When he tried to shoot Sir Peel from behind, he inadvertently shot Sir Peel’s Secretary, Edward Drummond, who thereafter died. M’Naghten was put on trial for murder and, to the shock of the nation, the jury found him not guilty by reason of insanity. *Queen v. M’Naghten*, 10 Clark & F.200, 2 Eng. Rep. 718 (H.L. 1843), accessed November 29, 2010, [users.php.php.ufl.edu/rbauer/forensic\\_neuropsychology/mcnaghten.pdf](users.php.php.ufl.edu/rbauer/forensic_neuropsychology/mcnaghten.pdf). After a public outcry at this verdict, the British House of Lords developed a test for insanity that remains relatively intact today.

The M’Naghten insanity defense is *cognitive* and focuses on the defendant’s awareness, rather than the ability to *control* conduct. The defense requires two elements. First, the defendant must be suffering from a *mental defect* at the time he or she commits the criminal act. The mental defect can be called a “defect of reason” or a “disease of the mind,” depending on the jurisdiction. Iowa Code § 701.4, accessed November 30, 2010, [coolice.legis.state.ia.us/cool-ice/default.asp?category=billinfo&service=iowacode&ga=83&input=701](http://coolice.legis.state.ia.us/cool-ice/default.asp?category=billinfo&service=iowacode&ga=83&input=701). Second, the trier of fact must find that because of the mental defect, the defendant did not know either the *nature and quality* of the criminal act or that the act was *wrong*.

The terms “defect of reason” and “disease of the mind” can be defined in different ways, but in general, the defendant must be cognitively impaired to the level of not knowing the nature and quality of the criminal act, or that the act is wrong. Some common examples of mental defects and diseases are psychosis, schizophrenia, and paranoia.

Jurisdictions vary as to the level of awareness the defendant must possess. Some jurisdictions use the term “know,” or “understand,” Cal. Penal Code § 25, accessed November 30, 2010, <http://law.onecle.com/california/penal/25.html>, while others use the term “appreciate.” Ala. Code § 13A-3-1, accessed November 30, 2010, [law.onecle.com/alabama/criminal-code/13A-3-1.html](http://law.onecle.com/alabama/criminal-code/13A-3-1.html). If know or understand is the standard, the trier of fact must ascertain a basic level of awareness under the attendant circumstances. If appreciate is the standard, the trier of fact must analyze the defendant’s emotional state, and evidence of the defendant’s character or personality may be relevant and admissible.

A defendant does not know the nature and quality of a criminal act if the defendant is completely oblivious to what he or she is doing. This is quite rare, so most defendants claiming insanity choose to assert that they did not know their act was *wrong*. However, jurisdictions differ as to the meaning of “wrong.” Some jurisdictions define wrong as “legally wrong,” meaning the defendant must be unaware that the act is against the law. *State v. Crenshaw*, 659 P.2d 488 (1983), accessed November 30, 2010, [lawschool.courtroomview.com/acf\\_cases/8790-state-v-crenshaw](http://lawschool.courtroomview.com/acf_cases/8790-state-v-crenshaw). Others define wrong as “legally and morally wrong,” meaning the defendant must also be unaware that the act is condemned by society. *State v. Skaggs*, 586 P.2d 1279 (1978), accessed November 30, 2010, [http://www.leagle.com/xmlResult.aspx?xmlidoc=1978587120Ariz467\\_1470.xml&docbase=CSLWAR1-1950-1985](http://www.leagle.com/xmlResult.aspx?xmlidoc=1978587120Ariz467_1470.xml&docbase=CSLWAR1-1950-1985). Generally, the only instance where the defendant must be “morally wrong,” standing alone, is when the defendant claims that the conduct was performed at the command of God, which is called the **deific defense**. *State v. Worlock*, 569 A.2d 1314 (1990), accessed November 30, 2010, [http://www.leagle.com/xmlResult.aspx?xmlidoc=1990713117NJ596\\_1172.xml&docbase=CSLWAR2-1986-2006](http://www.leagle.com/xmlResult.aspx?xmlidoc=1990713117NJ596_1172.xml&docbase=CSLWAR2-1986-2006). Whether the standard is legally wrong or morally wrong, if there is any evidence of a cover-up or an attempt to hide or escape, it is apparent that the defendant knew the difference between right and wrong, defeating the claim of insanity under M’Naghten.

### 6.1.2 Example of a Case Inappropriate for the M’Naghten Insanity Defense

Susan wants to marry a single man, but he does not want the responsibility of caring for her children. Susan decides to kill her children. She drives her two sons, aged three and five, out to the lake. She puts the car in park, gets out, and then puts it in gear, watching as it drives into the water. Both of her sons drown. Later that day, Susan files a police report stating that a stranger kidnapped her children at gunpoint. While searching the area for the kidnapper, the police discover the children’s bodies and evidence indicating that Susan killed them.

Susan recants her kidnapping story and admits she killed her children. However, she claims she is not guilty by reason of insanity. Susan’s claim will probably not be successful if she killed her children in a jurisdiction that recognizes the M’Naghten insanity defense. Susan tried to mislead the police, demonstrating her awareness that she had done something wrong. Thus although Susan’s behavior appears mentally imbalanced, she clearly *knew the difference* between right and wrong, and her conduct is not excusable under M’Naghten’s rigid requirements.

### 6.1.3 Example of a Case Appropriate for the M’Naghten Insanity Defense

Andrea, a diagnosed schizophrenic, drowns five of her young children in the bathtub. Andrea promptly phones 911 and tells the operator that her children are dead. The operator dispatches an emergency call to law enforcement. When law enforcement officers arrive at Andrea’s house, she informs them that she killed her children so that they could leave this earth and enter heaven.

Andrea thereafter claims she is not guilty for killing her children by reason of insanity. Andrea could be successful if the jurisdiction in which she killed her children recognizes the M’Naghten insanity defense. Andrea suffers from a **mental defect**, schizophrenia. In addition, there is *no* evidence indicating Andrea knew her conduct was **wrong**, such as an attempted escape, or cover-up. In fact, Andrea herself contacted law enforcement and immediately told them about her criminal acts. Thus both of the M’Naghten elements appear to be present, and Andrea’s conduct may be excusable under the circumstances.

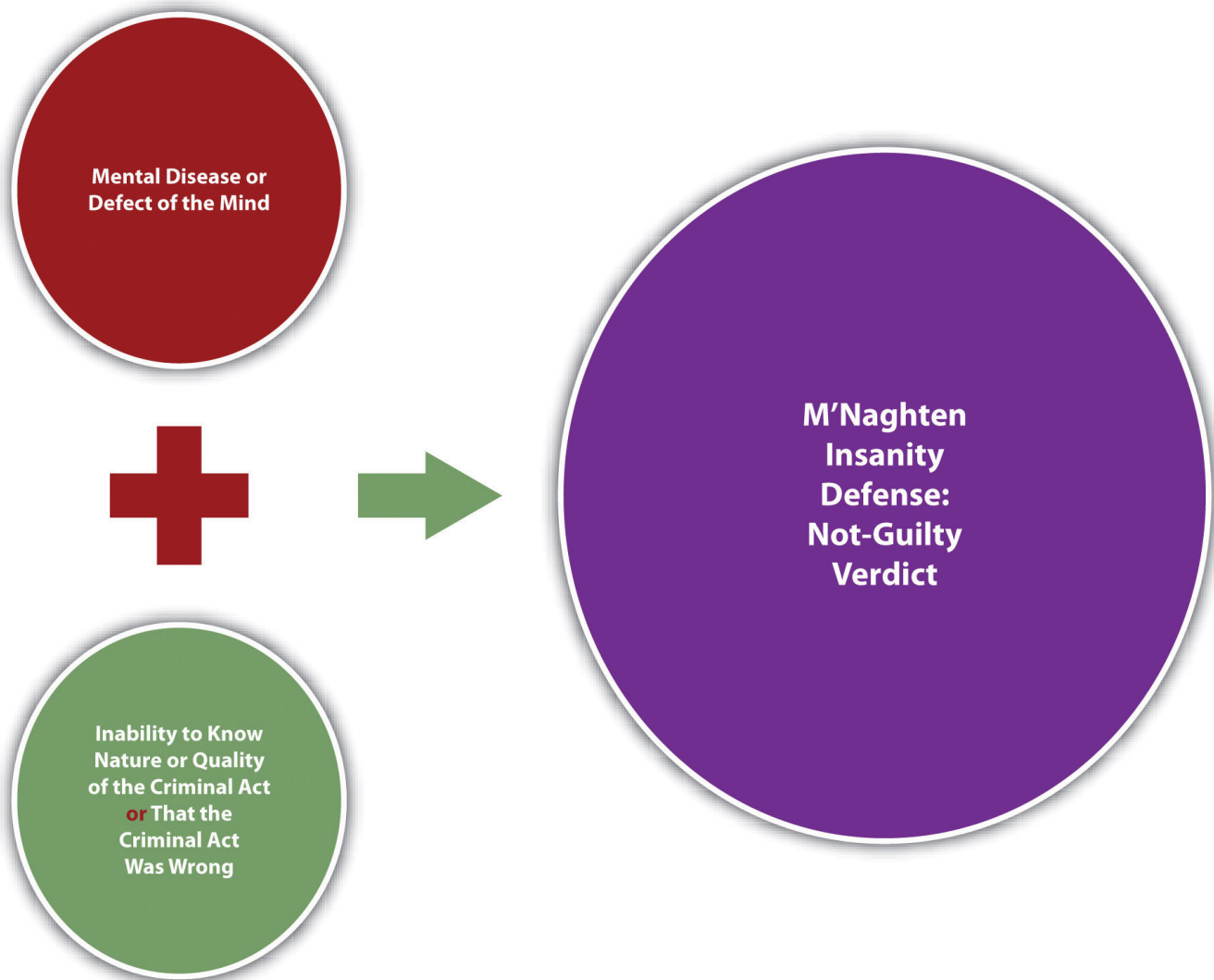


Figure 6.1 M'Naghten Insanity Defense

#### 6.1.4 Irresistible Impulse Insanity Defense

Another variation of the insanity defense is the **irresistible impulse defense**. This defense has lost popularity over the years and is rejected by most of the states and the federal government.<sup>18</sup> U.S.C. § 17, accessed November 28, 2010, [http://www.law.cornell.edu/uscode/18/uscode\\_sec\\_18\\_00000017----000-.html](http://www.law.cornell.edu/uscode/18/uscode_sec_18_00000017----000-.html). In some cases, the irresistible impulse insanity defense is *easier* to prove than the M'Naghten insanity defense, resulting in the acquittal of more mentally disturbed defendants.

The irresistible impulse insanity defense generally supplements M'Naghten, so the focus is on the defendant's awareness (cognitive) *and* the defendant's will (ability to control conduct). In jurisdictions that recognize the irresistible impulse insanity defense, the first element is the same as M'Naghten; the defendant must suffer from a mental defect or disease of the mind. However, the second element adds the concept of **volition**, or free choice. If the defendant cannot control his or her conduct because of the mental defect or disease, the defendant's conduct is excused even if the defendant understands that the conduct is wrong. *State v. White*, 270 P.2d 727 (1954), accessed November 30, 2010, [http://scholar.google.com/scholar\\_case?case=15018626933471947897&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=15018626933471947897&hl=en&as_sdt=2&as_vis=1&oi=scholar). This is a softer stance than M'Naghten, which does *not* exonerate a defendant who is aware conduct is wrong. The challenge for the trier of fact in an irresistible impulse jurisdiction is distinguishing between conduct that can be *controlled* and conduct that cannot.

### 6.1.5 Example of a Case Inappropriate for the Irresistible Impulse Insanity Defense

Jolene, who has been diagnosed with paranoia, decides she must cut off all her sorority sisters' hair because they are "out to get her." She drives to the sorority house with a Taser and scissors in her backpack. Her plan is to subdue each sister with the stun gun and then hack off her hair. As she arrives at the house, she sees Agnes, one of her sorority sisters, trip and fall in the parking lot, ripping her cashmere sweater and scraping her chin. Feeling a stab of pity, Jolene ignores Agnes and walks hurriedly toward the building. As she enters, Ashley, another sorority sister, turns, scowls at Jolene, and barks, "What in the world are you wearing? You look like you just rolled out of bed!" Jolene pulls the stun gun out of her backpack and shoots Ashley. While Ashley is lying on the floor, Jolene takes out the scissors and cuts Ashley's hair off at the scalp.

Jolene claims she is not guilty for assault and battery of Ashley by reason of insanity. If Jolene attacked Ashley in a jurisdiction that recognizes the irresistible impulse insanity defense, she probably will not be successful with her claim. Jolene has been diagnosed with **paranoia**, which is a mental defect or disease. However, Jolene seems aware that shooting someone with a stun gun and cutting off her hair is *wrong* because she spared Agnes based on pity. In addition, Jolene's choice not to attack Agnes indicates she has *control* over her conduct. Thus Jolene is **cognitive** of the difference between right and wrong and has the **will** to suppress criminal behavior, defeating any claim of insanity under the irresistible impulse insanity defense.

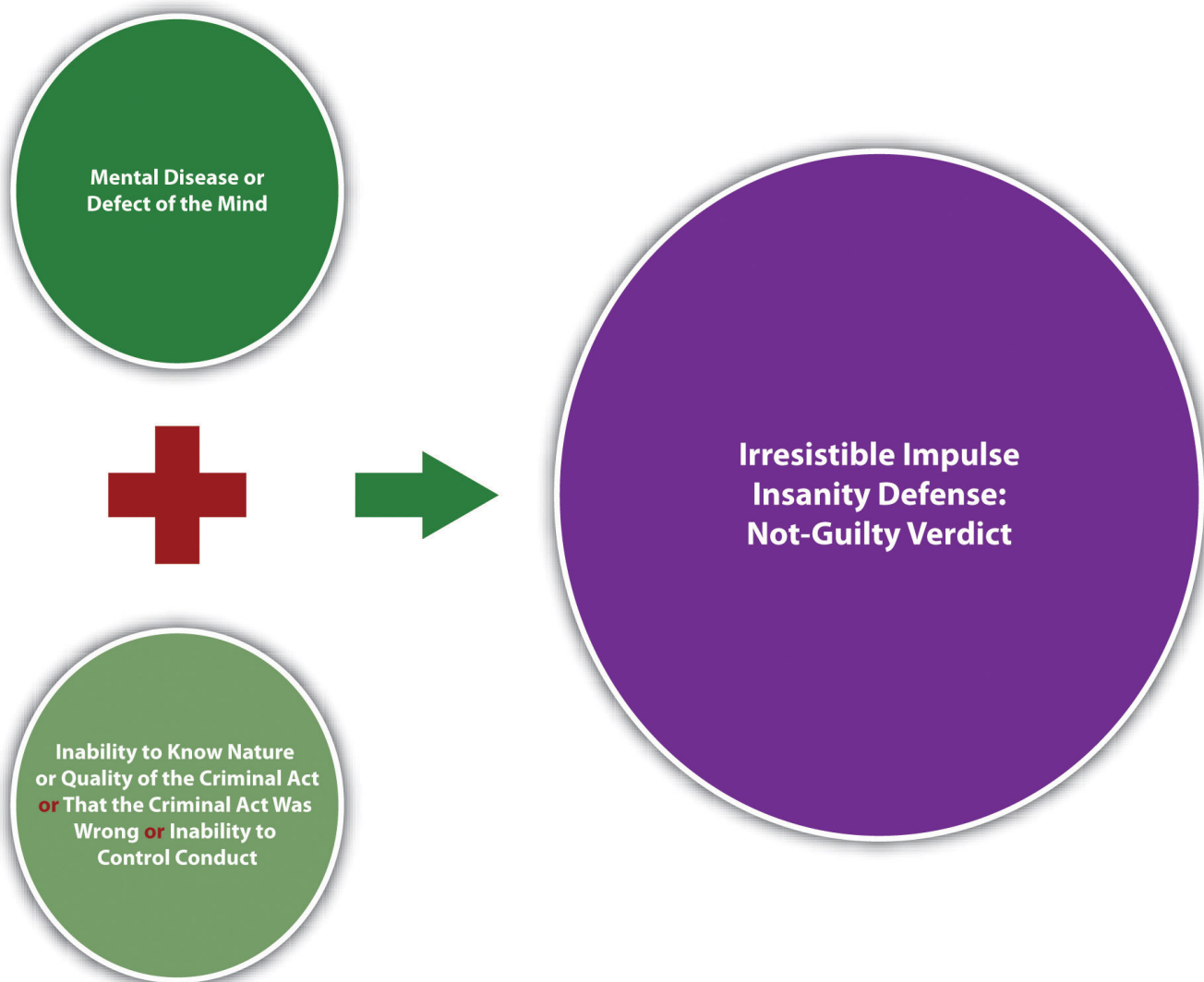


Figure 6.2 Irresistible Impulse Insanity Defense

### 6.1.6 The Substantial Capacity Test

The **substantial capacity test** is the insanity defense created by the Model Penal Code. The Model Penal Code was completed in 1962. By 1980, approximately half of the states and the federal government adopted the substantial capacity test (also called the **Model Penal Code** or **ALI defense**). Carol A. Rolf, “From M’Naghten to Yates—Transformation of the Insanity Defense in the United States—Is It Still Viable?” *Rivier College Online Academic Journal* 2 (2006), accessed December 1, 2010, [www.rivier.edu/journal/ROAJ-2006-Spring/J41-ROLF.pdf](http://www.rivier.edu/journal/ROAJ-2006-Spring/J41-ROLF.pdf). However, in 1982, John Hinckley successfully claimed insanity using the substantial capacity test in his federal trial for the attempted murder of then-President Ronald Reagan. Public indignation at this not-guilty verdict caused many states and the federal government to *switch* from the substantial capacity test to the more inflexible M’Naghten standard. 18 U.S.C. § 17, accessed November 28, 2010, [http://www.law.cornell.edu/uscode/18/usc\\_sec\\_18\\_00000017---000-.html](http://www.law.cornell.edu/uscode/18/usc_sec_18_00000017---000-.html). In addition, jurisdictions that switched to M’Naghten also shifted the burden of proving insanity to the *defendant*. Carol A. Rolf, “From M’Naghten to Yates—Transformation of the Insanity Defense in the United States—Is It Still Viable?” *Rivier College Online Academic Journal* 1 (2006), accessed December 1, 2010, [www.rivier.edu/journal/ROAJ-2006-Spring/J41-ROLF.pdf](http://www.rivier.edu/journal/ROAJ-2006-Spring/J41-ROLF.pdf). The defendant’s burden of proof for the insanity defense is discussed shortly.

The substantial capacity test is as follows: “A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he lacks substantial capacity either to appreciate the criminality [wrongfulness] of his conduct or to conform his conduct to the requirements of law” (Model Penal Code § 4.01(1)). The defense has two elements. The first element requires the defendant to have a mental disease or defect, like the M’Naghten and irresistible impulse insanity defenses. The second element combines the **cognitive** standard with **volitional**, like the irresistible impulse insanity defense supplementing the M’Naghten insanity defense.

In general, it is easier to establish insanity under the substantial capacity test because both the cognitive and volitional requirements are scaled down to more flexible standards. Unlike the M’Naghten insanity defense, the substantial capacity test relaxes the requirement for complete inability to understand or know the difference between right and wrong. Instead, the defendant must lack *substantial*, not total, capacity. The “wrong” in the substantial capacity test is “criminality,” which is a *legal* rather than moral wrong. In addition, unlike the irresistible impulse insanity defense, the defendant must lack *substantial*, not total, ability to conform conduct to the requirements of the law. Another difference in the substantial capacity test is the use of the word “appreciate” rather than “know.” As stated previously, appreciate incorporates an emotional quality, which means that evidence of the defendant’s character or personality is relevant and most likely admissible to support the defense.

### 6.1.7 Example of the Substantial Capacity Test

Loreen has been diagnosed with psychosis and spent most of her life in a mental hospital. While at the mental hospital, Loreen made friends with many of the patients and health-care personnel. From time to time, Loreen would play jokes on these friends. Most of these “jokes” consisted of putting her antidepressants into their food. Loreen was always reprimanded and often sternly punished for these escapades. After her release from the mental hospital at age twenty-one, Loreen falls in love with Aidan, a man who works in a bookstore near her apartment. Loreen decides to make Aidan fall in love with her by feeding him a magic potion, which she concocts out of a mixture of her antidepressants. Loreen buys a book from Aidan and casually asks if he would like her to buy him a coffee. Aidan shrugs and says, “Sure, but I don’t have a break for another two hours.” Loreen offers to bring him the coffee. Before bringing the drink to Aidan, she puts her “magic potion” in it. While Aidan is sipping the coffee, Loreen declares her love for him. She then states, “I know I shouldn’t have, but I put a love potion in your coffee. I hope it doesn’t hurt you.” Aidan becomes seriously ill after drinking the coffee and is hospitalized.

Loreen claims she is not guilty for battering Aidan by reason of insanity. If Loreen is in a jurisdiction that recognizes the substantial capacity test, she may be successful with her claim. Loreen has a mental disease or defect, **psychosis**. Loreen’s statement to Aidan indicates that she lacks the *substantial* capacity to appreciate the criminality of her conduct. Note that if Loreen were in a M’Naghten jurisdiction, her statement “I know I shouldn’t have” could prove her awareness that her conduct was *wrong*, defeating her claim. In addition, Loreen’s behavior at the mental hospital indicates that she lacks the substantial capacity to conform or control her conduct. Even after a lifetime of being punished over and over for mixing her meds together and putting them in other people’s food or drink, Loreen still does it. Lastly, in a substantial capacity jurisdiction, testimony from Loreen’s friends at the mental hospital may be admissible to support her claim of insanity, and her lack of ability to “appreciate” the criminality of her conduct.

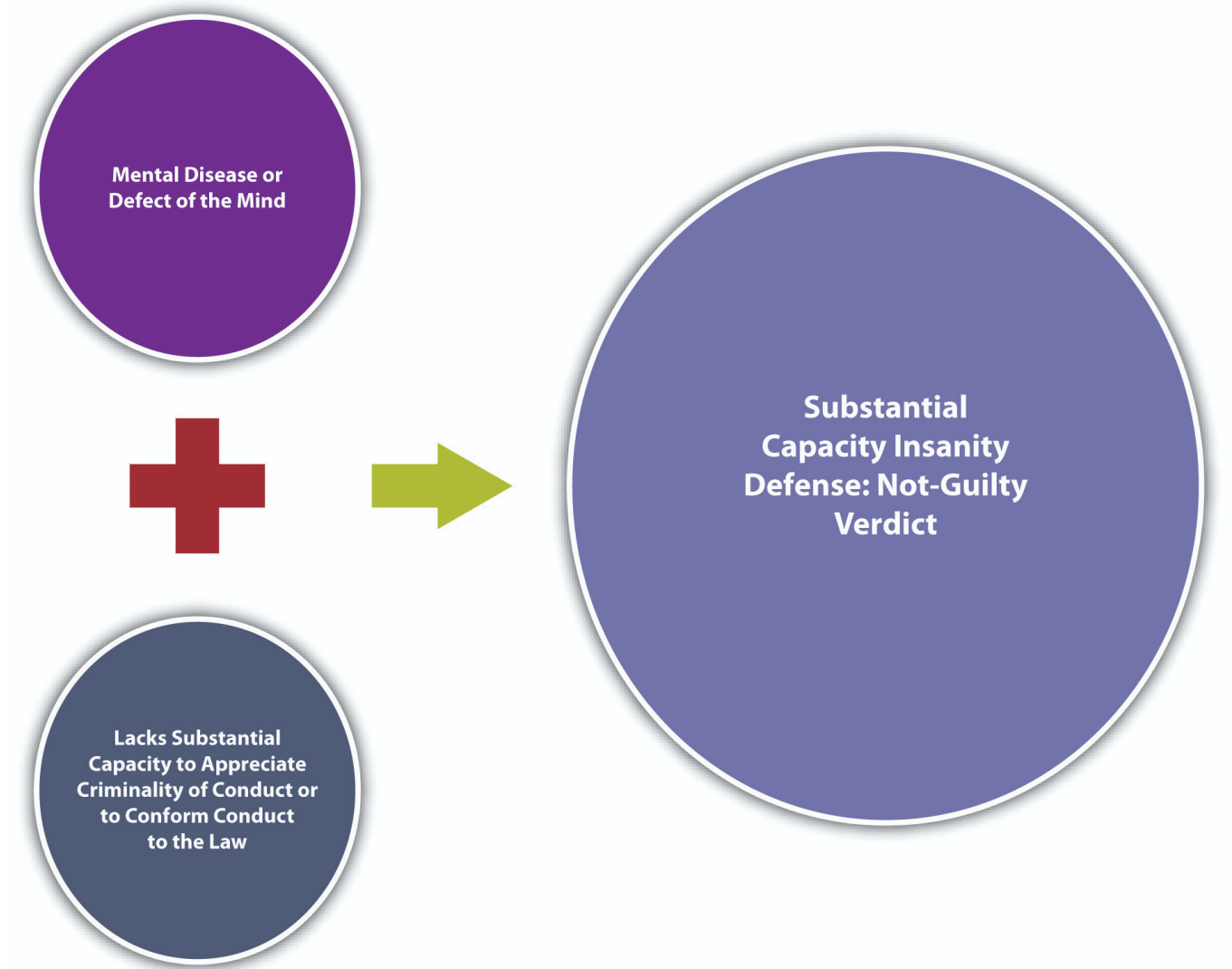


Figure 6.3 Substantial Capacity Insanity Defense

### 6.1.8 The Durham Insanity Defense

The **Durham insanity defense** is used only in New Hampshire and has been the established insanity defense in New Hampshire since the late 1800s. The Durham defense, also called the **Durham rule** or the **product test**, was adopted by the Circuit Court of Appeals for the District of Columbia in the case of *Durham v. U.S.*, 214 F.2d 862 (1954). The defense set forth in that case is as follows: “[A]n accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect.” *Durham v. U.S.*, 214 F.2d 862, 875 (1954), accessed December 2, 2010, [http://scholar.google.com/scholar\\_case?case=1244686235948852364&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=1244686235948852364&hl=en&as_sdt=2&as_vis=1&oi=scholar). However, the court failed to give definitions for product, mental disease, or mental defect. Thus the Durham insanity defense is extremely difficult to apply, and the D.C. Circuit rejected it in 1972 in the case of *U.S. v. Brawner*, 471 F.2d 969 (1972), which was later superseded by federal statute. 18 U.S.C. § 17, accessed November 28, 2010, [http://www.law.cornell.edu/uscode/18/usc\\_sec\\_18\\_00000017----000-.html](http://www.law.cornell.edu/uscode/18/usc_sec_18_00000017----000-.html).

In general, the Durham insanity defense relies on ordinary principles of **proximate causation**. The defense has two elements. First, the defendant must have a mental disease or defect. Although these terms are not specifically defined in the *Durham* case, the language of the judicial opinion indicates an attempt to rely more on objective, psychological standards, rather than focusing on the defendant’s subjective cognition. The second element has to do with **causation**. If the criminal conduct is “caused” by the mental disease or defect, then the conduct should be excused under the circumstances.



### 6.1.9 Example of the Durham Insanity Defense

Arianna has been diagnosed with **paranoia**. Most psychiatric experts agree that individuals afflicted with paranoia unreasonably believe that the human population is “out to get them.” Arianna works under the direct supervision of Nora, who has a physical condition called “walleye.” Nora’s walleye makes it appear that she is looking to the side when she addresses people. Arianna gradually becomes convinced that Nora is communicating secret messages to their coworkers when she is speaking to Arianna. Arianna is genuinely frightened that Nora is telling their coworkers to kill her, and she decides she needs to defend herself. Arianna brings a gun to work one day, and when Nora begins talking to her about her tendency to take overlong lunches, Arianna pulls the gun out of her cubicle and shoots and kills Nora.

Arianna claims she is not guilty for killing Nora by reason of insanity. If Arianna killed Nora in New Hampshire, she might be successful with her claim. Arianna has a mental disease or defect, **paranoia**. Arianna can probably produce evidence, such as psychiatric expert testimony, that her paranoia “caused” or “produced” her criminal conduct, which was shooting Nora. Thus a trier of fact could acquit Arianna on the grounds that her conduct is excusable under these circumstances.

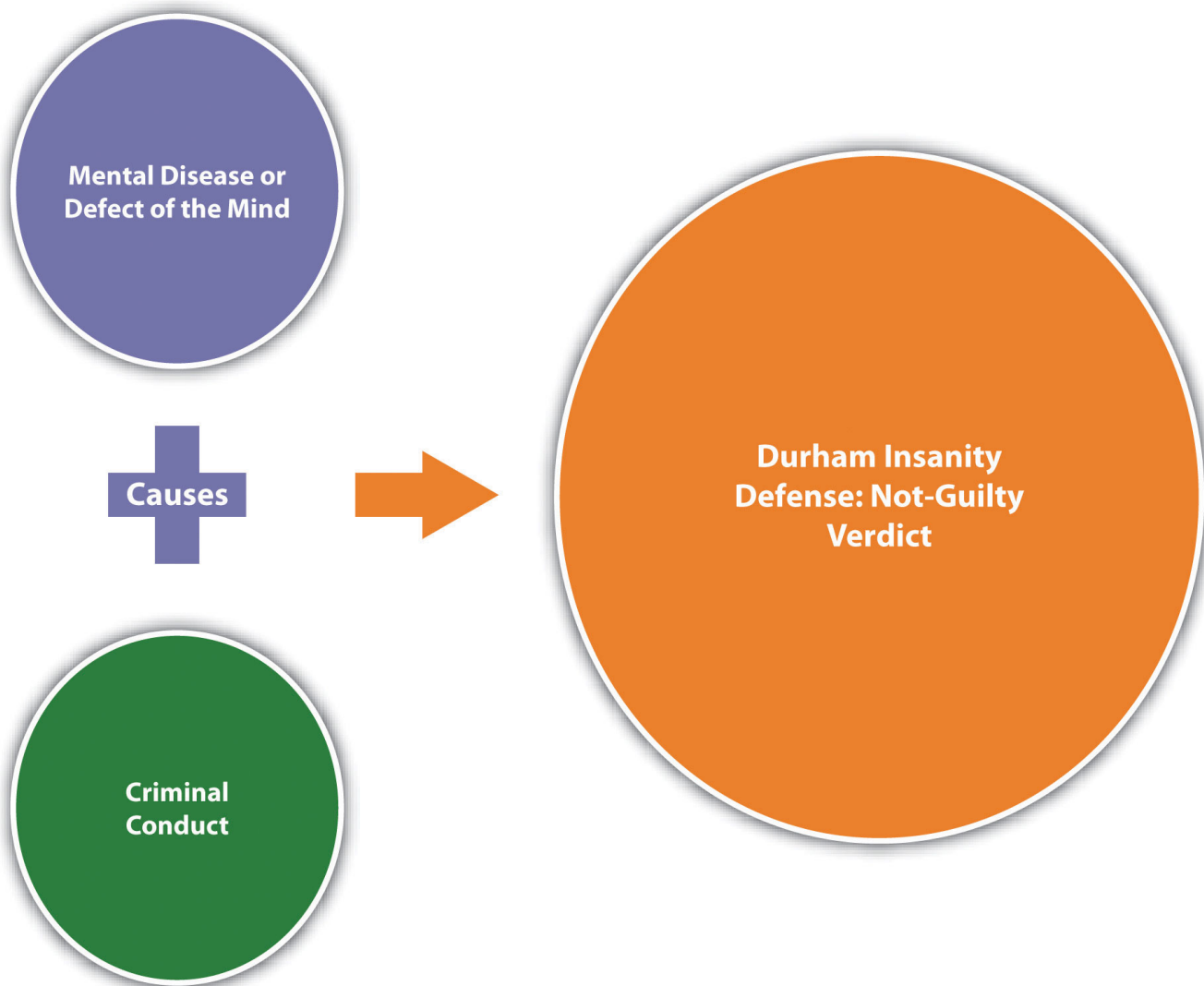


Figure 6.4 Durham Insanity Defense

### 6.1.10 Proving Insanity

There is generally a **presumption** that criminal defendants are *sane*, just as there is a presumption that they are *innocent*. Therefore, at a minimum, a defendant claiming insanity must produce evidence that rebuts this presumption. Some states require the prosecution to thereafter prove sanity beyond a reasonable doubt or to a preponderance of evidence. James R. Elkins and

students at the West Virginia University College of Law, “Insanity Defense,” West Virginia Homicide Jury Instructions Project, accessed December 2, 2010, [myweb.wvnet.edu/~jelkins/adcrimlaw/insanity.html](http://myweb.wvnet.edu/~jelkins/adcrimlaw/insanity.html).

Post-*Hinckley*, many states have converted the insanity defense into an affirmative defense. Thus as discussed in Chapter 5, the defendant may also have the burden of persuading the trier of fact that he or she is insane to a preponderance of evidence. New Jersey Jury Instruction on Insanity, Based on N.J. Stat. Ann. § 2C: 4-1, accessed November 30, 2010, [www.judiciary.state.nj.us/criminal/charges/respons1.pdf](http://www.judiciary.state.nj.us/criminal/charges/respons1.pdf). The federal government and some other states require the defendant to prove insanity by **clear and convincing evidence**, which is a higher standard than preponderance of evidence. Tenn. Code Ann. § 39-11-501, accessed December 2, 2010, <http://law.justia.com/tennessee/codes/2010/title-39/chapter-11/part-5/39-11-501>.

### 6.1.11 Diminished Capacity

A claim of **diminished capacity** differs from the insanity defense. Diminished capacity is an **imperfect failure of proof defense** recognized in a minority of jurisdictions. Diminished capacity could reduce a first-degree murder charge to second-degree murder or manslaughter if the defendant lacks the mental capacity to form the appropriate criminal intent **for first-degree murder**.

In California, diminished capacity was abolished as an affirmative defense after San Francisco Supervisor Dan White used it successfully in his trial for the murder of fellow Supervisor Harvey Milk. A jury convicted White of voluntary manslaughter rather than first-degree premeditated murder after reviewing evidence that proved his diet of junk food (Twinkies) created a chemical imbalance in his brain. In the aftermath of this highly publicized trial, California passed legislation eliminating the diminished capacity defense and limiting the admissibility of evidence of diminished capacity only to sentencing proceedings. Cal. Penal Code § 25, accessed December 2, 2010, <http://law.onecle.com/california/penal/25.html>.

Similar to diminished capacity is the **syndrome defense**. A syndrome that negates the requisite intent for the crime could function as a **failure of proof defense** in a minority of jurisdictions. Some common examples of syndromes the American Psychiatric Association recognizes in the *Diagnostic and Statistical Manual of Mental Disorders*, fourth edition (*DSM-IV*), are antisocial personality disorder, posttraumatic stress disorder, and intermittent explosive disorder. Some common examples of syndromes identified but not recognized in *DSM-IV* are battered woman or battered wife syndrome (discussed in Chapter 5) and caffeine withdrawal. Although successful use of the syndrome defense is rare, at least one case has excused a defendant’s drunken driving and assault and battery against a police officer because of premenstrual syndrome (PMS). “Successful PMS Defense in Virginia Case Revives Debate,” Baltimore.com website, accessed June 16, 2011, [http://articles.baltimoresun.com/1991-06-16/news/1991167033\\_1\\_pms-richter-defense](http://articles.baltimoresun.com/1991-06-16/news/1991167033_1_pms-richter-defense).

### 6.1.12 Mental Competence to Stand Trial

The insanity defense is different from **mental competence to stand trial**. The insanity defense pertains to the defendant’s mental state when he or she commits the crime. If the insanity defense is successful, it *exonerates* the defendant from guilt. Mental competence to stand trial is analyzed at the time the trial is to take place. If the defendant is mentally incompetent to stand trial, the trial is delayed until the defendant regains competency. Although a detailed discussion of mental competence to stand trial is beyond the scope of this book, in general, a criminal defendant must be able to understand the charges against him or her, and be able to assist in his or her defense. As the Model Penal Code provides, “[n]o person who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense shall be tried, convicted or sentenced for the commission of an offense so long as such incapacity endures” (Model Penal Code § 4.04). A defendant who is mentally incompetent at the time of trial is subject to mental health treatment or even involuntary medication until competence is regained.

### 6.1.13 Guilty but Mentally Ill

Post-*Hinckley*, some states adopted the **guilty but mentally ill verdict**. A defendant who is found **guilty but mentally ill** is not *acquitted* but punished and treated for mental health simultaneously while in prison. Typically, the guilty but mentally ill verdict is available only when the defendant fails to prove legal insanity, and requires the defendant to prove mental illness at the time of the crime to a preponderance of evidence. 725 ILCS § 5/115-4(j), accessed December 3, 2010, <http://law.onecle.com/illinois/725ilcs5/115-4.html>.

### 6.1.14 Example of Guilty but Mentally Ill

Review the example with Jolene in [Section 6](#). In this example, Jolene has been diagnosed with paranoia, but shows an ability to control and understand the wrongfulness of her conduct, so she probably will not be successful with an irresistible impulse insanity defense. If Jolene is in a state that offers a guilty but mentally ill verdict, Jolene may be an appropriate candidate because she was



mentally ill at the time she assaulted and battered her sorority sister. If Jolene is found guilty but mentally ill, she will be treated for her mental health simultaneously while serving any prison sentence.

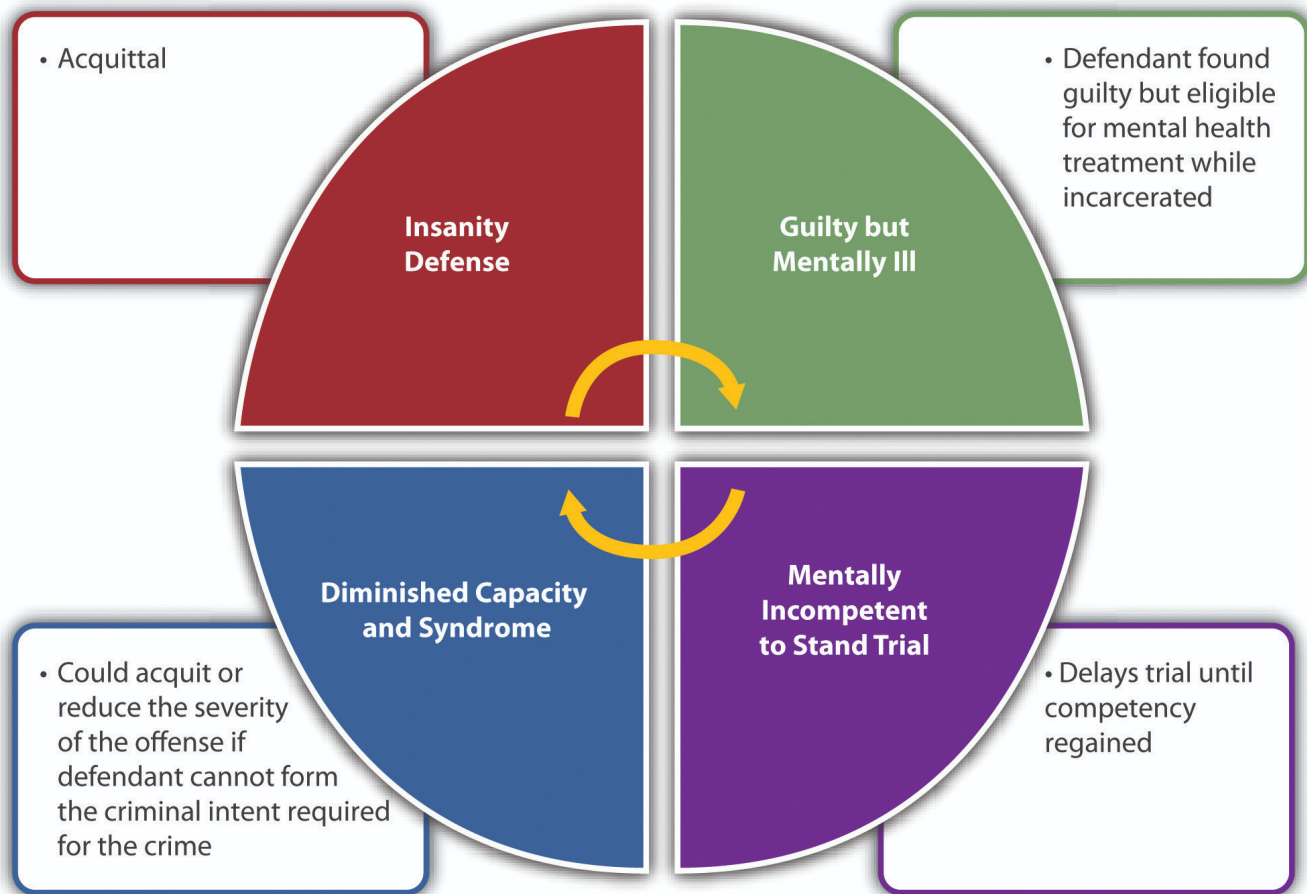


Figure 6.5 Effects (Circular Diagram) of Mental Competency Claims



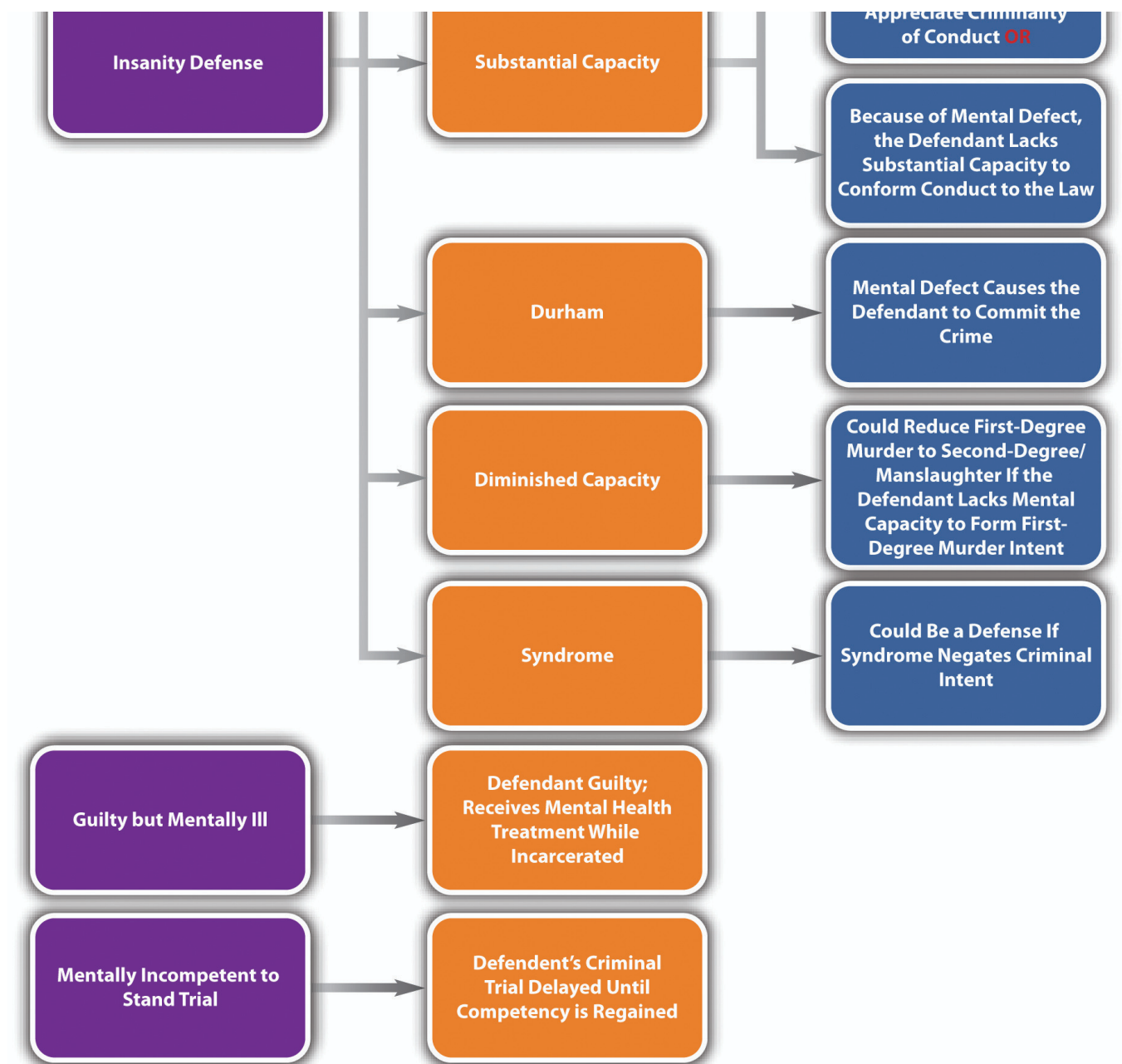


Figure 6.6 Diagram of the Insanity Defense

#### 6.1.14.1 Hasan Fort Hood Shooting Video

Does Hasan Have an Insanity Defense? The Judge Rules!

In this news story on the legal implications of the Fort Hood shootings, Judge Napolitano discusses the upcoming prosecution of Nidal Hasan and the possibility of an insanity defense. Angela K. Brown, "Fort Hood Shooting Suspect Major Nidal Hasan to Be Arraigned," Huffingtonpost.com website, accessed August 26, 2011, [http://www.huffingtonpost.com/2011/07/20/fort-hood-shooting-suspect-in-court\\_n\\_904274.html](http://www.huffingtonpost.com/2011/07/20/fort-hood-shooting-suspect-in-court_n_904274.html).

(click to see video)

#### 6.1.15 Disposition of the Legally Insane

The not guilty by reason of insanity verdict means that the defendant is absolved from criminal responsibility and devoid of any criminal record for the offense. However, it does *not* mean that the defendant is free to return to society.

In several states and federally, a defendant who is found not guilty by reason of insanity is *automatically committed* to a treatment facility until there is a determination that mental health has been restored.<sup>18</sup> U.S.C. § 4243(a), accessed December 3, 2010, <http://law.onecle.com/uscode/18/4243.html>. This is also the Model Penal Code approach. As the Model Penal Code states in § 4.08(1), “[w]hen a defendant is acquitted on the ground of mental disease or defect excluding responsibility, the Court shall order him to be committed to the custody of the Commissioner of Mental Hygiene [Public Health] to be placed in an appropriate institution for custody, care and treatment.”

Other states have a hearing on sanity after the judgment or verdict of not guilty by reason of insanity is returned. If the defendant is deemed mentally competent at the hearing, he or she is *released*. If the defendant is found mentally ill at the hearing, he or she is *committed* to the appropriate treatment facility. Ohio Rev. Code Ann. § 2945.40, accessed December 3, 2010, <http://codes.ohio.gov/orc/2945.40>.

### 6.1.16 Temporary Insanity

Many states also recognize **temporary insanity**, which does not differ in analysis from permanent insanity except for the duration of the mental illness. Aaron Malo, Matthew P. Barach, and Joseph A. Levin, “The Temporary Insanity Defense in California,” [hastings.edu](http://hastings.edu) website, accessed December 3, 2010, [www.uchastings.edu/public-law/docs/tempinsanity.pdf](http://www.uchastings.edu/public-law/docs/tempinsanity.pdf). In a state that recognizes temporary insanity, the elements of the state’s insanity defense, either **M’Naghten**, **irresistible impulse**, **substantial capacity**, or **Durham**, must be present at the time the crime was committed. If the defendant is found not guilty by reason of insanity for the criminal offense, but regains mental competence at the time of prosecution, the defendant is *released* after the verdict is rendered. The trial court will order release based on the commitment procedure discussed in [Section 6.1.9 “Disposition of the Legally Insane”](#).

### 6.1.17 Example of Temporary Insanity

In Virginia in 1994, Lorena Bobbitt was tried for the crime of slicing off her husband’s penis. Bobbitt pleaded not guilty to malicious wounding by reason of insanity. Bobbitt successfully established the **irresistible impulse insanity defense** by presenting evidence of years of spousal abuse, a forced abortion, and rape on the night of the incident. Rachael Bell, “Crimes Below the Belt: Penile Removal and Castration,” TruTV website, accessed December 3, 2010, [www.trutv.com/library/crime/criminal\\_mind/sexual\\_assault/severed\\_penis/index.html](http://www.trutv.com/library/crime/criminal_mind/sexual_assault/severed_penis/index.html); “John Wayne and Lorena Bobbitt Trials: 1993 and 1994—Lorena Bobbitt’s Trial Begins,” [law.jrank.org](http://law.jrank.org) website, accessed December 3, 2010, <http://law.jrank.org/pages/3594/John-Wayne-Lorena-Bobbitt-Trials-1993-1994-Lorena-Bobbitt-s-Trial-Begins.html>. After the jury returned the verdict of not guilty by reason of insanity, Bobbitt was evaluated, deemed mentally competent, and released. Rachael Bell, “Crimes Below the Belt: Penile Removal and Castration,” TruTV website, accessed December 3, 2010, [www.trutv.com/library/crime/criminal\\_mind/sexual\\_assault/severed\\_penis/2.html](http://www.trutv.com/library/crime/criminal_mind/sexual_assault/severed_penis/2.html).

#### 6.1.17.1 Lorena Bobbitt Trial Video

Lorena Bobbitt Trial, Day One

This news story discusses the first day of the Lorena Bobbitt trial. Roger Simon, “Was Lorena Bobbitt’s Act ‘an Irresistible Impulse?’” [Baltimoresun.com](http://baltimoresun.com) website, accessed August 26, 2011, [http://articles.baltimoresun.com/1994-01-12/news/1994012071\\_1\\_lorena-bobbitt-insanity-defense-reason-of-insanity](http://articles.baltimoresun.com/1994-01-12/news/1994012071_1_lorena-bobbitt-insanity-defense-reason-of-insanity).

([click to see video](#))

### 6.1.18 Exercises

- The four states that do not recognize the insanity defense are Montana, Utah, Kansas, and Idaho.
- The four versions of the insanity defense are M’Naghten, irresistible impulse, substantial capacity, and Durham.
- The two elements of the M’Naghten insanity defense are the following:
  - The defendant must be suffering from a mental defect or disease at the time of the crime.
  - The defendant did not know the nature or quality of the criminal act he or she committed or that the act was wrong because of the mental defect or disease.
- The two elements of the irresistible impulse insanity defense are the following:
  - The defendant must be suffering from a mental defect or disease at the time of the crime.
  - The defendant could not control his or her criminal conduct because of the mental defect or disease.

- The substantial capacity test softens the second element of the M’Naghten and irresistible impulse insanity defenses. Under the substantial capacity test, the defendant must lack substantial, not total, capacity to appreciate the criminality of conduct or to control or conform conduct to the law.
- The Durham insanity defense excuses criminal conduct when it is caused by a mental disease or defect.
- The criminal defendant pleading not guilty by reason of insanity must produce evidence to rebut the presumption that criminal defendants are sane. Thereafter, either the prosecution has the burden of disproving insanity to a certain evidentiary standard or the defendant has the burden of proving insanity to a preponderance of evidence or clear and convincing evidence.
- The diminished capacity defense is a failure of proof imperfect defense that may reduce a first-degree murder to second-degree murder or manslaughter if the defendant did not have the mental capacity to form first-degree murder criminal intent. The insanity defense is generally a perfect affirmative defense in many jurisdictions.
- The insanity defense exonerates the defendant from criminal responsibility. Mental incompetence to stand trial delays the criminal trial until mental competency is regained.
- The guilty but mentally ill verdict finds the criminal defendant guilty but orders him or her to undergo mental health treatment while incarcerated. The insanity defense is generally a perfect affirmative defense in many jurisdictions.
- The federal government and some states automatically commit a criminal defendant to a mental health facility after an acquittal based on insanity. Other states have a postverdict hearing to rule on commitment.
- A claim of temporary insanity is the same as a claim of insanity except for the duration of the mental illness.

### 6.1.19 Exercises

Answer the following questions. Check your answers using the answer key at the end of the chapter.

1. Jeffrey is diagnosed with schizophrenia. For fifteen years, Jeffrey kidnaps, tortures, kills, and eats human victims. Jeffrey avoids detection by hiding his victims’ corpses in various locations throughout the city. If the jurisdiction in which Jeffrey commits these crimes recognizes the M’Naghten insanity defense, can Jeffrey successfully plead and prove insanity? Why or why not?
2. Read *State v. Guido*, 191 A.2d 45 (1993). In *Guido*, the defendant killed her husband and claimed insanity in a jurisdiction that recognizes the M’Naghten insanity defense. Psychiatric experts examined the defendant and deemed her legally sane at the time of the killing. The experts thereafter met with the defendant’s attorney and changed their opinion to state that the defendant was legally *insane* at the time of the killing. The jury found the defendant sane after being made aware of this discrepancy. Did the New Jersey Supreme Court uphold the defendant’s conviction? The case is available at this link: [lawschool.courtroomview.com/acf\\_cases/8791-state-v-guido](http://lawschool.courtroomview.com/acf_cases/8791-state-v-guido).
3. Read *State v. Hornsby*, 484 S.E.2d 869 (1997). In *Hornsby*, the defendant sought to reverse his convictions for burglary and murder after jury verdicts of guilty but mentally ill. The defendant wanted to invalidate South Carolina’s statute recognizing the verdict of guilty but mentally ill as unconstitutional. The defendant claimed that defendants incarcerated after guilty but mentally ill verdicts receive the same mental health treatment as defendants incarcerated under regular guilty verdicts, violating the Fourteenth Amendment due process clause. Did the Supreme Court of South Carolina uphold the statute? The case is available at this link: [http://scholar.google.com/scholar\\_case?case=13615864613799310547&hl=en&as\\_sdt=2&as\\_vis=1&oi=scholar](http://scholar.google.com/scholar_case?case=13615864613799310547&hl=en&as_sdt=2&as_vis=1&oi=scholar).

#### 6.1.19.1 LAW AND ETHICS: THE ELIZABETH SMART CASE

##### Two Prosecutions—Two Different Results

In 2002, Brian David Mitchell and his accomplice and wife, Wanda Barzee, kidnapped fourteen-year-old Elizabeth Smart from her home. Mitchell, a so-called street preacher, and Barzee held Smart captive for nine months, tethering her to a metal cable, subjecting her to daily rapes, and forcing her to ingest alcohol and drugs. Jennifer Dobner, “Elizabeth Smart Kidnapper Convicted, Jury Rejects Insanity Defense,” the *Christian Science Monitor* website, accessed December 11, 2010, <http://www.csmonitor.com/USA/2010/1210/Elizabeth-Smart-kidnapper-convicted-jury-rejects-insanity-defense>. At one point, they transported Smart across state lines to California. Mitchell was put on trial for kidnapping and sexual assault in the state of Utah. The trial court found Mitchell incompetent to stand trial, and did not make a ruling forcing him to submit to medication to remedy the incompetency. Jennifer Dobner, “Wanda Barzee, Elizabeth Smart Kidnapper, Gets Fifteen Years, Including Seven Already Served,” the *Huffington Post* website, accessed December 11, 2010, [www.huffingtonpost.com/2010/05/21/wanda-barzee-elizabeth-smart\\_n\\_584787.html](http://www.huffingtonpost.com/2010/05/21/wanda-barzee-elizabeth-smart_n_584787.html). Unlike Mitchell, Barzee was involuntarily medicated pursuant to a state court order (by the same judge that heard Mitchell’s incompetency claim), and pleaded guilty to federal and state kidnapping, sexual assault, and illegal transportation of a minor for sex, receiving two fifteen-year sentences, to be served concurrently. Jennifer Dobner, “Wanda Barzee, Elizabeth Smart Kidnapper, Gets Fifteen Years, Including Seven Already Served,” the *Huffington Post* website, accessed December 11, 2010,

[http://www.huffingtonpost.com/2010/05/21/wanda-barzee-elizabeth-smart\\_n\\_584787.html](http://www.huffingtonpost.com/2010/05/21/wanda-barzee-elizabeth-smart_n_584787.html). The **federal** government also instituted a prosecution against Mitchell for kidnapping and taking Smart across state lines for sex. The US District Court judge held a competency hearing and found that Mitchell was *competent* to stand trial. Ben Winslow, “Mitchell Ruled Competent to Stand Trial for Kidnapping Elizabeth Smart,” Fox13now.com website, accessed December 11, 2010, [www.fox13now.com/news/kstu-mitchell-competent-trial-kidnapping-smart,0,4261562.story](http://www.fox13now.com/news/kstu-mitchell-competent-trial-kidnapping-smart,0,4261562.story). Mitchell pleaded not guilty by reason of **insanity**. Throughout the trial, Mitchell was often removed from the courtroom for loudly singing Christmas carols and hymns. A series of experts testified regarding Mitchell’s psychological ailments, including a rare delusional disorder, schizophrenia, pedophilia, and antisocial personality disorder. Nonetheless, the jury *rejected* the insanity defense and convicted Mitchell of kidnapping and transporting a minor across state lines for the purpose of illegal sex. Jennifer Dobner, “Elizabeth Smart Kidnapper Convicted, Jury Rejects Insanity Defense,” the *Christian Science Monitor* website, accessed December 11, 2010, <http://www.csmonitor.com/USA/2010/1210/Elizabeth-Smart-kidnapper-convicted-jury-rejects-insanity-defense>.

If Mitchell had not committed federal crimes, he might *still* be awaiting trial in Utah.

1. What is the purpose of putting Mitchell on trial rather than delaying the trial for mental incompetency? Is this purpose *ethical*?

Check your answer using the answer key at the end of the chapter.

Read about Mitchell’s sentencing at <http://content.usatoday.com/communities/ondeadline/post/2011/05/elizabeth-smarts-kidnapper-sentenced-to-xx-years-in-prison/1>.

### 6.1.19.2 Brian David Mitchell Video

#### Suspect Deemed Competent in Elizabeth Smart Case

This video is a news story on the federal court’s ruling that Brian David Mitchell was mentally competent to stand trial in the Elizabeth Smart case:

(click to see video)

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