

Terry Lenamon on the Death Penalty

Sidebar with a Board Certified Expert Criminal Trial Attorney



Terence M. Lenamon is a Florida Bar certified expert in the area of criminal trial law. With over 17 years experience he has built a reputation as one of Florida's most respected criminal defense lawyers. His defense has been sought by many high-profile clients and has led him through 20 first-degree murder trials and eight death penalty cases. That experience has brought him national recognition as a go-to commentator on death penalty issues. He is the force behind both deathpenaltyblog.com and Florida Capital Resource Center (floridacapitalresourcecenter.org), and can be reached at terry@lenamonlaw.com.

[The Mentally Ill Are Executed in the United States - 1: Who is Legally Insane Under The Law?](#)

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Many people believe that if someone is mentally ill, then they cannot be executed for their crimes. [This is not true; an individual suffering from a mental illness can be sentenced to death in the United States.](#) In fact, the protections against someone being executed due to their psychological impairments is rather limited: many seriously mentally ill individuals set on Death Row in this country today.

What is "legal insanity" under the law? It depends upon which jurisdiction applies.

The reality is that a defendant's mental capacity becomes an issue as early as the initial investigation by law enforcement into the crime, however, it is clearly a major component of any criminal trial of that individual, first addressed in the guilt phase of a capital case. Legal insanity is an affirmative defense to a crime: it is proven by the defense in the guilt phase of the case where the state is seeking the death penalty, not the penalty phase.

There are **two prevailing legal tests** to determine whether or not a defendant is legally insane (again, as a defense to be pled and proven by defense counsel at trial). The first, and most popular, is the "*M'Naghten* test." See, [Clark v. Arizona, 548 U.S. 735 \(2006\)](#).

M'Naghten Test

Under *M'Naghten*, the determining factor is whether or not the defendant was (1) able to understand what he (or she) was doing at the time of the crime due to some "defect of reason or disease of the mind" or, (2) if he (or she) was aware of what they were doing, that he (or she) nevertheless failed to comprehend or understand that what they were doing was wrong.

ALI - Model Penal Code Test

The alternative test for legal insanity has been provided by the American Law Institute in the Model Penal Code. Under the ALI test, the key is if the defendant lacked the substantial capacity, as a result of a men-

tal disease or defect either (1) to appreciate the criminality of his conduct or (2) to conform his conduct to the requirements of law.

[M’Naghten is considered a much stricter standard than the ALI test.](#) Under M’Naghten, the two defendants made popular by Truman Capote in the nonfiction novel *In Cold Blood* were found to be legally sane, convicted of capital murder, and after being sentenced to death, each was hanged by the State of Kansas.

Using the ALI/Model Penal Code test, John Hinckley was found to be legally insane, therefore not legally culpable for his attempted assassination of President Ronald Reagan, and not subject to capital punishment. [Public outrage at the Hinckley result](#) has forced many jurisdictions to return to the harsher M’Naghten standard.

Next in the series: Mental Illness as a Mitigating Factor