

**EVIDENCE OF MENTAL DISEASE OR DEFECT<sup>1</sup>**  
**(N.J.S.A. 2C:4-2)**

There is an issue which pertains to each and every one of the offenses on which I am about to instruct you (**OR** which pertains to the following offenses: [List Offenses to Which Defense Applies]) Evidence alleging that the defendant suffered from a mental disease or defect (**OR**: [Insert Specific Mental Disease or Defect Alleged]) has been produced.

(**CHARGE IF APPLICABLE**: Also, evidence that the defendant suffered from insanity has been produced, as will explain to you shortly.<sup>2</sup>

In considering the state's burden of proof, which is to prove every element of the charged offense(s) beyond a reasonable doubt, you must consider and weigh all of the evidence of defendant's mental state, including that offered as evidence of mental disease or defect [**OR** insanity] [**OR**: [Insert Specific Mental Disease or Defect Alleged]], in determining whether or not the State has proven beyond a reasonable doubt:

that [Insert Defendant's Name] acted [purposely/knowingly/recklessly], which is (are) (an) element(s) of [Insert Specific Offenses to Which Defense Applies].

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<sup>1</sup> This defense is potentially applicable to any offense not involving strict liability, and may result in either complete acquittal or reduction to a less culpable mental state, depending on the facts. State v. Moore, 113 N.J. 239, 281 (1988); State v. Breakiron, 108 N.J. 591, 608-10 (1987); State v. Ramseur, 106 N.J. 123, 269 (1987); State v. Junta, 224 N.J. Super. 711 (App. Div. 1988); State v. Washington, 223 N.J. Super. 367 (App. Div. 1988). All mental deficiencies, including conditions that cause a loss of emotional control, may satisfy the diminished capacity defense if they can, and the record supports an inference that they in fact did, affect the defendant's cognitive capacity. State v. Galloway, 133 N.J. 631, 647 (1993).

<sup>2</sup> State v. Delibero, 149 N.J. 90, 106 (1997), holds that courts should instruct jurors to consider all evidence of a defendant's mental state, including that offered as evidence of both diminished capacity and insanity, in deciding whether the State has proven every element of the offense beyond a reasonable doubt.

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(OR that [Insert Defendant's Name] acted with the requisite state of mind forming any element of the offenses charged in the indictment).

In making this decision, you must give the defendant the benefit of any reasonable doubt about whether his/her mental functioning was such as to render him/her incapable of acting with the required state of mind, or about whether she/he did in fact act with the required state of mind.<sup>3</sup> In other words, you must determine whether, despite the evidence of mental disease or defect [or insanity], the State has proven beyond a reasonable doubt that the defendant acted [purposely/knowingly/recklessly].<sup>4</sup>

If, after considering all the evidence, including the evidence of mental disease or defect (or insanity) (OR: [Insert Specific Mental Disease or Defect Alleged]) or any other evidence or lack of evidence in the case, you have a reasonable doubt whether the defendant's mental functioning was such as to render him/her incapable of acting with the required state of mind, or if you have a reasonable doubt whether she/he did in fact act with the required state of mind, then the defendant is not guilty (**CHARGE IF APPLICABLE:** and go on to consider the crime of \_\_\_\_\_).

If, however, you find that the State has proven beyond a reasonable doubt that [Insert Defendant's Name] was able to, and did, in fact, have the required criminal state of mind (OR: act [purposely/knowingly/recklessly]), together with all the other elements of the offense beyond a reasonable doubt, then you must find the defendant guilty.<sup>5</sup>

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<sup>3</sup> State v. Galloway, 133 N.J. at 643, 647.

<sup>4</sup> State v. Zola, 112 N.J. 384, 402 (1988).

<sup>5</sup> State v. Harris, 141 N.J. 525, 554 (1995).