Title 13: Crimes And Criminal Procedure

Chapter 157: Insanity As A Defense

- **§ 4801. Test of insanity in criminal cases**

(a) The test when used as a defense in criminal cases shall be as follows:

(1) A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect he or she lacks adequate capacity either to appreciate the criminality of his or her conduct or to conform his or her conduct to the requirements of law.

(2) The terms "mental disease or defect" do not include an abnormality manifested only by repeated criminal or otherwise anti-social conduct. The terms "mental disease or defect" shall include congenital and traumatic mental conditions as well as disease.

(b) The defendant shall have the burden of proof in establishing insanity as an affirmative defense by a preponderance of the evidence. (Amended 1983, No. 75.)

--Insanity is an affirmative defense; when a defendant claims that he or she was insane at the time of the offense, the burden is on the defendant to establish insanity by a preponderance of the evidence. *State v. Webster,* 206 Vt. 178, 196 (2017).

-- In principle, the insanity defense can be traced back through at least 1,000 years of British law, and perhaps back as far as Roman, Christian, and Judaic law, and it reflects the principle that it is unjust to impose criminal sanctions on an actor who was unable, at the time he or she committed the crime, to know either what was being done or that it was wrong. *United States v. Denny–Shaffer,* 2 F.3d 999, 1012 (10th Cir.1993).

-- Expert medical testimony is generally required to establish both (1) whether the defendant suffered from a mental disease or defect and (2) whether that condition was the cause of the defendant's failure to appreciate the criminality or his or her conduct or conform it to the requirements of the law. *United States v. Keen,* 96 F.3d 425, 430–31 (9th Cir.1996); *United States v. Sanchez–Ramirez*, 432 F.Supp.2d 145 (D. Me. 2006); 13 V.S.A. § 4814.

--"A successful insanity defense absolves the defendant from criminal responsibility for the death." *Webster*, 106 Vt. At 196.

- **§ 4817. Competency to stand trial; determination**

(a) A person shall not be tried for a criminal offense if he or she is incompetent to stand trial.

(b) If a person indicted, complained, or informed against for an alleged criminal offense, an attorney or guardian acting in his or her behalf, or the State, at any time before final judgment, raises before the court before which such person is tried or is to be tried, the issue of whether such person is incompetent to stand trial, or if the court has reason to believe that such person may not be competent to stand trial, a hearing shall be held before such court at which evidence shall be received and a finding made regarding his or her competency to stand trial. However, in cases where the court has reason to believe that such person may be incompetent to stand trial due to a mental disease or mental defect, such hearing shall not be held until an examination has been made and a report submitted by an examining psychiatrist in accordance with sections 4814-4816 of this title.

(c) A person who has been found incompetent to stand trial for an alleged offense may be tried for that offense if, upon subsequent hearing, such person is found by the court having jurisdiction of his or her trial for the offense to have become competent to stand trial. (Added 1969, No. 20, § 4.)

--“To be competent to stand trial, a defendant must have ‘sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding’ and ‘a rational as well as factual understanding of the proceedings against him.’” *State v. Curry*, 186 Vt. 623, 628 (2009).

--"Trying an incompetent defendant deprives him of his due process right to a fair trial.” *State v. Beaudoin*, 185 Vt. 164, 168 (2008).

--Some of the issues relevant to a criminal defendant's competency are whether the “defendant kn[ows] the charges against him and their relative severity,” whether he can “describe the basic functions of a trial ... distinguish between guilty and not guilty,” whether he knows “the role of his attorney and the prosecutor,” and whether he understands “the concept of plea bargaining and his right to appeal.” *Curry*, 186 Vt. at 628, citing *Beaudoin,* 185 Vt. at 164.

--There is no necessary precondition of mental illness for a defendant to qualify as incompetent to stand trial. *Curry*, 186 VT at 628. So, a person can be incompetent to stand trial without having been insane at the time of the offense.

--If the Court does determine that the person was insane at the time of the alleged offense or incompetent to stand trial, then another hearing must be held to determine if the person is a danger to self or others and must be committed to the custody of the Commissioner of Mental Health. 13 V.S.A. § § 4820, 4822.