

CHAPTER I
SANITY-OFFENSES
COMMITTED ON OR AFTER
JULY 1, 1995

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The instructions in this chapter are designed to cover the affirmative defense of not guilty by reason of insanity in §§ 16-8-101 through -107, C.R.S.

I:01 INSANITY-BURDEN OF PROOF

The evidence in this case has raised the affirmative defense of insanity as to count(s).

The burden of proof is upon the prosecution to prove to the satisfaction of the jury beyond a reasonable doubt that the defendant was sane at the time of the commission of the crime(s) charged. Thus, the prosecution must prove beyond a reasonable doubt the defendant was sane, as well as all the elements of the crime(s) charged.

The jury must consider the issue of the defendant's sanity with respect to each crime charged in count(s) (list felony counts).

After considering the evidence concerning the defendant's sanity, with all the other evidence in this case, if you are not convinced the prosecution has proven the defendant's sanity at the time of the commission of the crime(s) charged, beyond a reasonable doubt, then you should find the defendant not guilty.

If you unanimously find from the evidence the prosecution has proven all of the elements of the crime(s) charged, as well as the defendant's sanity beyond a reasonable doubt, you will find the defendant guilty of the/those offense(s).

NOTES ON USE

The court must make a preliminary determination as a matter of law that credible evidence of the defendant's insanity at the time of the commission of the acts has been introduced. Once this determination is made, the presumption of sanity no longer exists. This instruction should be given in every trial wherein sanity is an issue if the acts occur on or after July 1, 1995.

SOURCE & AUTHORITY

§16-8-101 et.seq., C.R.S.

Dunlap v. People, 173 P.3d 1054 (Colo. 2007)

People v. Flipppo, 159 P.3d 100 (Colo. 2007)

People v. Vanrees, 125 P.3d 403 (Colo.2005)(defendant can introduce evidence of "mental slowness" to show that he lacked the culpable mental state of the crime charged - without entering a plea of not guilty by reason of insanity or impaired mental condition)

People v. Hill, 934 P.2d 821 (Colo. 1997)

I:02 INSANITY DEFINED

A person is insane if:

(1) he/she is so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong with respect to that act, or

(2) he/she suffered from a condition of mind caused by a mental disease or defect that prevented him/her from forming a culpable mental state that is an essential element of a crime charged.

In both instances, the jury should take care not to confuse such mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions because, when the act is induced by any of these causes, the person is accountable to the law.

NOTES ON USE

This instruction shall be given in every trial where insanity is an issue when the act is committed on or after July 1,1995.

SOURCE & AUTHORITY

§16-8-101.5, C.R.S.

Dunlap v. People, 173 P.3d 1054 (Colo. 2007)

People v. Flippo, 159 P.3d 100 (Colo. 2007)

People v. Vanrees,125 P.3d 403 (Colo.2005)(defendant can introduce evidence of "mental slowness" to show that he lacked the culpable mental state of the crime charged - without entering a plea of not guilty by reason of insanity or impaired mental condition)

I:03 DEFINITIONS-INSANITY

Concerning the issue of the defendant's sanity:

"DISEASED OR DEFECTIVE IN MIND" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

"MENTAL DISEASE OR DEFECT" means only those severely abnormal mental conditions which grossly and demonstrably impair a person's perception or understanding of reality and which are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

"MORAL OBLIQUITY" refers to an act committed by person who is capable of distinguishing moral right from wrong, but nevertheless acts out a perverse and culpable rejection of prevailing moral standards. "MORAL OBLIQUITY" does not include an act committed by a person in a state of mental illness that renders the person incapable of distinguishing right from wrong with respect to the act.

"INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG" refers to the cognitive inability, due to mental disease or defect, to distinguish right from wrong as measured by a societal standard of morality, even though the person may be aware that the conduct in question is criminal. The phrase "INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG" does not refer to a purely personal and subjective standard of morality.

NOTES ON USE

The definitions of "diseased or defective in mind" and "mental disease or defect" should be given in all cases where sanity is an issue. The definitions of "moral obliquity" and "incapable of distinguishing right from wrong" may be given at the discretion of the court.

SOURCE & AUTHORITY

§§16-8-101, -101.5, -102, C.R.S.

People v. Serravo, 823 P.2d 128 (Colo. 1992)

People v. Galimanis, 944 P.2d 626 (Colo. App. 1997)

People v. Vanrees, 125 P.3d 403 (Colo.2005) (defendant can introduce evidence of "mental slowness" to show that he lacked the culpable mental state of the crime charged - without entering a plea of not guilty by reason of insanity or impaired mental condition)

People v. Grant, 174_P.3d 798_(Colo. App.2007) (self-induced intoxication not insanity)

I:04 INSTRUCTION ON FINDING OF NOT GUILTY BY REASON OF INSANITY

This is an informational instruction and must have no persuasive bearing on the verdicts you arrive at under the evidence.

If the defendant is found not guilty of all felony charges and the jury unanimously finds the defendant is not guilty solely by reason of insanity of any felony offense, it is the duty of the Court to commit the defendant to the Department of Human Services. He/she will be confined until such time as he/she is determined to no longer require hospitalization because he/she no longer suffers from a mental disease or defect which is likely to cause him/her to be dangerous to him/herself, to others, or to the community in the reasonably foreseeable future.

NOTES ON USE

This instruction must be given if requested by the defense.

SOURCE & AUTHORITY

People v. Wartena, 156 P.3d 469, 473 (Colo. 2007)

Cordova v. People, 817 P.2d 66 (Colo. 1991)

People v. Thompson, 197 Colo. 232, 591 P.2d 1031 (1979)

People v. Gordon, 160 P.3d 284, 288 (Colo.App. 2007)

**I:05 LIMITING INSTRUCTION AS TO EVIDENCE OBTAINED
DURING COURT-ORDERED EXAMINATION**

The evidence you are about to hear shall be considered by you only as to the issue of defendant's mental condition and cannot be considered for any other purpose.

NOTES ON USE

This instruction shall be given at the request of either party, at the time the evidence is admitted.

If this instruction is given, the concluding instruction on evidence limited as to purpose should also be given.

SOURCE & AUTHORITY

§16-8-107(1.5), C.R.S.

People v. Flippo, 159 P.3d 100 (Colo. 2007)

**I:06 VERDICT FORM - WHERE DEFENDANT HAS BEEN FOUND
NOT GUILTY AND INSANITY IS AN ISSUE**

SPECIAL INTERROGATORY AS TO COUNT _____

THE PEOPLE OF THE STATE OF COLORADO,

Plaintiff,

v.

Defendant.

If you find the defendant guilty of (list, in the disjunctive, all charges submitted to jury) you should disregard this instruction. If, however, you find the defendant not guilty of all the charges, you must answer the following question.

As to count _____, did you find the defendant not guilty solely because of the affirmative defense of not guilty by reason of insanity?

[fn*] I [] YES

[fn*] II [] NO

FOREPERSON

[fn*]The foreperson must complete this Special Interrogatory if the defendant was found not guilty of all charges, by placing, in ink, an X in the appropriate bracket. The foreperson should mark only one of the above (I. or II.). If the verdict is NOT GUILTY BY REASON OF INSANITY, then I. above should be marked.

NOTES ON USE

This Special Interrogatory must be submitted to the jury along with all required verdict forms in every trial where the affirmative defense of Not Guilty by Reason of Insanity is at issue and the act was committed on or after July 1, 1995. This should be given for each felony count submitted to the jury. If the defendant is found guilty of any felony and not guilty of another felony, it is irrelevant why the jury found the defendant not guilty, because the defendant was subject to incarceration, in the trial court's discretion on the felony charge. *People v. Bielecki*, 964 P.2d 598 (Colo. App. 1998) See also *People v. Welsh*, 176 P.3d 781 (Colo.App. 2007); *People v. Lowry*, 160 P.3d 396 (Colo.App. 2007)

SOURCE & AUTHORITY

§16-8-105.5(3), C.R.S.

People v. Welsh, 176 P.3d 781 (Colo.App. 2007)