

U.S. Criminal Code

Nixon Asks End to Insanity Defense

Change on Murder, Kidnap Law

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In a move certain to provoke controversy in legal circles, President Nixon will ask Congress to abolish insanity as a defense against murder and related federal crimes such as treason and kidnaping.

Under legislation the White House will submit within the next few days, a criminal will no longer be able to avoid conviction on federal charges by proving that he was insane at the time of the crime. This defense has been recognized, under varying definitions of insanity, for more than a century.

Instead, the issue of the defendant's mental state will arise during a federal trial only if his derangement was so serious that the prosecution is unable to prove he had criminal intent at the time he acted, an essential element in making a case in such crimes as murder.

Thus, under the proposed legislation, a defendant could no longer plead not guilty by reason of insanity as long as the prosecution had established its basic case, including all the elements of the crime.

The proposed legislation provides further that, even if a defendant were acquitted because the prosecution could not establish his criminal intent, he would still be subject to a further hearing to determine if he should then be committed to a mental institution.

Broadly speaking, the proposed change in the law would be likely to increase substantially the number of convictions for such offenses. Narrowing the court's consideration of the defendant's mental condition to a

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single question and requiring proof of considerably more serious impairment than is true in most jurisdictions now.

If adopted, this would eliminate a good deal of legal precedent now available to many defendants — claims that they had been incapable of understanding the criminality of their conduct or that they had been overcome by an "irresistible impulse" — without putting any new burden on the prosecution.

This proposed change in the federal criminal code would have no effect on state court proceedings, which provide the overwhelming majority of murder prosecutions. Insanity defenses would continue to be valid in state courts. In addition, the U.S. Supreme Court would undoubtedly be called upon to review the constitutionality of any such change in the federal code.

REVISION

For the past week, the White House has been saying that Mr. Nixon would recommend changes in the defense of legal insanity as part of a revision of the federal criminal code. However, neither he nor his speechwriters nor his spokesmen have reported that the proposed legislation would eliminate that defense, as a legal matter.

Those who have seen the Nixon bill say it contains a provision much like the one considered but rejected by the National Commission on Reform of Federal Criminal Laws two years ago. That provision, in its precise legal language, reads as follows:

"Mental disease or defect provides no defense unless it negatives an element of the offense."

It has always been true that the government's case against an accused murderer fails if it cannot establish that he had criminal intent. If he was so deranged as to be incapable of any intent at all, he cannot be successfully prosecuted. The Nixon bill would leave this requirement unchanged.

CORNERSTONE

The President, even if he had chosen to, could not have eliminated this last single use of the insanity defense without, at the same time, revising the entire concept of the criminal law to eliminate the necessity of proving intent, one of its cornerstones.

The principal alternative to abolishing insanity as a defense is a proposal drafted by the American Law Institute as a modernized version of old court rulings. It would provide that "a person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity to appreciate the criminality of his conduct."

Supporters of the approach adopted by the administration say it would greatly simplify juries' problems by restricting any determination of mental impairment to a single standard: whether the defendant was capable of criminal intent.

Abolition of the insanity defense, it is argued, would end current anomalous situations in which an accused can be found "medically" insane but "legally" sane and thus punishable, or in which a defendant is judged guilty of a criminal act but exonerated on the ground of mental illness.