

Subsection (b) of this section is a significant change unanimously recommended by the Task Force. As with other defenses that a State may choose to provide in its criminal law, the State may require the burden of proof to be on the defendant who raises the issue. This change which results in the fact of the defendant's being not criminally responsible being established by the evidence at trial is essential to another important change made by this title on recommendation of the Task Force. The State's right to automatically commit to the Department an individual found not criminally responsible rests on "insanity" being proved by evidence in court. See § 12-111 of this title. Because being not criminally responsible is an exculpatory fact related to criminal punishment, due process does not preclude placing the proof burden on the defendant. Similar provisions have been approved by the Supreme Court. "When a criminal defendant establishes by a preponderance of the evidence that he is not (criminally responsible)...by reason of insanity, the Constitution permits the (State), on the basis of the insanity judgment, to confine him to a mental institution until such time as he has regained his sanity or is no longer a danger to himself or society". Jones v. United States, 463 U.S. ____, 103 S. Ct. 3043 (1983).

Placing the burden on the defendant also avoids the former anomaly of requiring the State to prove sanity beyond a reasonable doubt unsupported by any criteria, standard, or definition of sanity; then, if the State is unsuccessful in proving the defendant sane at trial, requiring the State to prove the same individual insane at a commitment hearing.

Subsection (b) does not alter the State's burden to prove all essential elements of the crime beyond a reasonable doubt.

In subsection (c) of this section, a new provision clarifies the current law of this State. The jury must first make a determination as to whether or not the defendant committed the criminal act charged. The term "criminal act charged" is used to indicate that the trier of fact first determines whether the State proved beyond a reasonable doubt all the elements of the crime. This determination is made before considering the plea of not criminally responsible. The traditional theory that an insanity defense if proved means that the defendant was mentally incapable of forming criminal intent is not an established fact under the definition of criminal responsibility in § 12-108 of this title. "...as presently defined, neither prong of the insanity defense -- either lack of capacity '[t]o appreciate the criminality of one's conduct' [§ 12-108(a)(1) of this title] or the lack of capacity '[t]o conform that conduct to the requirements of law' [§ 12-108(a)(2) of this title] -- is necessarily inconsistent with general criminal intent. Second, the volitional prong -- the lack of capacity '[t]o