

A PRIMER ON MENTAL HEALTH ISSUES FOR CRIMINAL DEFENSE COUNSEL



The Scream by Edvard Munch 1893

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WHEN IS CLIENT'S MENTAL HEALTH RELEVANT?

NOW

--COMPETENCE

AT TIME OF ALLEGATIONS

--NGRI

--DIMINISHED CAPACITY

AT TIME OF ARREST

--VOLUNTARINESS OF MIRANDA RIGHTS

-THEN, NOW AND IN THE FUTURE

--MITIGATION

NOW: COMPETENCE – 552.020 RSMo



No 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 the incapacity endures.

THEN: RESPONSIBILITY-NGRI

552.030

Mental Disease or Defect Excluding Responsibility

A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect such person was incapable of knowing and appreciating the nature, quality, or wrongfulness of such person's conduct.



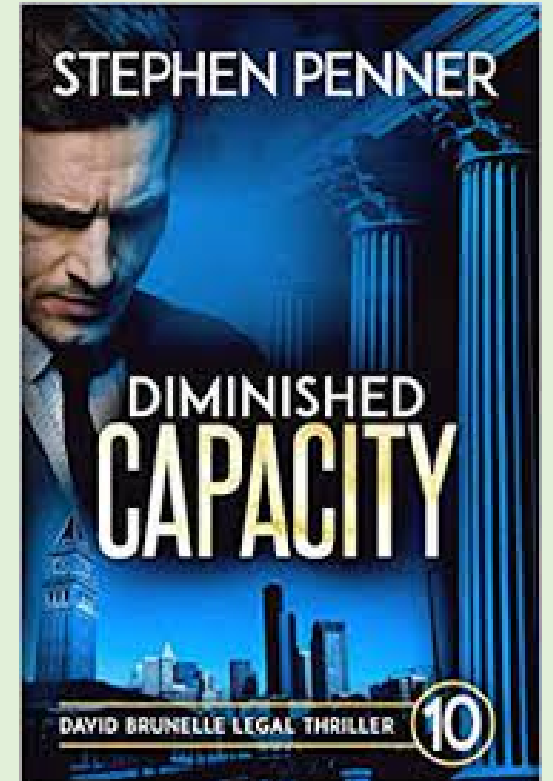
Teen found not guilty
by reason of insanity

THEN: DIMINISHED CAPACITY

552.015.2(8)

**Mental Disease or Defect
Excluding a Culpable Mental State**

To prove that the defendant did or did not have a state of mind which is an element of the offense



THEN, NOW AND IN THE FUTURE - MITIGATION

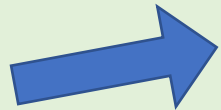
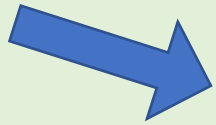
At the sentencing hearing, defense counsel presents mitigating factors to humanize the defendant and/or offer explanations for the defendant's behavior in an effort to obtain leniency.



***-“Representing People with Mental Disabilities: A Practical Guide for Criminal Defense Lawyers”
by Elizabeth Kelley***

IDENTIFYING MH IN A CLIENT

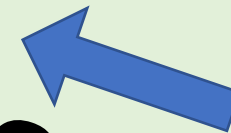
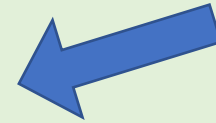
**CONVERSATIONAL
ABILITY**



RECORDS



FACTS OF CASE



**COLLATERAL
WITNESSES**

A person wearing a bright red hooded cloak and a white, featureless mask. The person is looking downwards and to the left. The background is a rough, grey, textured wall. The text "BEWARE" is written in large, bold, black capital letters on the left side of the image. Below it, the words "CLOAK OF COMPETENCE" are written in bold, black capital letters, slanted downwards from left to right.

BEWARE

**CLOAK
OF
COMPETENCE**

PSYCHOSIS

**MOOD
DISORDERS**

TBI

**INTELLECTUAL
DISABILITY**



552.010

Mental disease or defect does not include:

- an abnormality manifested only by repeated criminal or otherwise antisocial conduct,**
- alcoholism without psychosis or drug abuse without psychosis**
- an abnormality manifested only by criminal sexual psychopathy**

EVALUATIONS

**PRIVATE
FORENSIC
EXAMINER**

vs.

**DMH
FORENSIC
EXAMINER**



FACTORS TO CONSIDER IN DECIDING DMH VS. PRIVATE

FACTOR	PRIVATE	DMH
DISCLOSURE IF NOT HELPFUL	NO	YES
BAD REPORT USED AGAINST CLIENT	NO	YES
BAD REPORT USED IN FUTURE	NO	YES
SELECT EXAMINER	YES	NO
CONTROL OVER EVALUATION	YES (LIMITED)	NO
FASTER	??	??
COST	YES	NO

WHAT TYPE OF PRIVATE EXPERT?

**PSYCHOSIS - PSYCHIATRIST
(MEDICATION)**



**INTELLECTUAL - PSYCHOLOGIST
DISABILITY (TESTING)**

**HEAD TRAUMA – NEUROPSYCHOLOGIST
(ORGANIC BRAIN DAMAGE)**

RULES TO FOLLOW

3

**1. CAN'T EVALUATE FOR
RESPONSIBILITY UNTIL KNOW
CLIENT IS COMPETENT**

**2. YOU SHOULD ALWAYS BE FIRST
TO REQUEST RESPONSIBILITY EVAL**

**3. DON'T LET JUDGE ORDER OR
STATE REQUEST 552.030
EVALUATION**

3

MORE RULES

**1. CAN'T WAIVE
COMPETENCE EVALUATION**

**2. CAN'T LET CLIENT PLEA
OR GO TO TRIAL IF CLIENT
NOT COMPETENT**

**3. ONLY CLIENT CAN DECIDE
TO PURSUE NGRI**

BUT FIRST, COLLECT RECORDS



- *MENTAL HEALTH
TREATMENT***
- *PREVIOUS FORENSIC
REPORTS***
- *MEDICAL***
- *SCHOOL***
- *SOCIAL SECURITY***
- *MILITARY***
- *DOC/JAIL MEDICAL***

RECORDS

**ALWAYS ASK FOR BUSINESS RECORD
AFFIDAVIT WHEN ASKING FOR
RECORDS
AND FILE NOTICE OF INTENT TO USE
THE RECORDS**

RSMo. 490.692



WHAT IS RESULT OF EVALUATION?

Not competent –DMH

NGRI – DMH

Dim Cap – charge reduced



OBJECTION TO DMH EVALUATION

10 DAYS – 552.020.6

ANOTHER EVALUATION – YOUR COST



COMPETENCE

**PRE TRIAL HEARING –
JUDGE OR 6 PERSON
JURY WITH COURT'S
PERMISSION**

**BURDEN OF PROOF ON
PERSON CLAIMING
INCOMPETENCE**

**PRESUMPTION OF
COMPETENCE**



RESPONSIBILITY OR DIMINISHED CAPACITY

LITIGATED AT TRIAL

MAI 406.02 – RESPONSIBILITY

MAI 408.03 – DIMINISHED CAPACITY

**MAI 400.20 LIMITATION ON EXPERT
TESTIMONY**



