

(B) BURDEN OF PROOF.

THE DEFENDANT HAS THE BURDEN TO ESTABLISH, BY A PREPONDERANCE OF THE EVIDENCE, THE DEFENSE OF NOT CRIMINALLY RESPONSIBLE.

(C) DEGREE OF PROOF AND VERDICT.

IF THE TRIER OF FACT FINDS THAT THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED THE CRIMINAL ACT CHARGED, THEN, IF THE DEFENDANT HAS PLEADED NOT CRIMINALLY RESPONSIBLE, THE TRIER OF FACT SEPARATELY SHALL FIND, BY A PREPONDERANCE OF THE EVIDENCE, WHETHER THE DEFENDANT WAS AT THE TIME CRIMINALLY RESPONSIBLE OR NOT CRIMINALLY RESPONSIBLE BY REASON OF INSANITY UNDER THE TEST FOR CRIMINAL RESPONSIBILITY IN § 12-108 OF THIS TITLE.

(D) VERDICT NOT ALLOWED.

A COURT MAY NOT ENTER A VERDICT OF NOT CRIMINALLY RESPONSIBLE UNLESS THE DEFENDANT OR DEFENSE COUNSEL HAS FILED A WRITTEN PLEA UNDER SUBSECTION (A) OF THIS SECTION.

TASK FORCE COMMENT TO § 12-109.

This section replaces former Health - General Article, § 12-108, "Same - Plea". The following are the substantive changes recommended by the Governor's Task Force to Review the Defense of Insanity.

Throughout this section, the phrase "not criminally responsible" is substituted for the legal terms "insanity" and "insane" in keeping with the recommendation of the Task Force that the phrase "not criminally responsible" is a more accurate statement of the defendant's status under criminal law. The Task Force recommends avoiding the terms "insane" and "insanity" to the extent possible. Even though the terms are legal terms that convey long-understood concepts of law, there is unpreventable carryover which perpetuates stigmatizing images of all mentally ill individuals in the public mind, including those who have committed no crime. This carryover counteracts efforts to improve the understanding and treatment of mental illness. The Task Force also believes that the terms "insane" and "insanity" are misleading as legal terms. Jurors and the general public's understanding of the term "insane", conveys a mental image that may unfairly prejudice the credibility of the plea when the defendant seems relatively normal by contrast. Nevertheless, with awareness of the potential for unintended change, the Task Force recommends the terms not be deleted entirely.

In subsection (a) of this section, the former provision -- "This plea may be made in addition to any other lawful plea." -- is deleted in light of other recommended changes made to this title by the Task Force.