

Defenses



Defense: No crime has been committed

- Generally falls into 2 categories:
- No crime
 - Yes, I had a gun, but I had a valid license
 - No, it was not rape because the partner was of age and consented
- No criminal intent
 - Yes I took the coat but it was an honest mistake... I thought it was mine.

Defense: This defendant did not commit the crime

- Alibi
 - Evidence the defendant was somewhere else at the time the crime was committed



“Justifiable” defenses

- Defendant committed an act that would ordinarily be considered a crime
- But the act is excusable or otherwise justifiable
 - Self-defense
 - Defense of property
- Key: defendant must act REASONABLY

Not criminally responsible

- Infancy
- Intoxication
- Insanity
- Entrapment
- Duress
- Necessity

Not criminally responsible: Infancy

- Usually children under 7 are considered legally incapable of committing a crime
- Between 7 and 14 there is a general presumption that a child cannot commit a crime to be adjudicated in criminal court
- Hearings will determine if the child should be turned over to juvenile court

Not criminally responsible: Intoxication

- Voluntary intoxication is NOT a defense
- Could be a valid defense if proof of a specific mental state is required
- Ex.: charge is *assault with intent to kill*
 - D was so drunk couldn't form requisite intent to kill
 - D still guilty of assault; no intent required

Not criminally responsible: Insanity

- Insanity is a LEGAL not psychological concept
- 2 general ideas:
 - People with mental disease or defect shouldn't be convicted if they don't know what they are doing or don't know right from wrong
 - Persons who lack “substantial capacity” to appreciate the nature of an act or conform to the law shouldn't be convicted

Not criminally responsible: Insanity

- Despite the notoriety of this defense, it is seldom used
 - About 1% of criminal cases in one study
- And when it is used, it is not very successful
 - Only about 25% of the time in the same study

Not criminally responsible: Entrapment

- An act by law enforcement officials to persuade someone to commit a crime that the person would not have committed otherwise
- Famous case of John Delorean (remember the car in “Back to the Future?”)



Entrapment as a Defense: Duress

- Unlawful pressure to commit an act that a person would not otherwise do
- Substantial and real threat or the perception of a threat
- “Holding a gun to your head”



Not criminally responsible: Necessity

- Driving without a license to get a dying person to the hospital
- Breaking and entering to shut the gas off when fire is a danger