

This section replaces former Health - General Article, § 12-106, "Report on defendants committed as incompetent". The Governor's Task Force to Review the Defense of Insanity recommends, as the only substantive change to this section, the addition of a new subsection (d) to require the recording of an escape by any individual committed to the Department as incompetent to stand trial. The Task Force believes this information is needed for better protection of the public and for better institutional planning and analysis by this State.

12-108. CRIMINAL RESPONSIBILITY FOR CRIMINAL CONDUCT -- TEST FOR INSANITY.

(A) TEST -- IN GENERAL.

A DEFENDANT IS NOT CRIMINALLY RESPONSIBLE FOR CRIMINAL CONDUCT IF, AT THE TIME OF THAT CONDUCT, THE DEFENDANT, BECAUSE OF A MENTAL DISORDER OR MENTAL RETARDATION, LACKS SUBSTANTIAL CAPACITY:

- (1) TO APPRECIATE THE CRIMINALITY OF THAT CONDUCT; OR
- (2) TO CONFORM THAT CONDUCT TO THE REQUIREMENTS OF LAW.

(B) SAME -- EXCLUSION.

FOR PURPOSES OF THIS SECTION, "MENTAL DISORDER" DOES NOT INCLUDE AN ABNORMALITY THAT IS MANIFESTED ONLY BY REPEATED CRIMINAL OR OTHERWISE ANTISOCIAL CONDUCT.

TASK FORCE COMMENT TO § 12-108.

This section replaces former Health - General Article, § 12-107 and § 12-101(f). The following are the only substantive changes recommended by the Governor's Task Force to Review the Defense of Insanity.

In subsection (a) of this section, the phrase "not criminally responsible" is substituted for the phrase "not responsible" as being a more accurate statement of the defendant's status under criminal law. The Task Force recommends the adoption of this term to make clear to the defendant, the jury, and to society that the defendant remains morally and personally responsible for committing criminal acts, but the State does not hold a defendant subject to criminal punishment, if this test is met.

Subsection (b) of this section is newly transferred here from its former placement in the definition section. The Task Force recommends the inclusion here because of the provision's specific application to this section and because it is a substantive part of the test for criminal