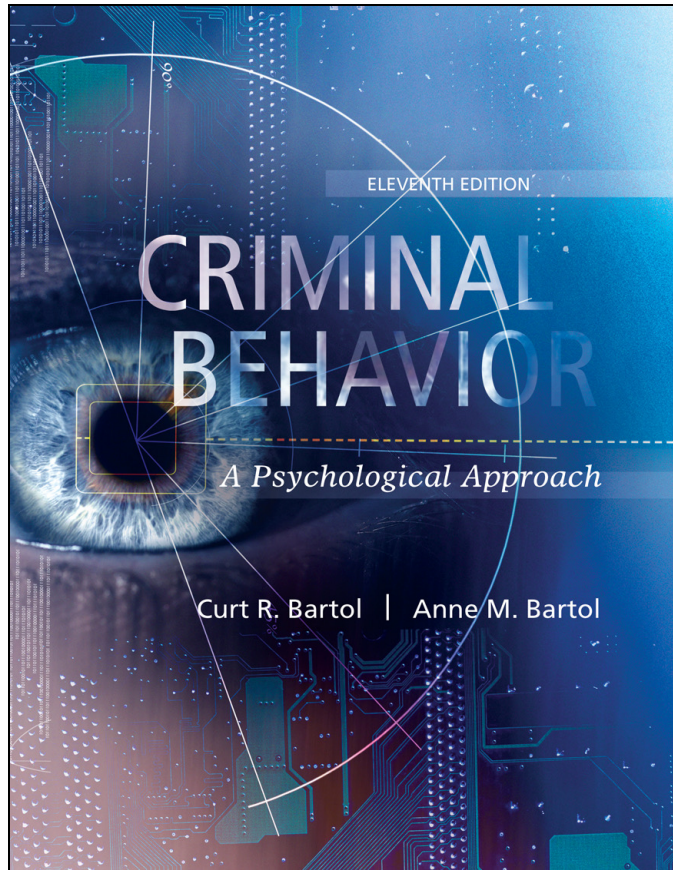


Criminal Behavior

A Psychological Approach

Eleventh Edition



CHAPTER 8

Crime and Mental Disorders

Chapter Objectives

- Define mental disorders.
- Provide an overview of the DSM and the diagnoses that are most relevant to criminal behavior.
- Define and review issues relating to competency to stand trial.
- Review the insanity defense rules and standards.

Chapter Objectives

- Discuss special defenses sometimes raised to absolve defendants of criminal responsibility or mitigate responsibility.
- Discuss the prevalence of mental illness in incarcerated populations.

Chapter Objectives

- Define risk assessment and identify the risk factors employed in assessing violent criminal behavior.
- Explore the relationship between mental disorder and violence.

Defining Mental Illness: Code of Virginia

§ 37.2-100. Definitions

- Mental illness Defined Code of Virginia
§ 37.2-100. Definitions
- “Mental illness” means a disorder of thought, mood, emotion, perception, or orientation that significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life necessities and requires care and treatment for the health, safety, or recovery of the individual or for the safety of others.

Defining Mental Illness: Code of Virginia

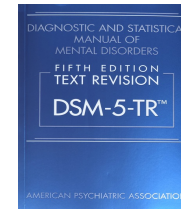
§ 37.2-100. Definitions

- "Intellectual disability" means a disability, originating before the age of 18 years, characterized concurrently by (i) significant subaverage intellectual functioning as demonstrated by performance on a standardized measure of intellectual functioning, administered in conformity with accepted professional practice, that is at least two standard deviations below the mean and (ii) significant limitations in adaptive behavior as expressed in conceptual, social, and practical adaptive skills.

Diagnosing Mental Illness

- The Diagnostic and Statistical Manual for Mental Disorders, 5th Edition.

(DSM 5)



- The guidebook for clinicians seeking to define and diagnose specific mental disorders
- Published in 2013 with a Text Revision published in 2022 (DSM 5-TR)
- American Psychiatric Association
 - But all mental health professions use it

Mental Illness and the Criminal Justice System (3:15)



Mental Illness & Crime

Mental illnesses are common in the United States. Nearly one in five U.S. adults live with a mental illness (52.9 million in 2020). Some of these illnesses are severe and some are less severe. (NIMH, 2022)

NIMH defines Serious Mental Illness as, “a mental, behavioral, or emotional disorder resulting in serious functional impairment, which substantially interferes with or limits one or more major life activities.” (NIMH, 2022)

Mental Illness & Crime

The percentage of persons in correctional institutions with *serious* mental illnesses far exceeds the percentage in the general population. It is estimated that approximately 20% of inmates in jails and 15% of inmates in state prisons have a serious mental illness while the estimated percentage of persons with serious mental illness in the general public was estimated to only be 5.6%

Mental Illness & Crime

- People with **serious** mental illness are booked into jails approximately 2 million times each year.
- It is possible to have more than one of the diagnosable mental disorders at the same time, (dual diagnosis, co-morbidity), and many incarcerated individuals fall into this category.

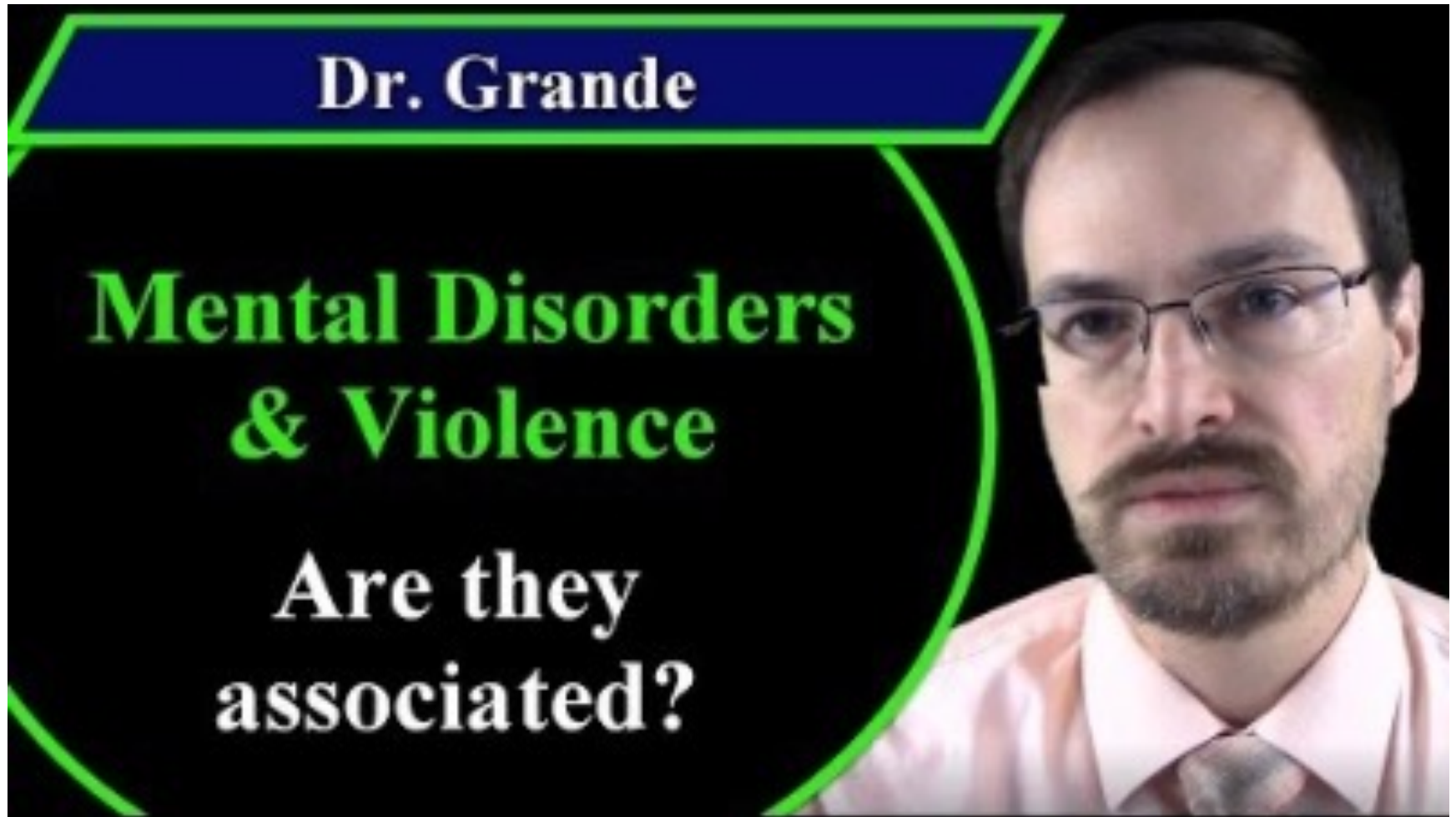
Substance abuse is a common accompanying condition

- Diagnoses can be wrong

Mental Illness & Crime

- Mentally ill inmates remain in jail longer than inmates without mental illnesses. In Florida's Orange County Jail, the average stay for all inmates is 26 days; for mentally ill inmates, it is 51 days. The main reason mentally ill inmates are incarcerated longer than other prisoners is that many find it difficult to understand and follow jail and prison rules and are twice as likely to be charged with rules violations. (Treatment Advocacy Center, 2016)
- Mentally ill inmates are much more likely to attempt suicide while incarcerated than are inmates without a mental illness. A 2002 study in the state of Washington found that "the prevalence of mental illness among inmates who attempted suicide was 77%, compared with 15% of the general jail population.

Mental Illness & Crime (6:58)



Defining Mental Illness

- Mental disorders that are most likely to be associated with criminal conduct
 - Persons with these disorders are not "crime prone."
 - Even if an individual is diagnosed with these disorders, he or she still can be held responsible for criminal conduct.
 - The diagnosis alone is not sufficient to escape punishment.
 - Must show cognitive incompetency

Mental Illness & Crime

- Mental disorders that are most likely to be associated with criminal conduct
 - Schizophrenia spectrum and other psychotic disorders
 - Bipolar disorder
 - Major depression
 - Antisocial personality disorder

Schizophrenia (DSM 5)

- Two (or more) of the following, each present for a significant portion of time during a 1-month period (or less if successfully treated). At least one of these must be delusions, hallucinations or disorganized speech:
 - Delusions
- Hallucinations
 - Disorganized speech (e.g., frequent derailment or incoherence)
 - Grossly disorganized or catatonic behavior
 - Negative symptoms (i.e., diminished emotional expression or avolition)
- Schizophreniform disorder is very similar to schizophrenia, but symptoms last for 1 to 6 months. If the symptoms last longer than 6 months, a doctor may diagnose schizophrenia.

Schizophrenia Spectrum and Other Psychotic Disorders

- **Schizotypal disorder** (NOT schizotypal as in textbook)
 - People with schizotypal personality disorder are often described as odd or eccentric and usually have few, if any, close relationships. They generally don't understand how relationships form or the impact of their behavior on others. They may also misinterpret others' motivations and behaviors and develop significant distrust of others. (Mayo Clinic, 2019)
- **Schizoaffective disorder**
 - a mental health disorder that is marked by a combination of schizophrenia symptoms, such as hallucinations or delusions, and mood disorder symptoms, such as depression or mania (Mayo Clinic, 2019)
- **Schizoid Personality Disorder**
 - Schizoid personality disorder is an uncommon condition in which people avoid social activities and consistently shy away from interaction with others. They also have a limited range of emotional expression.

Schizophrenia Spectrum and Other Psychotic Disorders

- Proportion of violent crimes is small, but level of violence is higher when they do commit a violent crime.
 - Risk is transitional. More likely when person is experiencing psychosis.
- “If a person has a severe mental illness, [they] may have other risk factors for violent behavior,” he says. “So, it may not be mental illness that is driving the violence at all, but rather factors like having been abused as a child, being unemployed, or living in a high-crime neighborhood.” (American Psychological Association, 2022)

Bipolar Disorder

- Bipolar disorder is a severe and prevalent psychiatric disease. Poor outcomes include a high frequency of criminal acts, imprisonments, and repeat offenses. (Psychiatry Online, 2015)
- Mood disorder
- Manic phase
 - Euphoria, hyper-energy, and distractibility
- Depressive phase
 - Diminished interest or pleasure in all activities and depressed mood

Bipolar Disorder

- Bipolar I vs Bipolar II
 - No mania, or hypo mania, in Bipolar II
- Reckless behavior that leads to criminal activity during manic phase
 - Associated impulsivity may be related to criminal activity

Major Depressive Disorder

- Extremely depressed state that lasts for at least two weeks
 - A generalized slowing down of mental and physical activity, gloom, despair, feelings of worthlessness, and perhaps frequent thoughts of suicide
 - Suicide by Cop, mass murder
- Delinquency in teenage girls
- People with a depressive illness are three times more likely to commit a violent or sex crime than those in the general population, a study suggests. (Dept of Psychiatry U of Oxford, 2015)
 - The don't care about what happens to them so why should they care about what happens to someone else?

Antisocial Personality Disorder

- A history of continuous behavior in which the rights of others are violated (crime)
- At least 18 years of age and must have a history of some symptoms of conduct disorder before age 15
- Impulsivity, lack of empathy, deceitfulness
- Common diagnosis of offenders
 - Maybe because part of the diagnosis requires committing a crime?

Substance Abuse Disorder

- In co-morbid disorders where substance abuse is one of the conditions, the risk of violence goes up dramatically.
 - For schizophrenia, the risk with schizophrenia alone for violence is 2x the unaffected public
 - Add substance abuse and the risk goes to 9x

Borderline Personality Disorder

- Key symptoms that might be related to criminal behavior (most will not act in a criminal manner):
 - High sensitivity to rejection and feelings of alienation or isolation
 - Reaction to the rejection?
 - Intense and highly variable moods
 - Rapid cycling between love and hate
 - Difficulty in regulating emotions in general
 - Inappropriate, intense anger or problems controlling anger

Borderline Personality Disorder

- Tend to see things in terms of only either/or
 - Only good or bad, no in between
- Engaging in impulsive behaviors/no self-control
 - Lashing out
 - May be violent

Borderline Personality Disorder



Competency in the Criminal Justice System (8:26)



Competency

- Two types of mental competency come into play in judicial hearings in criminal cases. (We will not be discussing civil competency hearings)
 - Competency to stand trial
 - Competency at the time of the offense
 - A person could be found incompetent to stand trial but competent at the time of the offense,
 - What do you think happens then?
 - Burden of proof on defendant
 - Usually have to plead guilty first
 - Is this fair?

Competency

- Incompetency to stand trial
 - State of Mind NOW
 - Not at the time of the offense
 - *Dusky v. United States* (1960)
 - A lack of understanding of court proceedings, one's rights, or the functions performed by one's lawyer
 - Too impaired to participate in one's own defense
 - 80% of those evaluated are found competent

Competency

- Incompetency to stand trial
 - What is the defendant's state of mind at the present time, or at the time of the pretrial proceedings or trial?
 - *Jackson v. Indiana* (1970)
 - What if you cannot be made competent to stand trial by treatment after a lengthy period of time?
 - Must release from criminal custody, but can commit under civil procedures

Competency

- Incompetency to stand trial
 - *Sell v. United States* (2003)
 - Does it violate the 5th Amendment to force a person that is incompetent to stand trial to take medication to make them competent to stand trial?
 - If you are untreated and will not otherwise be competent to stand trial, they would have to release you from criminal custody.
 - Sell decided the state has a right to force medication ***IF*** the person is charged with a serious VIOLENT crime.

Criminal Responsibility

- If an insanity defense is successful, it will result in one of two outcomes:
 - Not Guilty By Reason of Insanity (NGRI)
 - Guilty but Insane
- Outcomes are quite different
 - NGRI: hospitalized but could be released without further involvement with the criminal justice system if restored to competency.
 - Guilty but insane: hospitalized and if restored to competency, serve the rest of the sentence in prison
 - In both cases, if not restored to competency, may stay in custody for ever, so may get longer term.

Criminal Responsibility

- Not guilty by reason of insanity (NGRI)
 - A person's state of mind at the time an offense was committed
 - Rationale is that a person with a serious mental illness cannot establish Mens Rea (remember required elements of a crime)
 - Not all mental disorders render a person incapable of establishing Mens Rea

Criminal Responsibility

- Not guilty by reason of insanity (NGRI)
 - Media coverage always abundant when a finding of NGRI is made in a prominent case
 - A small proportion of criminal cases
 - No systematic, nationwide data
 - Used in only 1% of all U.S. felony criminal cases
 - Estimates are much higher for misdemeanor offenses (22-25%)

Insanity Standards

- No single standard for insanity defense in the US. Each state, and the federal government can establish their own rules.
 - It is not required that a state have an insanity defense (Kahler v. Kansas, 2020, 6-3 decision).
 - Kansas, Utah, Montana and Idaho do not have provisions for this.
- Do you think this is fair?

Insanity Standards

- M'Naghten Rule
 - Formulated in 1843
 - Not in the US but in Scotland
 - Used by about half the states
 - Right and wrong test
 - Did the person know the difference between right and wrong at the time of the offense, not at the present time
 - Irresistible impulse test sometimes added on to M'Naghten
 - Knew act was wrong but driven by irresistible forces and just could not stop committing the act
 - Ex. Parent catches someone sexually molesting their child and then immediately beats them to death with a bookend.

Virginia Insanity Standards

- In Virginia, the legal code does not directly define insanity; the current definition of insanity in Virginia was established through case law, or historical court cases. (Virginia Dept of Behavioral Health).
- **Commonwealth of Virginia** uses the M’Naghten rule plus irresistible impulse standard.

Insanity Standards

- The Brawner Rule (1973) and the American Law Institute Rule
 - Used by 20 states & federal courts (HG Legal, 2023)
 - “A person is not responsible for criminal conduct if at the time of the action, as a result of mental disease or defect, he/she lacks substantial capacity either to appreciate the criminality of his conduct to the requirements of the law.”
This rule makes it clear that any “mental disease or defect” does not include the manifestation of mental illness due to repeated criminal acts throughout their life.” (HG Legal, 2023)
 - So, claiming Antisocial Personality Disorder would not work
 - Includes irresistible impulses

Insanity Standards

- The Durham Rule: The Product Test
 - Assumes that one cannot be held responsible if an unlawful action is the product of mental disease or defect.
 - Vague and subjective
 - What mental disease?
 - Would the state have to let all DUI drivers go to treatment instead of jail if they proved they were alcoholics?
 - Only used by one state: New Hampshire

Insanity Standards

- The Insanity Defense Reform Act (IDRA)
 - Response to John Hinkley case
 - Similar to M’Naughten but behavior has to be linked to a mental condition
 - In federal cases, experts can only testify to findings, diagnosis of mental conditions, but not opinions about sanity
 - Can state someone has Schizophrenia but cannot state they believe that person is insane

Unique Defenses and Conditions

- Posttraumatic stress disorder
 - Between 1 and 7% all Americans
 - Military veterans have higher rates.
 - Used to support NGRI defense
 - Dissociated state
 - Battered woman syndrome
 - More unsuccessful claims of NGRI for PTSD than successful one

Unique Defenses and Conditions

- Dissociative identity disorder
 - Multiple personality disorder
 - The presence of two or more distinct personality states or an experience of possession and recurrent episodes of amnesia
 - Validity is debated
 - Low success rates in claiming NGRI
 - The rate of dissociation in the general public is also very low

Unique Defenses and Conditions

- Dissociative amnesia
 - Complete or partial memory loss of an event, series of events, or some segment of life's experiences, either due to physical trauma, neurophysiological disturbance, or psychological factors, or alcohol/drugs
 - Just because you cannot now recall the event, were you conscious about it and the repercussions when it was done?
 - How would you prove it?
 - Burden of proof is on you.

Mental Disorder and Policing

- Police and the mentally disordered
- Currently, many jurisdictions are rethinking having police respond to mental health crises
 - What if a trained person is too far away?
 - Police may fail to recognize behavior as representing a mental disorder.
 - Police should focus on behavior and not on diagnosis
 - Change tone of voice
 - Reduce speed of questioning
 - Speed is not always of the essence
 - Don't make a minor crisis a major one

Mental Disorder and Policing

- False confessions during interrogations
 - Improper use of Reed Technique
 - Some disorders affect comprehension and response may not reflect reality due to a lack of understanding
 - Both of the above lead to a higher percentage of false confessions from mentally ill persons during interrogations.
- Some jurisdictions, such as Fairfax County locally have created diversionary systems for mentally ill persons involved in minor crimes
 - Not everyone needs to go to jail

Mental Disorder and Jails

- Mentally disordered inmates
 - Research indicates that the percentage of mentally disordered inmates in the nation's jails and prisons is increasing.
 - Clinical diagnoses are difficult to determine.
 - Not enough clinicians
 - Not enough time spent per inmate
 - Revolving door
 - Costing jurisdictions a lot of money

Mental Disorder and Jails

- Mentally disordered inmates
 - Jails may make existing mental conditions worse
 - May create new mental health conditions in previously unaffected persons
 - Supermax prisons are almost all solitary confinement
 - Pennsylvania system in early 1800's
 - Produced psychotic persons from solitary confinement with no interpersonal contact

Duty to Warn Virginia Code

A mental health service provider has a duty to take precautions to protect third parties from violent behavior or other serious harm only when the client has orally, in writing, or via sign language, communicated to the provider a specific and immediate threat to cause serious bodily injury or death to an identified or readily identifiable person or persons, if the provider reasonably believes, or should believe according to the standards of his profession, that the client has the intent and ability to carry out that threat immediately or imminently. (§ 54.1-2400.1: B)

Dangerousness and the Assessment of Risk

- The Tarasoff case
 - California case, not national case law
 - Duty to warn or protect
 - Assumes one can predict threat with accuracy
 - This makes these laws vague in many cases: See Virginia Code next slide.

Dangerousness and the Assessment of Risk

- Violence risk factors and measures
 - Actuarial approach
 - Almost just a check list
 - Unstructured clinical approach
 - Extremely subjective
 - Structured professional judgment
 - Clinical and actuarial approaches
 - Some have argued they are racially biased
 - Actuarial has best validity based on research
 - Still lacking
- Best predictor of future violent behavior is past behavior regardless of mental health status

Other Resources

Text:

Defining Mental Illness: Code of Virginia § 37.2-100. Definitions (2011)

<https://law.lis.virginia.gov/vacodefull/title37.2/chapter1/>.

National Institute of Mental Health (NIMH). Mental Illness. (January 2022).

<https://www.nimh.nih.gov/health/statistics/mental-illness>

Treatment Advocacy Center. Serious Mental Illness Prevalence in Jails and Prisons. (Sept 2016).

<https://www.treatmentadvocacycenter.org/evidence-and-research/learn-more-about/3695>

DeAngelis, T. Mental illness and violence: Debunking myths, addressing realities. American Psychological Association. (2022) <https://www.apa.org/monitor/2021/04/ce-mental-illness>

Fovet, T. M, Geoffroy, P, Vaiva, G, Adins, C, Thomas, P, Amad, A. Individuals With Bipolar Disorder and Their Relationship With the Criminal Justice System: A Critical Review. Psychiatry Online (2015) <https://ps.psychiatryonline.org/doi/10.1176/appi.ps.201400104>

Depression linked to Violent Crime Study Finds. Department of Psychiatry University of Oxford. (2015)

<https://www.psych.ox.ac.uk/news/depression-linked-to-violent-crime-study-finds>

Schizoaffective Disorder. Mayo Clinic. (2019) <https://www.mayoclinic.org/diseases-conditions/schizoaffective-disorder/symptoms-causes/syc-20354504>

Schizotypal Disorder. Mayo Clinic. (2019) <https://www.mayoclinic.org/diseases-conditions/schizotypal-personality-disorder/symptoms-causes/syc-20353919>

Other Resources

Text:

Mayo Clinic. Schizoid Personality Disorder. (2019) <https://www.mayoclinic.org/diseases-conditions/schizoid-personality-disorder/symptoms-causes/syc-20354414>

United States Supreme Court, Kahler v. Kansas, Oyez. (2020) <https://www.oyez.org/cases/2019/18-6135>

Virginia Department of Behavioral Health & Developmental Services. Insanity Defense and NGRI Finding.(2022) <https://dbhds.virginia.gov/wp-content/uploads/2022/09/Section-1-The-Insanity-Defense-Insanity-Finding.pdf>

HG Legal. Insanity Defenses. (2023) <https://www.hg.org/legal-articles/legally-insane-the-insanity-defense-34143>

Code of Virginia § 54.1-2400.1 (B) Mental Health Service Providers Duty to Protect 3rd Parties. <https://law.lis.virginia.gov/vacode/title54.1/chapter24/section54.1-2400.1/>

Other Resources

Video:

Startling Number of Mental Patients Behind Bars in US. (2016) BBC News.

<https://www.youtube.com/watch?v=OT3ZlaVOhrc>

What does it Mean to be Criminally Insane? (2021) Infographics.

<https://www.youtube.com/watch?v=UzGnD9sE0A4>

Mental Disorders and Violence. (2018) Dr. Grande <https://www.youtube.com/watch?v=MjGNleUGtfo>

Sprouts (2024) Borderline Personality Disorder. <https://www.youtube.com/watch?v=JYSX88h-qlc>