

**INSANITY**  
**(LACK OF CRIMINAL RESPONSIBILITY**  
**BY REASON OF MENTAL DISEASE OR DEFECT)**  
**Penal Law § 40.15**

---

*If the affirmative defense of insanity is applicable, omit the final two paragraphs of the instructions of the crime charged, and substitute the following:*

---

Therefore, if you find that the People have not proven beyond a reasonable doubt any one of those elements, you must find the defendant not guilty of (*specify*) as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the People have proven beyond a reasonable doubt each of those elements, you must consider the defendant's affirmative defense that he/she lacked criminal responsibility by reason of mental disease or defect. If you find that the defendant has proven that affirmative defense, then you must return a verdict of not responsible by reason of mental disease or defect.

A jury during its deliberations must never consider or speculate concerning matters relating to the consequences of its verdict. However, because of the lack of common knowledge regarding the consequences of a verdict of not responsible by reason of mental disease or defect, I charge you that if this verdict is rendered by you there will be hearings as to the defendant's present mental condition and, where appropriate, involuntary commitment proceedings.<sup>1</sup>

Under our law, the defendant has the burden of proving an affirmative defense by a preponderance of the evidence. A preponderance of the evidence means the greater part of the believable and reliable evidence, not in terms of the number of witnesses or the length of time taken to present the evidence, but in terms of its quality and the weight and convincing effect it has. For the affirmative defense to be proved by a preponderance of the evidence, the evidence that supports the affirmative defense must be of such convincing quality as to outweigh any evidence to the contrary.

Under our law, it is an affirmative defense to the crime(s) charged that, when the defendant engaged in the prohibited conduct, he/she lacked criminal responsibility by reason of mental disease or defect.

A person lacks criminal responsibility by reason of mental disease or defect when, at the time of the prohibited conduct, as a result of mental disease or defect, that person lacked substantial capacity to know or appreciate either:

1. The nature and consequences of such conduct; or
2. That such conduct was wrong.<sup>2</sup>

Let us examine that definition.<sup>3</sup>

First, the lack of substantial capacity to know or appreciate must have existed at the time the prohibited conduct was committed.

Second, the lack of substantial capacity to know or appreciate must have been the result of mental disease or defect.

Third, a lack of substantial capacity to know or appreciate does not require a lack of total capacity to know or appreciate.

Fourth, the term “know or appreciate” means to have some understanding; it means more than mere surface knowledge.

For example, children can sometimes recite things that they cannot understand. In those circumstances, the children may be said to have surface knowledge of what they recited, but no true understanding. Thus, a lack of substantial capacity to know or appreciate either the nature and consequences of the prohibited conduct, or that such conduct was wrong, means a lack of substantial capacity to have some true understanding beyond surface knowledge of either the nature and consequences of such conduct, or that such conduct was wrong.<sup>4</sup>

Fifth, with respect to the term “wrong,” a person lacks substantial capacity to know or appreciate that conduct is wrong if that person, as a result of mental disease or defect, lacked substantial capacity to know or appreciate either that the conduct was against the law or that it was against commonly held moral principles, or both.<sup>5</sup>

As I have explained, the defendant has the burden of proving that he/she lacked criminal responsibility by reason of mental disease or defect and he/she must do so by a

preponderance of the evidence. I remind you, however, that placing this burden of proof of the affirmative defense on the defendant does not relieve the People of the burden of proving, beyond a reasonable doubt, all the elements of the crime(s) charged.

In this case, one of those elements was (specify element containing culpable mental state; e.g. That the defendant intended to cause the death of ....). The affirmative defense does not transfer to the defendant the burden of proving (specify, e.g. That the defendant did not intend to cause the death of....”) The burden remains on the People to prove (specify, e.g., That the defendant intended to cause the death of...) and to prove it beyond a reasonable doubt.

In determining whether the People have proven that element beyond a reasonable doubt, you may consider any evidence, psychiatric or otherwise, that relates to the defendant's state of mind at the time of the commission of the crime(s) charged. If you find that the People have not proven that element, or any other element beyond a reasonable doubt, then you must find the defendant not guilty. If you find that the People have proven all the elements beyond a reasonable doubt, then you must consider whether the defendant has proven the affirmative defense by a preponderance of the evidence.

In determining whether the defendant has proven the affirmative defense by a preponderance of the evidence, you may consider evidence introduced by the People or by the defendant, including but not limited to:

*Select appropriate alternative(s):*

- opinions of psychiatric witnesses,
- prior hospitalizations of the defendant,
- hospital and other medical records,
- the nature and manner in which the crime was committed,
- (*specify*)

Therefore, if you find that the defendant has not proven the affirmative defense by a preponderance of the evidence, then, based upon your initial determination that the People have proven beyond a reasonable doubt the elements of the charged crime, you must find the defendant guilty of that crime as charged in the \_\_\_\_\_ count.

On the other hand, if you find that the defendant has proven the affirmative defense by a preponderance of the evidence, then you must find the defendant not responsible by reason of mental disease or defect for that crime as charged in the \_\_\_\_\_ count.

1. CPL 300.10(3) requires the quoted instruction “without elaboration.”
2. Penal Law § 40.15.
3. See generally *People v. Adams*, 26 N.Y.2d 129 (1970).
4. See *Adams*, 26 N.Y.2d at 135-136.
5. See *People v. Wood*, 12 N.Y.2d 69, 76 (1962); *People v. Schmidt*, 216 N.Y. 324 (1915); *Moett v. People*, 85 N.Y. 373 (1881).