



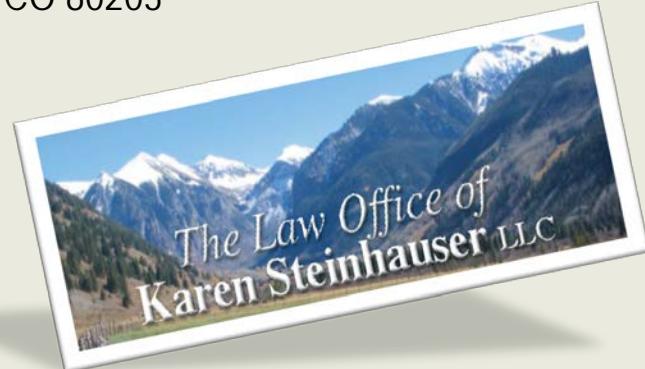
Law School for Journalists



Tuesday, August 7, 2012
8:30 to 10:00 a.m.



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Incompetent to Proceed

C.R.S. 16-8.5-101



Definition

As a result of a mental disability or developmental disability, the defendant does not have sufficient present ability to consult with the defendant's lawyer with a reasonable degree of rational understanding in order to assist in the defense, or that, as a result of a mental disability or developmental disability, the defendant does not have a rational and factual understanding of the criminal proceedings.

Mental Disability

C.R.S. 16-8.5-101 (2.7)



Definition

A substantial disorder of thought, mood, perception, or cognitive ability that results in marked functional disability, significantly interfering with adaptive behavior.

"Mental disability" does not include acute intoxication from alcohol or other substances, or any condition manifested only by antisocial behavior, or any substance abuse impairment resulting from recent use or withdrawal.

However, substance abuse that results in a long-term, substantial disorder of thought, mood, or cognitive ability may constitute a mental disability.

Developmental disability

C.R.S. 16-8.5-101



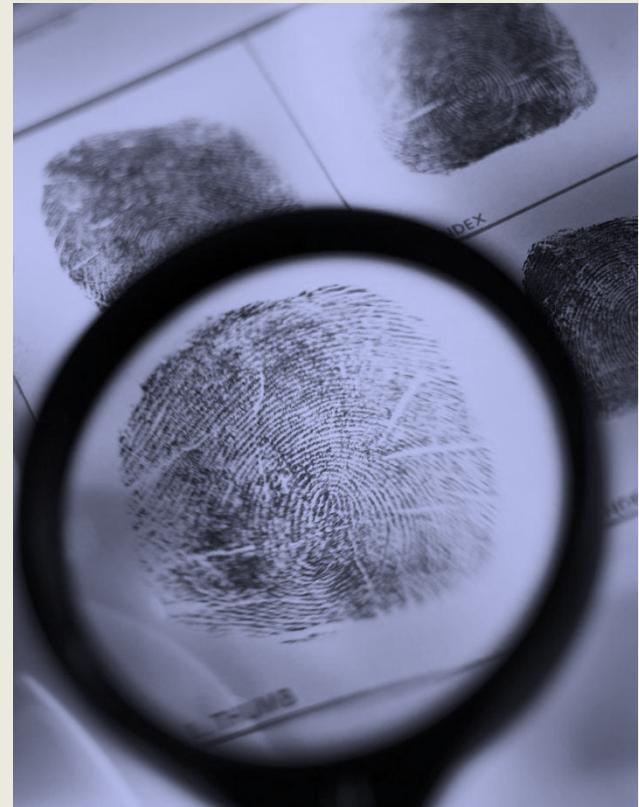
Definition

A disability that has manifested before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected individual, and is attributable to mental retardation or other neurological conditions when such conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with mental retardation.

Judge, prosecutor
or defense can
challenge competency.



Whoever asserts
incompetency of a
defendant, has to prove
it by preponderance of
the evidence.





If found incompetent to proceed, proceedings are suspended except for those that can take place without the participation of the defendant.



Insanity

C.R.S. § 16-8-101.5



(1) The applicable test of insanity shall be:

- (a) A person who 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 is not accountable; except that care should be taken 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, for, when the act is induced by any of these causes, the person is accountable to the law; or
- (b) A person who suffered from a condition of mind caused by mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged, but care should be taken 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.

Insanity - Continued



(2) As used in subsection (1) of this section:

- (a) "Diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.
- (b) "Mental disease or defect" includes only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(3) This section shall apply to offenses committed on or after July 1, 1995.

Mental disease or defect

C.R.S. 16-8-102 (4.7)



Definition

Only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that 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.

Defendant can be released on bond or held at the state hospital until restored to competency.

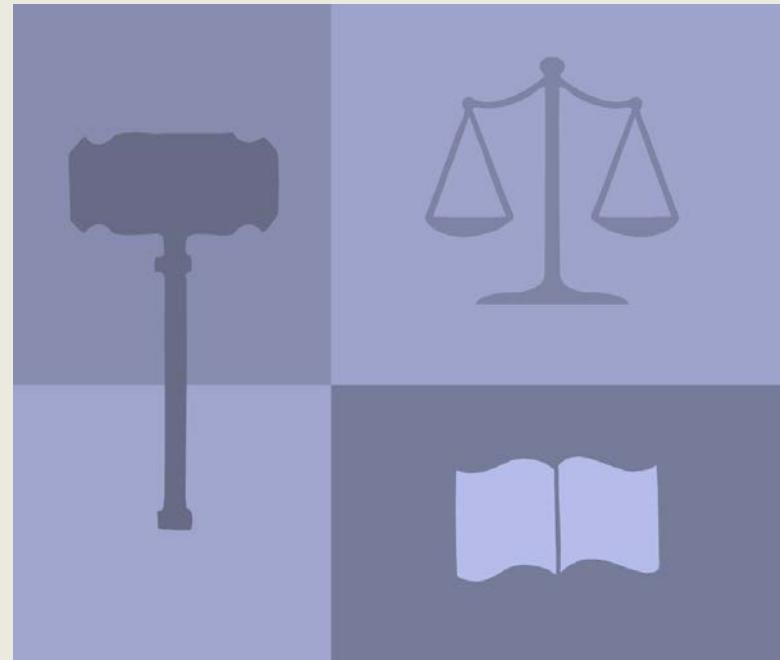


Every person
presumed
to be sane.





Prosecution has burden of proving beyond a reasonable doubt the defendant is sane



Evaluation typically done
at State Hospital
by forensic psychologist
or psychiatrist.



Death Penalty

C.R.S.18-1.3-1201



Definition

Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant pursuant to part 11 of this article, in either of which cases, the defendant shall be sentenced to life imprisonment.

Aggravating factors

C.R.S. 18-1.3-1201(5)



- (a) The class 1 felony was committed by a person under sentence of imprisonment for a class 1, 2, or 3 felony as defined by Colorado law or United States law, or for a crime committed against another state or the United States which would constitute a class 1, 2, or 3 felony as defined by Colorado law; or
- (b) The defendant was previously convicted in this state of a class 1 or 2 felony involving violence as specified in section 18-1.3-406, or was previously convicted by another state or the United States of an offense which would constitute a class 1 or 2 felony involving violence as defined by Colorado law in section 18-1.3-406 ; or

Aggravating factors - Continued



- (c) The defendant intentionally killed any of the following persons while such person was engaged in the course of the performance of such person's official duties, and the defendant knew or reasonably should have known that such victim was such a person engaged in the performance of such person's official duties, or the victim was intentionally killed in retaliation for the performance of the victim's official duties:
 - (I) A peace officer or former peace officer as described in section 16-2.5-101 , C.R.S.; or
 - (II) A firefighter as defined in section 24-33.5-1202(4), C.R.S.; or
 - (III) A judge, referee, or former judge or referee of any court of record in the state or federal system or in any other state court system or a judge or former judge in any municipal court in this state or in any other state. For purposes of this subparagraph (III), the term "referee" shall include a hearing officer or any other officer who exercises judicial functions.
 - (IV) An elected state, county, or municipal official; or
 - (V) A federal law enforcement officer or agent or former federal law enforcement officer or agent; or

Aggravating factors - Continued



- (d) The defendant intentionally killed a person kidnapped or being held as a hostage by the defendant or by anyone associated with the defendant; or
- (e) The defendant has been a party to an agreement to kill another person in furtherance of which a person has been intentionally killed; or
- (f) The defendant committed the offense while lying in wait, from ambush, or by use of an explosive or incendiary device or a chemical, biological, or radiological weapon. As used in this paragraph (f), "explosive or incendiary device" means:
 - (I) Dynamite and all other forms of high explosives; or
 - (II) Any explosive bomb, grenade, missile, or similar device; or
 - (III) Any incendiary bomb or grenade, fire bomb, or similar device, including any device which consists of or includes a breakable container including a flammable liquid or compound, and a wick composed of any material which, when ignited, is capable of igniting such flammable liquid or compound, and can be carried or thrown by one individual acting alone.

Aggravating factors – Continued



- (g) The defendant committed a class 1, 2, or 3 felony and, in the course of or in furtherance of such or immediate flight therefrom, the defendant intentionally caused the death of a person other than one of the participants; or
- (h) The class 1 felony was committed for pecuniary gain; or
- (i) In the commission of the offense, the defendant knowingly created a grave risk of death to another person in addition to the victim of the offense; or**

Aggravating factors - Continued



- (j) The defendant committed the offense in an especially heinous, cruel, or depraved manner; or
- (k) The class 1 felony was committed for the purpose of avoiding or preventing a lawful arrest or prosecution or effecting an escape from custody. This factor shall include the intentional killing of a witness to a criminal offense.
- (l) The defendant unlawfully and intentionally, knowingly, or with universal malice manifesting extreme indifference to the value of human life generally, killed two or more persons during the commission of the same criminal episode; or

Aggravating factors - Continued



- (m) The defendant intentionally killed a child who has not yet attained twelve years of age; or
 - (n) The defendant committed the class 1 felony against the victim because of the victim's race, color, ancestry, religion, or national origin; or
 - (o) The defendant's possession of the weapon used to commit the class 1 felony constituted a felony offense under the laws of this state or the United States; or
- (p) The defendant intentionally killed more than one person in more than one criminal episode; or**
- (q) The victim was a pregnant woman, and the defendant intentionally killed the victim, knowing she was pregnant.

Mitigating factors

C.R.S. § 18-1.3-1201(4)



- (a) The age of the defendant at the time of the crime; or
- (b) The defendant's capacity to appreciate wrongfulness of the defendant's conduct or to conform the defendant's conduct to the requirements of law was significantly impaired, but not so impaired as to constitute a defense to prosecution; or
- (c) The defendant was under unusual and substantial duress, although not such duress as to constitute a defense to prosecution; or
- (d) The defendant was a principal in the offense which was committed by another, but the defendant's participation was relatively minor, although not so minor as to constitute a defense to prosecution; or
- (e) The defendant could not reasonably have foreseen that the defendant's conduct in the course of the commission of the offense for which the defendant was convicted would cause, or would create a grave risk of causing, death to another person; or
- (f) The emotional state of the defendant at the time the crime was committed; or
- (g) The absence of any significant prior conviction; or
- (h) The extent of the defendant's cooperation with law enforcement officers or agencies and with the office of the prosecuting district attorney; or
- (i) The influence of drugs or alcohol; or
- (j) The good faith, although mistaken, belief by the defendant that circumstances existed which constituted a moral justification for the defendant's conduct; or
- (k) The defendant is not a continuing threat to society; or
- (l) Any other evidence which in the court's opinion bears on the question of mitigation.

JURY VERDICT



In order to impose a verdict of death, the jury must be unanimous.

