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## Information Report on the The Insanity Defense

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Information Report on  
THE INSANITY DEFENSE

I. INTRODUCTION

In 1982, John Hinckley was acquitted of the attempted assassination of the President of the United States, and the insanity defense once again moved to the forefront of public debate. The notion that some persons who are mentally ill should not be held responsible for their crimes is embedded in our legal history. However, the insanity defense remains a topic of continuing concern and misunderstanding. Common misconceptions about the insanity defense include: that it is most frequently used by those accused of homicide, that prosecutors oppose most successful insanity defenses, and that the defense is a "rich man's" defense, relatively unavailable to indigent defendants. Although many advocate the restriction or abolition of the insanity defense, and the Congress and various state legislatures have recently enacted changes in the definition and operation of the defense, Oregon's 1985 legislature made no changes in our state's system. This current situation of relative stability presents an opportunity to review briefly the development of the insanity defense and its current operation in Oregon.

II. HISTORY OF THE INSANITY DEFENSE

By the time of King Edward III (1327-1377), "madness" was a defense to crime. Following the 1843 trial of Daniel M'Naghten, a formal test for insanity was adopted in England:

"[I]t must be clearly proved that, at the time of the committing of the act, the party accused was labouring 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."

This "M'Naghten rule" continues in effect in several states today. However, the rule has been criticized for not recognizing degrees of incapacity, not being in conformance with modern psychiatric thinking, and emphasizing the intellectual or cognitive elements to the exclusion of the volitional and emotional facets of mental illness.

To answer some of these concerns, United States courts during the late 1800s created "irresistible impulse" as an adjunct defense. That test recognized those disorders in which a person, while knowing the difference between right and wrong, is governed by acute uncontrollable drives. The "irresistible impulse" test also was confusing in its concept and difficult to apply.

Thus, in 1954, the District of Columbia federal appellate court held in the Durham case that "an accused is not criminally responsible if his unlawful act was the product of mental disease or mental defect." This rule differed from earlier tests by ignoring cognitive or volitional elements; if a person's behavior was caused by a mental disease or defect, it would not support responsibility for any resulting crime. However,

difficulties arose over how to define "disease" and "defect" and how to determine what acts were "products" of such conditions.

In 1972, therefore, the same court put an end to the Durham rule. It adopted the Model Penal Code test, which is now the basis for the insanity standard in most states, including Oregon. That test provides that:

"A person is guilty except for insanity if, as a result of mental disease or defect at the time of engaging in criminal conduct, the person lacks substantial capacity either to appreciate the criminality of the conduct or to conform the conduct to the requirements of law."  
[ORS 161.295 (1)]

This rule does not require total incapacity, and it recognizes that because of mental disease or defect a person may lack ability to control behavior even if he or she can appreciate that an act is wrong. The terms "mental disease or defect" do not include abnormalities manifested only by repeated criminal or otherwise anti-social conduct. Oregon also excludes abnormalities "constituting solely a personality disorder." [ORS 161.295(2)]

Public concern has focused on protecting the community from mentally ill offenders, as well as on the test for legal insanity. Although fewer than 1% of all defendants charged with serious crimes successfully use the insanity defense, many believe that these persons are particularly dangerous. After review of the system by several task forces, the 1977 Oregon legislature decided not to change the test for insanity. Instead it created an innovative statewide system for monitoring and treating those who successfully assert the insanity defense. Oregon's approach has been cited as a model by the American Psychiatric Association, and it is being studied by many other states.

### III. OREGON'S SYSTEM

A successful insanity defense in Oregon results in a verdict of "guilty except for insanity." The same result was labelled "not responsible" before 1983. The Oregon legislature changed the verdict's name to reflect more accurately the procedural operation of the defense and to accommodate those who lobbied for the abolition or substantial modification of the defense.

Trial judges must place dangerously mentally ill persons found "guilty except for insanity" under the jurisdiction of the Oregon Psychiatric Security Review Board (PSRB), which is the centerpiece of Oregon's system. The PSRB is an interdisciplinary part-time board consisting of a licensed psychologist, a lawyer, a psychiatrist, a person who has worked in the parole or probation system, and a member of the general public. The Board is not part of the court system nor of the Mental Health Division, but is an independent body. The PSRB began operations on January 1, 1978. It functions somewhat like a parole board for those individuals committed to its jurisdiction. It conducts periodic hearings to decide if a person should be committed to a secure state hospital, released back into the community subject to conditions, or discharged altogether from the PSRB's supervision. The PSRB can supervise a person for a period of time equal to

the maximum sentence the person could have received if he or she had been found guilty.

Every six months, individuals committed to the jurisdiction of the PSRB may apply for an order of discharge or conditional release. Hearings are required at least every two years, or whenever the hospital staff believes discharge or conditional release is appropriate. Many procedural protections are provided for the person about whom the hearing is being held, including appointed counsel, a formal record of the proceedings, the right to subpoena witnesses and documents, and the right to cross-examine adverse witnesses. Decisions of the PSRB may be appealed directly to the Oregon Court of Appeals.

There have been few empirical studies of insanity defense systems around the country, in part because most states have no mechanism for accumulating data. By contrast, Oregon's centralized PSRB collects and maintains extensive information about each individual under its jurisdiction. Analyses of these data have shown that many public perceptions about the operation and consequences of successfully asserting the insanity defense are inaccurate.

In Oregon, 100 people per year have been placed under the PSRB and the number of placements has been decreasing since 1979. Contrary to widely held beliefs, fewer than one in ten were charged with murder; approximately one in four were charged only with misdemeanors. The large majority of cases in which the insanity defense is successful are not contested by the prosecution; in effect, both sides agree that an insanity verdict is correct, with fewer than one in twenty cases being tried by a jury. Most defendants who successfully plead insanity are indigent. Two-thirds of insanity defendants committed to the state hospital are diagnosed as having psychoses, indicating severe mental illness often accompanied by hallucinations or distortions of reality. In four out of five cases, all of the mental health experts who examined the patient agreed on the diagnosis. During the first five years of operation, the PSRB placed 295 people on conditional release. Only thirty-nine of them (13%) were charged with new crimes, half of which were misdemeanors.

A wide range of professional groups has endorsed the PSRB as being a significant improvement over previous systems for managing insanity defendants. However, it is clear that the debate about criminal responsibility will continue.

Respectfully Submitted,

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SUBCOMMITTEE ON THE INSANITY DEFENSE  
LAW AND PUBLIC SAFETY STANDING COMMITTEE

Approved by the Research Board on May 30, 1985 and the Board of Governors on July 8, 1985 for publication and distribution to the membership. Because this report carries no conclusions or recommendations, no official action is required of the membership.