

Not Guilty by Reason of Insanity: Evaluating Criminal Responsibility at The Time of the Offense

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What does it mean when a defendant pleads, Not Guilty by Reason of Insanity (NGRI)? You've probably heard the term "insanity" thrown around but most people don't know the legal criteria for an NGRI plea.

"Insanity" is a legal term rather than a medical or mental health term. In order to understand how criminal responsibility is evaluated, you have to have an understanding of the legal criteria of NGRI.

The goal of this blog post is to provide an overview of the laws regarding insanity and how we evaluate individuals to determine if they are not guilty by reason of insanity.

What Are the Legal Criteria for Insanity?

The legal definition of insanity is known as the M'Naghten Rule. The M'Naghten Rule was established by the English House of Lords in the mid-19th Century.

In the M'Naghten case, Daniel M'Naghten shot and killed the secretary of the British Prime Minister because he thought that the Prime Minister was conspiring against him. The court acquitted M'Naghten "by reason of insanity," and he was placed in a mental institution for the rest of his life.

Most states follow the M'Naghten rule as it is or have additional criteria. For the purposes of this article, we're going to review the criteria for insanity in California.

In California, PC 25 sets the legal criteria for insanity and it is based on the M'Naghten Rule but the criteria were further clarified by Proposition 8 in 1982.

The burden of proof is on the defendant to prove by a **preponderance of the evidence** that they were legally insane at the time of the crime. If the defense can't prove that the defendant was insane at the time of the crime, then they are presumed to be sane.

In order for a defendant to be found not guilty by reason of insanity, the defense has to prove the following:

At the time of committing the offense, due to mental disease or defect (no personality disorders, seizure disorder, adjustment disorder, or substance-induced psychosis), the defendant was incapable of *either*...

- Knowing or understanding the nature and quality of his or her act.
- Distinguishing the difference between right and wrong.

Two important points to highlight here.

Insanity is evaluated **at the time the defendant committed the offense.**

NGRI is different than competency to stand trial, which is evaluated based on the defendant's behavior in the present. You can read more about competency to stand trial [here](#).

The defendant's behavior was due to a mental disease or defect. This means that if the defendant was under the influence of drugs or alcohol or if they have a personality disorder (and there was no evidence of mental disease or defect), then they can't use an NGRI plea.

For example, If the defendant was only high on methamphetamine and killed someone, they can't use an NGRI plea.

How Do You Evaluate for Insanity or Criminal Responsibility?

Evaluating for insanity or criminal responsibility can be challenging because the defendant is evaluated based on how they were in the past. The evaluation usually takes place weeks or even months after the crime. There are several steps for evaluating insanity.

1. Review of documents like medical records, mental health records, school records, and police reports.

Since insanity is evaluated based on how someone was in the **past**, it is important to review records from the past. For example, a review of medical and mental health records can help establish if the defendant has a history of mental illness.

A police report can have important behavioral observations of the defendant the day he was arrested. For example, police officers or paramedics might report that when they arrived on the scene, the defendant had rapid or pressured speech, was talking to himself, and was talking about how he is Jesus Christ and the apocalypse is coming.

This information can help us establish if the defendant presented with a "mental disease or defect". In the above example, the defendant might have Bipolar Disorder or Schizoaffective Disorder.

2. Interviews with collateral sources such as family, friends, co-workers, or eyewitnesses.

Collateral interviews can help provide helpful information regarding the defendant's history and past behavior. In some cases, the defendant might not have any history of documented mental illness. A family member can provide helpful information that can identify a history of mental illness. An eyewitness can provide information regarding the defendant's behavior before, during, or after the alleged offense.

3. An interview with the defendant and possible psychological testing.

An interview with a defendant has its limitations since the evaluation is taking place **after** the crime occurred. Unfortunately, we can't go back in time to evaluate the defendant immediately after the offense.

The interview can provide information on the defendant's insight into their mental illness, whether they were able to understand the nature and quality of their acts, their ability to distinguish from right or wrong, and if they were able to control their behavior at the time of the offense.

Psychological testing can be helpful to identify feigning or malingering of a psychiatric illness or identify the presence of a personality disorder. Neuropsychological testing can help identify the presence of an intellectual disability or diminished cognitive functioning.

Once all of this information is gathered, we can identify if, **at the time of committing the offense**, due to mental disease or defect, the defendant was incapable of **either**

- Knowing or understanding the nature and quality of his or her act.
- Distinguishing the difference between right and wrong.

What Happens to Defendants Who Are Not Guilty by Reason of Insanity?

The common misconception is that after a defendant is found to be not guilty by reason of insanity, they are free to go home. This couldn't be further from the truth. In California, the defendant is sentenced to the Department of State Hospitals (DSH).

According to PC 1026, the defendant is sentenced to DSH for the maximum term allowed for their crime. After they have served the maximum term and are deemed by DSH to continue to pose a substantial danger to the community, **their sentence can be extended every year for the rest of their lives.**

Given the lengthy sentence they can face when committed to DSH, generally, the only time that defendants use an NGRI plea is when they are facing serious charges such as murder, rape, kidnapping, etc.....

A defendant might have been “insane” during a commission of a robbery or burglary. These crimes don’t carry the same lengthy sentences as murder or rape so it is very unlikely that the defendant will enter an NGRI plea and risk spending the rest of their lives in DSH.

How Does a Defendant Get Discharged from DSH?

The Forensic Conditional Release Program (CONREP) is DSH’s statewide system of community outpatient treatment programs that supervises certain forensic patients. CONREP supervises patients after they are discharged from DSH to the community.

PC 1026 requires that DSH provide the court with two reports a year discussing the defendant’s status and progress in treatment. You can read more about the PC 1026 process [here](#).

CONREP has its own set of criteria that they use to determine if a patient is suitable for community supervision. You can read about CONREP’s criteria [here](#).

Here is a quick overview of CONREP’s criteria for discharge:

- No physical aggression (except in self-defense) or verbal threats in the past 9 to 12 months.
- The patient has voluntarily followed their treatment plan for at least the past six months including:
 - No major rule violations.
 - Taking medications as prescribed.
 - Attends assigned treatment groups related to clinical risk factors.
 - No alcohol or drug use or misuse of prescribed medications in the past six months including, no urine drug test refusal and no positive urine drug tests.
- The patient participates in creating and demonstrating capability in utilizing a personalized relapse prevention plan.
- Symptoms of mental illness are managed in a hospital environment and support readiness for supervised outpatient treatment.
- The patient agrees to the terms and conditions of CONREP.
- The patient has an adequate understanding of their crime, including the role their mental illness played in their crime and their risk of dangerousness (related to the instant offense and past dangerous behavior).

As you can see, there are a lot of criteria that have to be met in order to be discharged from DSH to the community.

CONREP will supervise the individual for the **rest of their lives**. This means that if the individual returns to the community and is not able to continue to meet the requirements for CONREP, their conditional release can be revoked and they can be sent back to DSH.

Not Guilty by Reason of Insanity Case Example

The best way to tie all this information together is to give you a quick overview of a real case from California.

In 2009, Nicholas Bendle brutally murdered 69-year-old Frederick Holgate with a hatchet while Holgate was out for a walk. Holgate and Bendle didn't know each other and the attack was unprovoked.

Bendle didn't have a criminal history, he didn't have a history of violence, and was in the process of applying to college.

Bendle pleaded NGRI, and both the defense and prosecution retained experts agreed that the attack was the result of acute psychotic paranoia, auditory hallucinations, and was the product of his mental disorder.

Bendle was committed to Patton State Hospital where he stayed until 2014. In 2014, the doctors at Patton wrote a court report stating that Bendle met CONREP's criteria for discharge. Bendle was discharged to the community and placed at Gateways Hospital and Mental Health Center. After 90 days, he was then discharged to a board and care facility under CONREP's supervision.

Conclusion

In California, PC 25 sets the legal criteria for insanity and it is based on the M'Naghten Rule but the criteria were further clarified by Proposition 8 in 1982.

In order to be found not guilty by reason of insanity, the defense has to prove the following:

At the time of committing the offense, due to mental disease or defect (no personality disorders, seizure disorder, adjustment disorder, or substance-induced psychosis), the defendant was incapable of *either*...

- Knowing or understanding the nature and quality of his or her act.
- Distinguishing the difference between right and wrong.

If they are found to be NGRI, the defendant is sentenced to DSH for the maximum term allowed for their crime. If they are deemed by DSH to continue to pose a substantial danger to the community, **their sentence can be extended every year for the rest of their lives.**

If the defendant meets the discharge criteria set by CONREP, they can be discharged to the community where they will be supervised by CONREP for the rest of their lives.

The laws and regulations regarding NGRI can be complicated and confusing. Hopefully, this article helped provide an overview of NGRI and how we evaluate a defendant to determine if they meet the legal criteria for NGRI.