

Defenses

For a conviction to occur in a criminal case, the prosecutor must establish beyond a reasonable doubt that the defendant committed the act in question with the required intent. The defendant is not required to present a defense but can instead simply force the government to prove its case. However, a number of possible defenses are available to defendants in criminal cases.



Chapter Overview Visit glencoe.com and enter **QuickPass** code **StreetLaw8u2** for an overview, a quiz, and other chapter resources.

No Crime Has Been Committed

The defendant may present evidence to show that (1) no criminal act was committed or (2) no criminal intent was involved. In the first case, a defendant might attempt to show that she was carrying a gun but had a valid license, or a defendant might attempt to show that he did not commit rape because the woman had consented. In the second case, the defendant might attempt to show that he mistakenly took another person's coat when leaving a restaurant. In this situation, the defendant is innocent of a charge of larceny if it was an unintentional, honest, and reasonable mistake.

A number of possible defenses are available to defendants.



Defendant Did Not Commit the Crime

Often no doubt exists that a criminal act has been committed. In such cases, the question is: who committed it? In this situation, the defendant might present evidence of a mistake in identity or offer an **alibi**—evidence that the defendant was somewhere else at the time the crime was committed.

Developments in science and technology have made it possible to use biological evidence, called **DNA evidence**, to connect an offender conclusively to a crime. Even if an offender does not leave fingerprints at a crime scene, he or she might leave biological evidence—a single hair, for example—at the scene without knowing it. It is possible to then conduct a DNA test to determine whether that hair or other piece of evidence belongs to the defendant. Although the state can use DNA evidence to prove that the defendant was at the scene or committed the crime, a defendant can also use DNA evidence to prove that he or she *did not* commit the crime. Additionally, many people who have been convicted of crimes have used DNA evidence, which may not have been available at the time of the trial, to exonerate themselves and be set free.

Defendant Committed the Act, but it Was Excusable or Justifiable

Sometimes an otherwise criminal act may be considered excusable or justifiable. Defenses in this category include self-defense, defense of property, and defense of others.

The law recognizes the right of a person who is unlawfully attacked to use reasonable force in self-defense. It also recognizes the right of one person to use reasonable force to defend another person from an attack that is about to occur. There are, however, a number of limitations to these defenses.

A person who reasonably believes there is imminent danger of bodily harm can use a reasonable amount of force in self-defense. However, a person cannot use more force than appears to be necessary.



Scientific developments allow the use of DNA evidence to connect an offender to a crime. *How else may DNA evidence be used?*

If, after stopping an attacker, the defender continues to use force, the roles reverse, and the defender can no longer claim self-defense. Deadly force can usually be used only by a person who reasonably believes that there is imminent danger of death or serious bodily harm. A person is also allowed to use deadly or nondeadly force to defend a third person if the person defended can claim self-defense.

Reasonable nondeadly force may be used to protect property. However, some states have enacted Stand Your Ground laws, also known as the Castle Doctrine, which give persons the right to use deadly force to defend their property against unwarranted intrusion. See page 244 in Chapter 19 for more information on these laws.

Problem 11.1

- a.** Ms. Urbanski kept a pistol in her home as protection against intruders. One evening, she heard a noise in the den and went to investigate. Upon entering the room, she saw a man stealing her television. The burglar, seeing the gun, ran for the window, but Ms. Urbanski fired and killed him before he could escape. In a trial for manslaughter, Ms. Urbanski pleaded self-defense. Would you find her guilty? Why or why not?
 - b.** Mr. Peters has a legal handgun to protect his home against intruders and against the increasing crime in his neighborhood. One night, Takeshi, a 16-year-old Japanese exchange student, walks up Mr. Peters's driveway looking for a party. Takeshi thinks Mr. Peters is hosting the party and begins yelling and waving his arms. Mr. Peters gets scared, retrieves his handgun, and points it at Takeshi while yelling "Freeze!" Takeshi does not understand English and keeps walking toward Mr. Peters. Thinking he is an intruder, Mr. Peters shoots and kills Takeshi at the front steps of his house. Mr. Peters is charged with first-degree murder. Does he have a defense?
 - c.** Would your answers to **a.** and **b.** above be any different if your state had a Stand Your Ground law?
 - d.** The owner of a jewelry store witnesses a shoplifter stealing an expensive diamond necklace. Can the owner use force to prevent the crime? If so, how much?
-

Defendant Committed the Act but Is Not Criminally Responsible

Some defenses in a criminal case rest on the defendant's lack of criminal responsibility. Although it is acknowledged that he or she committed the criminal act, he or she may be considered not criminally responsible. In this category are the defenses of infancy, intoxication, insanity, entrapment, duress, and necessity.

Infancy

Traditionally, children of a young age, usually under age 7, were considered legally incapable of committing a crime. Children between the ages of 7 and 14 were generally presumed incapable of committing a crime, but this presumption could be shown to be wrong. Under modern laws, many states follow some version of this common-law approach. Other states simply provide that children under a specified age shall not be tried for their crimes but shall be turned over to the juvenile court. Children under the specified age have the defense of **infancy**.

Some states either do not have a defense of infancy or allow prosecutors to decide whether to try a child as an adult, giving them more discretion to deal with juvenile delinquency on a case-by-case basis. These policies sometimes lead to the controversial result of trying a child for a heinous crime as an adult and allowing a sentence of up to life in prison. In Florida, for instance, a 12-year-old boy was tried as an adult for the death of a 6-year-old girl that resulted from the boy using a wrestling move on her that he saw on television. He received a mandatory life sentence under a “tough on crime” law that was passed in the mid-1990s.



The defense of infancy rests on the defendant's lack of criminal responsibility. *How does this defense vary among states?*

Intoxication

Defendants sometimes claim **intoxication** as a defense—that is, they claim that at the time of a crime, they were so drunk on alcohol or high on drugs that they did not know what they were doing. As a general rule, voluntary intoxication is not a valid defense for a crime. However, it may sometimes be a valid defense if the crime requires proof of a specific mental state. For example, Grady is charged with assault with intent to kill. He claims he was drunk. If he can prove that he was so drunk that he could not have formed the intent to kill, his intoxication may be a valid defense. Grady can still be convicted of the crime of assault, because specific intent is not required to prove that crime. However, if Grady had decided to kill the victim before he got drunk, or if he got drunk to get up enough nerve to commit the crime, then intoxication would not be a defense. This is because the required mental state—the intent to kill—existed before the drunkenness occurred.



After killing her five children, Texas mother Andrea Yates was found not guilty by reason of insanity in 2006. *How should a person who successfully pleads insanity be punished?*

Insanity

Over the centuries, the **insanity defense** has evolved as an important legal concept. Ancient Greeks and Romans believed that insane people were not responsible for their actions and should not be punished like ordinary criminals. Since the fourteenth century, English courts have excused offenders who were mentally unable to control their conduct. The modern standard grew out of an 1843 case involving the attempted murder of the British prime minister.

The basic idea is that people who have a mental disease or disorder should not be convicted if they do not know what they are doing or if they do not know the difference between right and wrong. In the United States about half of the states and the federal government use this standard. The other states hold that accused persons must be acquitted if they lack the *substantial capacity* to appreciate the nature of the act or to conform their conduct to the requirements of the law.

During criminal proceedings, the mental state of the accused can be an issue in determining whether (1) the defendant is competent to stand trial, (2) the defendant was sane at the time of the criminal act, and (3) the defendant is sane after the trial. The insanity defense applies only if the accused was insane at the time of the crime. Insanity at the time of the trial may delay the proceedings until the accused is competent to stand trial or can understand what is taking place. However, insanity during or after the trial does not affect the defendant's criminal liability.

In most states, there are three possible verdicts: guilty, innocent, or not guilty by reason of insanity. In some states, the last verdict results in automatic commitment to a mental institution. In others, the judge or jury exercises discretion, sometimes in a separate hearing, to determine commitment of the accused. In recent years, a number of states have come up with a new verdict: guilty but mentally ill. About one-third of the states have this verdict. Defendants found guilty but mentally ill can be sent to a hospital and later transferred to a prison once they are judged sane.

To prove insanity, the defense must produce evidence of a mental disease or disorder. Psychiatrists usually give testimony in these cases. Both the defense and the prosecution may have psychiatrists examine the defendant, and the testimonies are often in conflict. The decision as to whether insanity is a valid defense rests with whoever—judge or jury—decides the facts of the case.

There is a great deal of controversy about the insanity defense. Four states—Montana, Idaho, Kansas, and Utah—have abolished it entirely in their state courts. According to polling information, Americans believe that this defense has been successfully used by many heinous criminals. In reality, however, this defense is seldom used. Virtually all studies conclude that it is used in only about one percent of criminal cases. When it is used, it is seldom successful.

Problem 11.2

- a. What is the insanity defense? How does it work?
- b. Should the insanity defense be kept as it is, changed in some way, or abolished? Explain your answer.

Entrapment

The **entrapment** defense applies when the defendant admits to committing a criminal act but claims that he or she was induced, or persuaded, by a law enforcement officer to commit the crime.



The Law Where You Live

Find out how your state's criminal code defines *insanity*. Then write a brief definition based on your findings.

Entrapment is difficult to prove. *Could the situation in this photograph be considered entrapment?*

There is no entrapment when a police officer merely provides the defendant with an opportunity to commit a crime; rather, it must be shown that the defendant would not have committed the crime if not for the inducement of the police officer. Entrapment is difficult to prove and cannot be claimed as a defense to crimes involving serious physical injury, such as rape or murder.

Problem 11.3

Can entrapment be claimed as a valid defense in any of the following cases? Explain your answer.

- a.** Mary, an undercover police officer masquerading as a prostitute, approaches Edward and tells him that she'll have sex with him in exchange for \$50. Edward hands over the money and is arrested.
 - b.** Jan, a drug dealer, offers to sell drugs to Emilio, an undercover officer posing as a drug addict. Emilio buys the drugs, and Jan is arrested.
 - c.** Rashid, an undercover FBI agent, repeatedly offers Sammy a chance to get in on an illegal gambling ring, with the promise that he will win big. After refusing several offers, Sammy, who has no history of gambling and who just lost his job, finally gives Rashid \$200 as a bet. Rashid immediately arrests Sammy.
-

Duress

A person acts under **duress** when he or she does something as a result of coercion or a threat of immediate danger to life or personal safety. Under duress, an individual lacks the ability to exercise free will. For example, suppose someone points a gun at your head and demands that you steal money or be killed. You steal the money. Duress would be a good defense in this case if you were prosecuted for theft. It may also be used as a defense if the threat is made to a third party such as a family member. Duress is not a defense to homicide.

Necessity

An individual acts under **necessity** when he or she is compelled to react to a situation that is unavoidable in order to protect life. Suppose, for example, that a group of people is left adrift in a lifeboat so heavy with cargo that it is in danger of sinking. The group throws the cargo overboard to make the lifeboat lighter and more manageable. In this case, necessity would be a good defense to a charge of destruction of property. Necessity is not a defense to homicide.

Problem 11.4

Reread The Case of the Shipwrecked Sailors on page 6. Would any of the defenses discussed in this section be available to the sailors who survived and were prosecuted? Should they be? Explain your answers.
