

Criminal Defenses

When people defend themselves against criminal charges, they must refute one or more of the elements of the crime of which they have been accused. Defendants may deny the actus reus by arguing that they were falsely accused and the real culprit has yet to be identified. Defendants may also claim that, while they did engage in the criminal act they are accused of, they lacked the mens rea, or mental intent needed to be found guilty of the crime. If a person whose mental state is impaired commits a criminal act, the person could be excused of his or her criminal actions by claiming he or she lacked the capacity to form sufficient intent to be held criminally responsible. Insanity, intoxication, and ignorance are also among the types of excuse defenses.

Another type of defense is justification. Here, the individual usually admits committing the criminal act but maintains that the act was justified and that he or she, therefore, should not be held criminally liable. Among the justification defenses are necessity, duress, self-defense, and entrapment. Persons standing trial for criminal offenses may defend themselves by claiming either that their actions were justified under the circumstances or that their behavior can be excused by their lack of mens rea. If either the physical or mental elements of a crime cannot be proven, then the defendant cannot be convicted.

Ignorance or Mistake

Ignorance or mistake can be an excuse if it negates an element of a crime. As a general rule, however, ignorance of the law is no excuse. Some courts have had to accept this excuse in cases in which the government failed to make enactment of a new law public. It is also a viable justification when the offender relies on an official statement of the law that is later deemed incorrect. Barring that, even immigrants and other new arrivals to the United States are required to be aware of the content of the law. For example, on October 7, 1998, Chris Ahamefule Iheduru, a Nigerian immigrant, was convicted of sexual assault on the grounds that he had intimate relations with his 14-year-old stepdaughter after signing a contract with the girl to bear him a son (she gave birth to a daughter in September 1998).¹⁵ At trial, Iheduru testified that it is not illegal in his native country to have sex with a juvenile and that he did not know it was against the law in the United States. His ignorance of American law did not shield him from conviction.

Insanity

Insanity is a defense to criminal prosecution in which the defendant's state of mind negates his or her criminal responsibility. A successful insanity defense results in a verdict of "not guilty by reason of insanity." Insanity, in this case, is a legal category. As used in U.S. courts, it does not necessarily mean that everyone who suffers from a form of mental illness can be excused from legal responsibility. Many people who are depressed, suffer mood disorders, or have a psychopathic personality can be found legally sane. Instead, insanity means that the defendant's state of mind at the time the crime was committed made it impossible for him to have the necessary mens rea to satisfy the legal definition of a crime.

Thus, a person can be undergoing treatment for a psychological disorder but still be judged legally sane if it can be proven that at the time he committed the crime he had the capacity to understand the wrongfulness of his actions.

If a defendant uses the insanity plea, it is usually left to psychiatric testimony to prove that a person understood the wrongfulness of his actions and was therefore legally sane or, conversely, was mentally incapable of forming intent. The

① w/o knowing
Excuse
Defense

② Justification

Concept Summary 4.1 Various Insanity Defense Standards

Test	Legal standard of mental illness	Final burden of proof	Who bears burden of proof
M'Naghten	"Didn't know what he was doing or didn't know it was wrong"	Balance of probabilities	Defense
Irresistible impulse	"Could not control his conduct"	Beyond reasonable doubt	Prosecutor
Durham	"The criminal act was caused by his mental illness"	Beyond reasonable doubt	Prosecutor
Substantial capacity	"Lacks substantial capacity to appreciate the wrongfulness of his conduct or to control it"	Beyond reasonable doubt	Prosecutor
Present federal law	"Lacks capacity to appreciate the wrongfulness of his conduct"	Clear and convincing evidence	Defense

jury then must weigh the evidence in light of the test for sanity currently used in the jurisdiction. These tests vary throughout the United States. The commonly used ones are listed in Concept Summary 4.1.

See the Analyzing Criminal Justice Issues feature on page 135 for more about the insanity defense.

Intoxication

As a general rule, intoxication, which may include drunkenness or being under the influence of drugs, is not considered a defense. However, a defendant who becomes involuntarily intoxicated under duress or by mistake may be excused for crimes committed. Involuntary intoxication may also lessen the degree of the crime. For example, a judgment may be decreased from first- to second-degree murder because the defendant uses intoxication to prove the lack of the critical element of mens rea, or mental intent. Thus, the effect of intoxication on criminal liability depends on whether the defendant uses alcohol or drugs voluntarily. For example, a

defendant who enters a bar for a few drinks, becomes intoxicated, and strikes someone can be convicted of assault and battery. If, however, the defendant ordered a nonalcoholic drink that subsequently was spiked by someone else, the defendant may have a legitimate legal defense.

Because of the frequency of crime-related offenses involving drugs and alcohol, the impact of intoxication on criminal liability is a persistent issue in the criminal justice system. The connection between drug use, alcoholism, and violent street crime has been well documented. Although those in law enforcement and the judiciary tend to emphasize the use of the penal process in dealing with problems of chronic alcoholism and drug use, others in corrections and crime prevention favor approaches that depend more on behavioral theories and the social sciences. For example, in the case of *Robinson v. California*, the U.S. Supreme Court struck down a California statute making addiction to narcotics a crime, on the ground that it violated the defendant's rights under the Eighth and Fourteenth Amendments to the Constitution.¹⁶ However, the landmark decision in *Powell v. Texas* placed severe limitations on the behavioral science approach in *Robinson* when it rejected the defense of chronic alcoholism of a defendant charged with the crime of public drunkenness.¹⁷

Age

The law holds that a child is not criminally responsible for actions committed at an age that precludes a full realization of the gravity of certain types of behavior. Under common law, there is generally a conclusive presumption of incapacity for a child under age 7, a reliable presumption for a child between the ages of 7 and 14, and no presumption for a child over the age of 14. This generally means that a child under age 7 who commits a crime will not be held criminally responsible for these actions and that a child between ages 7 and 14 may be held responsible. These common law rules have been changed by statute in most jurisdictions. Today, the maximum age of criminal responsibility for children ranges from ages 14 to 17 or 18, while the minimum age may be set by statute at age 7 or under age 14.¹⁸ In addition, every ju-

risdiction has established a juvenile court system to deal with juvenile offenders and children in need of court and societal supervision. Thus, the mandate of the juvenile justice system is to provide for the care and protection of children under a given age, established by state statute. In certain situations, a juvenile court may transfer a more serious chronic youthful offender to the adult criminal court.

*In capacity < age 7
Reliable presumption between ages 7-14*

Justification and Excuse

In 1884 two British sailors, desperate after being shipwrecked for days, made the decision to kill and eat a suffering cabin boy. Four days later, they were rescued by a passing ship and returned to England. English authorities, wanting to end the practice of shipwreck cannibalism, tried and convicted the two men for murder. Clemency was considered and a reluctant Queen Victoria commuted the death sentences to six months.¹⁹ Were the seamen justified in killing a shipmate to save their lives? If they had not done so, they likely all would have died. Can there ever be a good reason to take a life? Can the killing of another ever be justified? Before you answer, remember that people can kill in self-defense, to prevent lethal crimes, or in times of war. The passengers aboard United Airlines Flight 93 are considered heroes for attacking the hijackers on September 11. Certainly no rational person would condemn their acts even though they may have resulted in the death of others. Oftentimes, the quality of the act is not most important; the way society defines and reacts to it determines whether a crime has been committed.

Criminal defenses may be based on the concepts of justification or excuse. In these instances, defendants normally acknowledge that they committed the act but claim that they cannot be prosecuted because they were justified in doing so. Major types of criminal defenses involving justification or excuse are consent; self-defense; and entrapment, duress, and necessity.

Consent As a general rule, the victim's consent to a crime does not justify or excuse the defendant who commits the action. The type of crime involved generally determines the validity of consent as an appropriate legal defense. Such crimes as common law rape and larceny require lack of consent on the part of the victim. In other words, a rape does not occur if the victim consents to sexual relations. In the same way, a larceny cannot occur if the owner voluntarily consents to the taking of property. Consequently, in such crimes, consent is an essential element of the crime, and it is a valid defense where it can be proven or shown that it existed at the time the crime was committed. But in other crimes, such as sexual relations with a minor child, consent cannot be a defense because the state presumes that young people are not capable of providing adequate or mature consent. Similarly, it is still against the law to help someone commit suicide even if the person consented to the procedure. Dr. Jack Kevorkian was convicted in 1999 on charges of second-degree murder growing out of the death of Thomas Youk, a man he helped commit suicide. As of fall 2003, Oregon was the only state that allowed assisted suicide but narrowly controlled when it could be used, such as with a terminally ill patient.

Self-Defense In certain instances, a criminal defendant can claim to be not guilty because he acted in self-defense. To establish self-defense, the defendant must prove he acted with a reasonable belief that he was in danger of death or great harm and had no reasonable means of escape from the assailant.

As a general legal rule, a person defending herself may use only such force as is reasonably necessary to prevent personal harm. A person who is assaulted by another with no weapon is ordinarily not justified in hitting the assailant with a baseball bat. A person verbally threatened by another is not justified in striking the other party with his fists. If a woman hits a larger man, generally speaking the man would not be justified in striking the woman and causing her physical harm. In other words, to exercise the self-defense privilege, the danger to the defendant must be immediate. And, depending on the legal jurisdiction and facts of the case, the defendant may be obligated to prove that he sought

alternative means of avoiding the danger, such as escape, retreat, or assistance from others.

Entrapment, Duress, and Necessity Under the rule of law, a defendant may be excused from criminal liability if he can convince the jury that law enforcement agents used traps, decoys, and deception to induce criminal action. Law enforcement officers can legitimately set traps for criminals by getting information about crimes from informers, undercover agents, and codefendants. Police officers are allowed to use ordinary opportunities for defendants to commit crime and to create these opportunities without excessive inducement. However, when the police instigate the crime, implant criminal ideas, and coerce individuals into bringing about crime, defendants can claim to have been entrapped.

Entrapment then must be viewed within the context of the defendant's predisposition to commit a crime. A defendant with a criminal record would have a tougher time using this defense successfully than one who had never been in trouble. However, in one of the most important entrapment cases, *Jacobson v. United States* (1992), the Supreme Court ruled that a defendant with a past history of child pornography had been entrapped by the government into purchasing more. Keith Jacobson had ordered *Bare Boys* magazines depicting nude children. When his name came up in their *Bare Boys* files, government agents sent him mailings for more than two-and-a-half years in an effort to get him to purchase more kiddie porn. Such purchases are a violation of the Child Protection Act of 1984. Jacobson was arrested after he gave in to the inducements and ordered a magazine showing young boys engaged in sexual activities. A search of his house revealed no materials other than those sent by the government (and the original *Bare Boys* magazines). On appeal, the Court held that Jacobson was entrapped because the state could not prove a predisposition to break the law and the purchase of the sexually charged magazines was the result of government coaxing.²⁰

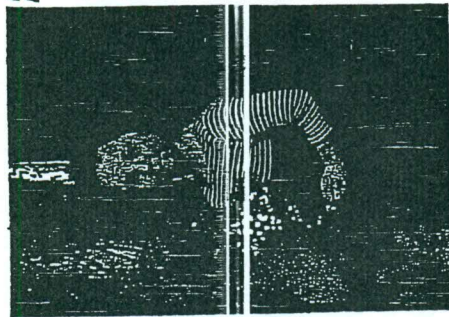
A duress (also called compulsion or coercion) defense may be used when the defendant claims he had been forced to commit a crime as the only means of preventing death or serious harm to himself or others. For example, a bank employee might be excused from taking bank funds if she can prove that her family was being threatened and that consequently she was acting under duress. But widespread general agreement exists that duress is no defense for an intentional killing.

The defense of necessity is used when a crime was committed under extreme circumstances and could not be avoided. For example, a husband steals a car to bring his pregnant wife to the hospital for an emergency delivery, or a hunter shoots an animal of an endangered species that was about to attack her child. Unlike the duress defense, which involves threats made by another person, people act out of necessity according to their own judgment.

Age may be a defense for crime and it is rare that a child under seven be prosecuted. On February 29, 2000, Kayla Rolland, a first grader, was killed by a six-year-old classmate who had taken a gun from his home.

Though the boy could not be prosecuted, a grand jury indicted one man for stealing the gun and two others for buying the gun that he used to shoot the girl in her classroom. This, a tribute to Kayla, now hangs in her elementary school.

LOVE
TODAY
WILLIAM
FACILITATOR



KAYLA ROLLAND

AGE 6

81203 - 37300

BUELL SCHOOL

Basel Community School District

Kayla was
a very bright
child. She was
a very good
student.

One of the
best things
about Kayla
was her smile.

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Types of Defenses

TYPE	DEFINITION	EXAMPLE
Ignorance / Mistake		
Insanity		
Age		
Self-Defense		
Entrapment		
Duress		
Necessity		
Intoxication		
Justification or Excuse		
Consent		