

#### **4.37 Mental Disease or Defect Evidence to Negate Intent**

**Evidence that the defendant suffers from a mental disease or defect is admissible to negate a culpable mental state of intent, notwithstanding that the defendant does not interpose the affirmative defense of mental disease or defect.**

##### **Note**

A defendant may interpose the affirmative defense of mental disease or defect to negate guilt of a criminal offense. (Penal Law § 40.15.) Upon doing so, however, the defendant bears the burden of proving that affirmative defense by a preponderance of the evidence. (Penal Law § 25.00.)

On the other hand, the People bear the burden of proof beyond a reasonable doubt of the elements of an offense. Thus, when the defendant's "intent" is an element of an offense, the People bear the burden of proof beyond a reasonable doubt of that intent. In turn, evidence of the defendant's mental disease or defect is admissible to negate that intent regardless of whether the affirmative defense of insanity is also in issue. (*People v Segal*, 54 NY2d 58, 66 [1981] ["Although proof of a mental defect other than insanity may not have acquired the status of a statutory defense, and will not constitute a 'complete' defense in the sense that it would relieve the defendant of responsibility for all his (or her) acts (see, e.g., Penal Law, § 30.05) it may in a particular case negate a specific intent necessary to establish guilt"]; *People v Moran*, 249 NY 179, 180 [1928] ["Feebleness of mind or will, even though not so extreme as to justify a finding that the defendant is irresponsible (per the defense of insanity), may properly be considered by the triers of the facts in determining whether a homicide has been committed with a deliberate and premeditated design to kill"]; *People v Matthews*, 148 AD2d 272, 278 [4th Dept 1989] ["It is well established that proof of a mental defect or deficiency short of insanity, although not having acquired the status of a statutory defense, may still negate a finding of specific intent essential to sustain a conviction"].)

The affirmative defense of mental disease or defect "is not the same as a *mens rea*-type defense. . . . (see generally, Penal Law § 25.00 [2]; Donnino, Practice Commentary, McKinney's Cons Laws of NY, Book 39, Penal Law § 40.15, at 203). An insanity affirmative defense is defined by the precise wording of Penal Law § 40.15, which contemplates that as a result of mental disease or defect, the defendant lacks substantial capacity to know or appreciate either the nature and consequences of such conduct or that such conduct was wrong. A *mens rea*-type defense, by contrast, serves to negate a specific intent necessary to establish guilt." (*People v Almonor*, 93 NY2d 571, 580 [1999].)

When the affirmative defense is, however, raised along with the *mens rea*-type defense, a court must carefully instruct the jury to avoid “confusion and erroneous application of rules [by a jury] with respect to the People’s burden of proving the element of intent and defendant’s burden of proving the affirmative defense of insanity.” (*People v Kohl*, 72 NY2d 191, 199 [1988].)

To date, the decisional law of New York has only passed on the admission of evidence of mental disease or defect to negate intent. Admission of evidence of mental disease or defect may, however, be also admissible to prove that the defendant did not have one of the other culpable mental states that is an element of a charged offense. (*See* Model Penal Code § 4.02 [1] [“Evidence that the defendant suffered from a mental disease or defect is admissible whenever it is relevant to prove that the defendant did or did not have a state of mind that is an element of the offense”]; *People v Colavecchio*, 11 AD2d 161, 165 [4th Dept 1960] [quoting the Model Penal Code in holding that evidence of mental disease was admissible to negate larcenous intent].)