

Categories of Mental Health Issues in Criminal Cases (with selected questions and answers)

I. Capacity to Proceed

One of three grounds for finding a defendant incapable of proceeding.

What is incapable of understanding the proceedings, comprehending situation, or assisting in defense?

The deadline for making a motion questioning capacity to proceed.

What is none?

The court officials who receive the evaluation when capacity is questioned.

Who are the judge, the prosecutor, and the defense attorney?

If the defendant presents a mental health defense, the privileges that render a competency evaluation inadmissible.

What is none?

The course to take when your client is incompetent but receives a sweet heart plea offer that would get him out right now.

What will Susan tell you in her ethics presentation tomorrow?

II. Capacity during Investigation

A type of evidence subject to suppression based on the defendant's mental state.

What is a statement by the defendant or evidence obtained by a consent search?

A ground for challenging the statement of a person with a mental disability.

What is that the statement was involuntary or was taken without a proper waiver of *Miranda* rights?

The test for voluntariness of a confession if the defendant has a mental disability.

What is all-the-circumstances?

The test for waiver of *Miranda* based on a mental disability.

What is knowing, intelligent, and voluntary?

A ground for suppressing a consent search by a person with a mental disability.

What is that the consent was not voluntary?

III. Capacity during Formal Proceedings

The difference in the standard between capacity to proceed, capacity to waive counsel, and capacity to plead guilty.

What is none?

The standard, in addition to capacity, for waiving constitutional rights, such as the right to counsel.

What is knowing and voluntary?

Between an invalid waiver of counsel and invalid guilty plea, the easier of the two to raise in subsequent proceedings.

What is a right to counsel violation?

The attorney should obtain this from the client to assert a diminished capacity defense.

What is consent?

If the attorney and client reach an absolute impasse, the person who decides what course to take.

Who is the client?

IV. Mental Health Defenses

Of the main mental health defenses, the one the courts are most hostile to.

What is voluntary intoxication (or insanity)?

The NCSC once gave this reason for refusing to recognize diminished capacity as a defense.

What is that even a dog has the mental capacity to intend to kill and patiently to stalk his prey for that purpose?

The correct spelling of the test for insanity in North Carolina.

What is M'Naghten?

A defense you might raise if your client says, "I was half asleep, and I thought I was groping my girlfriend, not her 8-year old daughter."

What is automatism or, for a specific intent crime, diminished capacity?

A defense you might raise if your client had a completely unexpected reaction to lawful medication and drove impaired.

What is involuntary intoxication?

V. Pretrial Procedure

The first word in the title of this song.

What is Achy, as in Achy Breaky Heart or Ake v. Oklahoma?

You should always make a motion for an expert to the court in this way.

What is ex parte?

You must notify the state of these affirmative defenses.

What is all?

You must provide the state with discovery of your experts and their findings except in one of these situations.

What is when you don't request any discovery yourself (rare) or when you decide the expert will not testify (not always foolproof)?

If you raise a mental health defense, the state may be entitled to this procedure with respect to your client.

What is a mental health examination of your client?

VI. Trial Procedure

Lawyers who show up drunk, sleep through trial, or don't consider viable mental health defenses have this in common.

What is ineffective?

This could happen to a judge who refuses to let you voir dire jurors about their views on mental health issues.

What is get reversed?

The party with the burden to obtain a jury instruction on a mental health defense.

Who is the defendant?

A mental health defense for which the defendant has the burden of persuasion before the jury.

What is insanity, involuntary intoxication, or automatism?

You may be able to get this for constitutional reasons if you need more time to prepare a mental health defense.

What is a continuance?

VII. Evidence Issues

Your expert testifies that your client was capable of premeditating or deliberating.

What is inadmissible as a legal conclusion?

Your expert testifies to statements that your client made to the expert without your client taking the stand.

What is admissible (usually) as basis of opinion?

The state calls the jailer to testify that after the offense your client was sober, lucid, and rational.

What is admissible as lay witness opinion?

The state cross-examines your expert about mental health records the expert did and did not consider in forming an opinion.

What is admissible as within the scope of cross-examination?

You cross-examine the state's eyewitness about her substance abuse, history of delusions, and other mental health problems.

What is admissible as impeachment?

VIII. Sentencing

A noncapital mitigating factor related to your client's mental condition.

What is a mental condition that was insufficient to constitute a defense; age, immaturity, or limited mental capacity; and sometimes duress?

A capital mitigating factor related to your client's mental condition.

What is mental or emotional disturbance; age; capacity to appreciate or conform; and sometimes duress?

The guy in the Andy Griffith show who let himself into the jail to sleep it off.

Who is Otis?

The USSC recognized that a person should not be subject to the death penalty for an offense under this age.

What is 18?

North Carolina References on Mental Health Issues in Criminal Cases

Capacity to Proceed

NC Defender Manual, Vol. 1, Ch. 2 (May 1998) (Capacity to Proceed), posted at www.ncids.org

Capacity during Investigation

NC Defender Manual, Vol. 1, Ch. 14, Sec. 14.2, 14.3 (July 2002) (Suppression Motions)
Robert L. Farb, Arrest, Search, and Investigation in North Carolina, pp. 81, 199–200, 203 (3d ed. 2003)

Capacity during Formal Proceedings

NC Defender Manual, Vol. 1, Ch. 12, Sec. 12.6, 12.8 (Feb. 2004) (Right to Counsel)
NC Defender Manual, Vol. 2, Ch. 21, Sec. 21.3 (Oct. 2002) (Guilty Pleas)

Mental Health Defenses

The Diminished Capacity Defense, Administration of Justice Memorandum 92/01 (Sept. 2002), posted at <http://www.sog.unc.edu/programs/crimlaw/aojm9201.pdf>
The Voluntary Intoxication Defense, Administration of Justice Memorandum 93/01 (April 1993), posted at <http://www.sog.unc.edu/programs/crimlaw/aojm9301.pdf>

Pretrial Procedure

NC Defender Manual, Vol. 1, Ch. 5 (May 1998) (Experts and Other Assistance)
2004 Legislation Affecting Criminal Law and Procedure, Administration of Justice Bulletin 2004/06 (Oct. 2004) (new discovery law), posted at <http://www.sog.unc.edu/programs/crimlaw/aoj200406.pdf>

Trial Procedure

NC Defender Manual, Vol. 2, Ch. 23, Sec. 23.3 (Selection of Jury)

Evidence

The Diminished Capacity Defense, *supra*
The Voluntary Intoxication Defense, *supra*

Sentencing

Stevens H. Clarke, Law of Sentencing Probation, and Parole in North Carolina, pp. 84–91 (2d ed. 1997) (mitigating factors)
Robert L. Farb, North Carolina Capital Case Law Handbook, Ch. 4 (2d ed. 2004) (capital sentencing)