

# Behavioral Addictions and Criminal Responsibility

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Certain behavioral addictions pose difficult and unresolved problems for the criminal justice system. These disorders are characterized by strong desire states and may be associated with illegal behaviors that are committed to support the addiction. In this article, we begin with a general account of criminal responsibility and provide the legally relevant phenomenology and cognitive features of behavioral addictions. We then discuss how the legal system has approached two behavioral addictions, gambling disorder and kleptomania, during criminal trials and at sentencing. The conclusion summarizes an approach to the adjudication of behavioral addiction-related criminal behavior.

*J Am Acad Psychiatry Law* 45:464–71, 2017

Behavioral addictions are characterized by diminished control over a behavior and frequently result in illegal activities. Some individuals with gambling disorder, for example, commit forgery, fraud, or theft to obtain money for gambling or to pay gambling debts, whereas kleptomania (compulsive stealing) is associated with shoplifting of items not needed for personal use. These criminal behaviors in turn pose unresolved forensic questions. In this article, we discuss the challenges that behavioral addictions pose for the criminal justice system. The article begins by reviewing the criteria for criminal responsibility and the circumstances under which psychiatric disorders may be used as a defense to responsibility. We emphasize that legal determinations of self-control and attendant responsibility are made on the basis of behavioral data: acts and mental states. The article then introduces behavioral addictions and summarizes the legally relevant clinical and phenomenological features of these disorders (e.g., impulsivity). It then

analyzes the forensic questions raised by legal cases involving gambling disorder or kleptomania. These cases show that courts have been willing to consider problem gambling as a mitigating factor in sentencing only if there is a close relationship between the illegal act and the underlying disorder. Likewise, defendants raising kleptomania as a defense to theft charges have struggled to show that their illegal acts were uncontrollable rather than merely uncontrolled or unresisted. Finally, the article concludes with recommendations to forensic psychiatrists evaluating individuals with behavioral addictions and proposes that diversion of some offenders to court-supervised treatment programs may benefit both patients and the criminal justice system as a whole.

## Legal and Psychiatric Perspectives on Behavior

To be found responsible under criminal law, an agent must have performed a specified act (*actus reus*) while in a particular mental state (*mens rea*). The government must prove each element beyond a reasonable doubt. Assuming that the prosecution satisfies its burden of production, the defendant may raise affirmative defenses, such as insanity. The insanity defense has been raised in several different formulations over time, but a defendant's criminal responsibility may generally be negated if the individual was

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Disclosures: Dr. Grant has received research grants from Brainsway, Forest, Roche, Takeda, and Psyadon Pharmaceuticals. Mr. Blum reports no financial or other potential conflicts of interest.

incapable of understanding or controlling his actions. The defense therefore traditionally consists of two prongs: a cognitive test (assessing the defendant's rationality at the time of the crime) and a control test (assessing volition). For the purpose of federal criminal law, Congress abolished the control test in 1984 following the acquittal of John W. Hinckley, Jr., for the attempted assassination of President Ronald Reagan, leaving the insanity defense available only to defendants who substantially lack rational capacity. The Federal Sentencing Guidelines (the "Guidelines"), however, authorize downward departure at sentencing on the basis of "a significantly impaired ability to (A) understand the wrongfulness of the behavior comprising the offense or to exercise the power of reason; or (B) control behavior that the defendant knows is wrongful."<sup>1</sup> Therefore, a reduction in federal sentencing may be available to defendants who understood the wrongfulness of an act but were unable to control their behavior.

The law views criminal defendants as moral agents who act on the basis of mental states such as desires, intentions, or plans.<sup>2</sup> Forensic psychology and psychiatry play an important role in the adjudication of criminal cases by providing evidence about a defendant's mental state at the time of the commission of a crime. A psychiatric diagnosis alone, however, is insufficient to mitigate or excuse criminal responsibility or to answer the normative question of whether a given behavior is blameworthy. Similar to previous editions, the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) contains a "Cautionary Statement for Forensic Use of DSM-5" warning of an "imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis" (Ref. 3, p 25). The Cautionary Statement adds that the diagnosis of a DSM-5 mental disorder "does not imply that an individual with such a condition meets legal criteria for the presence of a mental disorder or a specified legal standard (e.g., for competence, criminal responsibility, or disability)" (Ref. 3, p 25). It is the offender's behavior and thought process, not the psychiatric diagnosis, that is legally relevant.

Some behaviors, collectively called behavioral addictions, produce a short-term reward that may engender persistent behavior despite knowledge of adverse social, occupational, legal, and financial consequences.<sup>4</sup> Behaviors considered behavioral addictions in the DSM-5 include gambling disorder and

kleptomania (compulsive stealing). Although there is great heterogeneity within these disorders, all behavioral addictions are characterized by the failure to resist an impulse, drive, or desire ("craving") to perform an act that is harmful to the person or to others.<sup>4</sup> The question in the legal context is under what circumstances a behavioral addiction should be a mitigating or excusing condition for addiction-related criminal behavior. When, in other words, does a behavioral addiction sufficiently compromise a criminal defendant's rational capacity or volition to warrant mitigation or excuse?

### Phenomenological and Cognitive Features

Behavioral addictions have many similarities in natural history, phenomenology, and adverse consequences. From a phenomenological perspective, individuals with behavioral addictions frequently exhibit impaired control (e.g., craving and unsuccessful attempts to reduce the behavior), functional impairment (e.g., narrowing of interests and neglect of other areas of life), and risky use (persisting in the behavior despite awareness of damaging psychological effects).<sup>4</sup> Many people with behavioral addictions report feelings of tension or arousal before initiating the behavior and pleasure, gratification, or relief at the time of committing the act. Over time, the disordered behavior may shift from a reward-seeking (impulsive) pattern to one that is increasingly ego-dystonic and compulsive. In gambling disorder, for instance, gambling behavior may become less pleasurable and more driven by stress or with the goal of reducing anxiety.<sup>5</sup> Although many people with behavioral addictions recover without formal treatment, the natural histories of these disorders may show a chronic and relapsing course. Adverse consequences of behavioral addictions include poor quality of life, significant impairment in social and occupational functioning, and legal and financial difficulties.<sup>6</sup>

Behavioral addictions also appear to show a pattern of cognitive impairment relating to decision-making and reward processing.<sup>4,5</sup> Disordered gamblers typically score high on self-report measures of impulsivity and sensation-seeking, prefer small immediate rewards over larger delayed rewards, and perform disadvantageously on decision-making tasks, such as the Iowa Gambling Task. As expected in a disorder with compulsive features, individuals with gambling disorder often score high on the

Padua Inventory, a measure of compulsivity, and display marked response perseveration and difficulties with cognitive flexibility.<sup>5</sup> Although the cognitive features of kleptomania are less well understood, one study has found intact cognitive functioning in people with kleptomania compared with controls, though greater kleptomania symptom severity was associated with significantly worse performance on the Wisconsin Card Sorting Test.<sup>7</sup> Elevated self-reported impulsivity scores have also been found in participants with kleptomania.<sup>8</sup>

The neural correlates of behavioral addictions are not summarized here because they are not in themselves relevant to the current criteria for criminal responsibility.<sup>2</sup> It is legally relevant, however, that gambling disorder, kleptomania, and other behavioral addictions appear to be characterized by selective cognitive dysfunction and impaired impulse control. The cognitive findings support the behavioral evidence that at least some individuals with a behavioral addiction may have difficulty controlling their impulses at the time of a behavioral addiction-related criminal offense.

### Gambling Disorder

Gambling disorder (GD) is characterized by persistent and recurrent maladaptive patterns of gambling behavior. As in substance use disorders, clinical features of GD include preoccupation with and repeated unsuccessful attempts to stop the behavior, tolerance, withdrawal, and adverse psychosocial consequences.<sup>4</sup> GD is also characterized by unique cognitive biases that perpetuate disadvantageous decision-making. These cognitive errors include superstitions (e.g., wearing “lucky” clothing or performing gambling tasks in certain orders), the gambler’s fallacy (the belief that an independent event, such as the outcome of a fair coin flip, is more or less likely on the basis of past results), illusion of control over outcomes, inaccurate processing of reward and loss (e.g., the tendency of nonwinning “near-miss” outcomes to increase gamblers’ desire to gamble), and continued gambling despite recurrent losses (chasing losses).<sup>9</sup> For people with GD, gambling may produce many strong emotions in a short time: excitement, agitation, hope, and disgust.<sup>10</sup> It is understandable that some problem gamblers with legal difficulties seek mitigation at sentencing on the basis of impaired rationality or lack of control.

Although the causal relationship, if any, between problem gambling and criminal behavior is unclear, GD has been associated with crime and antisocial personality disorder (ASPD) in multiple settings. Among people with GD, the prevalence of criminal activity ranges from 25 to 43 percent, and it is estimated that 15 percent have co-occurring ASPD.<sup>11,12</sup> Criminal behaviors of problem gamblers often include income-generating activities used to finance gambling (e.g., theft, forgery, and embezzlement),<sup>13</sup> although one study found that problem gamblers are also more likely than others to be charged with violent and drug-related crimes.<sup>14</sup> Of note, a previous edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV-TR)<sup>15</sup> included illegal behavior in the diagnostic criteria for pathological gambling, suggesting that such behavior may characterize the disorder, at least for a subset of problem gamblers. Although the illegal acts criterion was not found to influence the overall prevalence of gambling disorder diagnoses and has been removed from the DSM-5,<sup>3</sup> it appears to improve diagnostic accuracy in correctional populations and may be useful as a marker of gambling severity.<sup>11</sup>

Some federal courts have granted a downward departure at sentencing based on disordered gambling. In *United States v. Caspersen*, Andrew W. W. Caspersen, a former Wall Street executive, was charged with securities fraud and wire fraud.<sup>16</sup> Mr. Caspersen pleaded guilty to both charges, admitting that he had engaged in a Ponzi-like scheme to defraud investors out of \$38.5 million. At sentencing, the defense claimed that Mr. Caspersen’s decade-long gambling addiction began with casino gambling and sports betting before turning to betting on the stock market. Later, after misdirecting investor funds to his own bank accounts, Caspersen made a series of all-in bets that Standard & Poor’s 500-stock index would fall that week. He quickly lost millions of dollars through his aggressive trading, leading to the discovery of the fraud. During sentencing, U.S. District Judge Jed S. Rakoff, also a founding member of the MacArthur Foundation Project on Law and Neuroscience, accepted the defense argument that Mr. Caspersen was impaired by a gambling addiction and that a departure from the United States Federal Sentencing Guidelines was warranted. Accordingly, Mr. Caspersen was sentenced to a lesser term of four years in prison.

Likewise, in *United States v. Dikiara*, the defendant also successfully raised gambling addiction at sentencing after being convicted of mail fraud.<sup>17</sup> Ms. Dikiara, a first-time offender, admitted that she had embezzled more than \$1 million from her employer over an 11-year period. Ms. Dikiara gambled the embezzled funds and nearly \$300,000 in retirement savings at a casino, resulting in \$1.6 million in gambling losses. In imposing a below-guidelines sentence of 15 months' imprisonment, the court discussed the role of Ms. Dikiara's gambling addiction in her behavior. The court compared the central features of GD with those of substance addiction, stating that both disorders "diminish the addict's capacity to evaluate and control his or her behaviors" (Ref. 17, p 1032). The court also observed that the American Psychiatric Association had reclassified disordered gambling from an impulse control disorder to an addiction-related disorder in DSM-5 because of their clinical and biological similarities. Further, the court cited recent neurobiological research that slot machines (Ms. Dikiara's preferred mode of gambling) may be more addictive than other forms of gambling.

Courts have refused to grant a departure if the connection between disordered gambling and the criminal behavior is not well supported. In one case, the defendant was convicted of failing to pay taxes to the Internal Revenue Service (IRS).<sup>18</sup> She requested a downward departure at sentencing, claiming that her gambling problem prevented her from controlling her behavior. The sentencing judge declined her request and applied a punishment suggested under the sentencing guidelines. On appeal, the court reasoned that the guidelines would allow departure if a gambling disorder "contributed substantially to the commission of the offense" (Ref. 18, p 672). The defendant, however, showed no evidence of functional impairment that would have affected her ability to conform to the law or to pay her taxes. Therefore, the sentence was affirmed on appeal.

These cases illustrate unresolved questions about the extent to which individuals with GD are morally or legally responsible for criminal behavior associated with gambling. Although he did not address all of these questions, Stephen J. Morse, a legal scholar who analyzes problems of agency and criminal responsibility, proposed a system for categorizing and morally evaluating addiction-related crime that can be applied to behavioral addictions such as GD.<sup>19</sup> In the first class are behaviors that define the addiction

(e.g., seeking and using a substance). In the second class are crimes committed to support an addiction (e.g., theft to finance the behavior). In the third and final class are crimes that appear only indirectly related to an addiction (e.g., crimes committed to expand the power of a criminal organization). Morse's argument is that addicted individuals in the second and third categories may be motivated more by the profit or pleasure of a criminal lifestyle than by addiction itself and that the law should therefore hold almost all such defendants responsible for the crimes committed.

In GD, the relationship between illegal behavior and the putative behavioral addiction is also complex.<sup>20</sup> As stated by the court in *United States v. Grillo*, in which Mr. Grillo unsuccessfully raised gambling addiction as a means of reducing a sentence for mail theft and fraud, crimes may be committed for any number of motives unrelated to addictive cravings and urges.<sup>21</sup> In the case of problem gamblers with co-occurring ASPD, illegal behavior may be motivated by antisocial tendencies, with gambling urges playing a relatively minor role. Should the legal system treat crimes committed by this subgroup of problem gamblers differently? On the one hand, courts may be less sympathetic toward problem gamblers with ASPD if the forensic assessment provides evidence of potential future recidivism or dangerousness. On the other hand, ASPD (like GD) is associated with high scores on measures of impulsivity and sensation-seeking, suggesting that affected individuals could argue for a reduced sentence based on impaired impulse control.<sup>22</sup> In either case, forensic clinicians evaluating offenders with GD are advised to assess for co-occurring ASPD to identify those who are more (or less) likely to benefit from a mitigating factor.

### Kleptomania

Kleptomania is unique among the behavioral addictions. The diagnostic criteria for the disorder include "recurrent failure to resist impulses to steal objects that are not needed for personal use or for their monetary value" (Ref. 3, p 478). In other words, an illegal activity (theft) is a necessary criterion for a psychiatric diagnosis. Although some people may be diagnosed with GD even if they gamble only legitimately acquired wealth, those with kleptomania have by definition committed theft, whether or not they have ever been convicted of a crime.



People with kleptomania report intrusive thoughts and urges related to shoplifting (described as out of character, uncontrollable, or wrong) that interfere with their ability to concentrate at home and at work.<sup>23</sup> Individuals with the disorder typically feel guilt, remorse, or depression after the theft. Stolen items are usually unwanted or unneeded by the offender and may be hoarded, discarded, given away, or returned to the store. Suicide attempts related to feelings of shame over shoplifting or legal or personal problems resulting from shoplifting are common.<sup>24</sup> In addition to emotional distress, kleptomania often has legal consequences. Between 64 and 87 percent of patients with kleptomania have been arrested and 15 to 23 percent have been incarcerated after their crime.<sup>25</sup> Individuals with kleptomania appear to have low rates of co-occurring antisocial personality disorder, suggesting that stealing behavior in kleptomania is unlikely to be motivated by underlying sociopathy.<sup>26</sup>

Kleptomania has been unsuccessful as the basis of a not-guilty-by-reason of insanity (NGRI) defense, at least in the state of Maine. In a 2015 Maine Supreme Judicial Court case, the court considered whether the defendant's kleptomania diagnosis could present a defense to a theft charge.<sup>27,28</sup> After pleading guilty to all charges, the defendant subsequently moved to withdraw his pleas, stating that his kleptomania diagnosis raised reasonable doubt as to his intent to commit theft. The trial court denied the defendant's motion, stating that kleptomania is not a defense to theft under Maine law. The defendant was sentenced to five years' imprisonment. The Maine Supreme Judicial Court upheld the conviction, as Maine law established that a "compulsion" to commit a crime does not preclude acting with intent. Moreover, the Maine Legislature had repealed the volitional test for legal insanity in 1986, leaving the defense available only to those who lack rational understanding of the wrongfulness of their behavior. Therefore, a defendant who is unable to control an impulse to steal could not successfully raise an insanity defense. An NGRI plea based on kleptomania was also unsuccessful in Ohio.<sup>29</sup>

A defendant convicted of theft may raise the doctrine of diminished capacity.<sup>30</sup> Diminished capacity is a partial defense to criminal responsibility that allows a defendant to introduce evidence that he lacked the mental capacity to form the specific intent to commit a crime. In the case of theft, the specific

intent is to deprive the owner of possession of the property. In one case, a defendant convicted of bank embezzlement argued at sentencing that she had an obsessive-compulsive disorder similar to kleptomania and that she therefore had diminished capacity to control her actions, presumably making the embezzlement unpremeditated.<sup>31</sup> The district court noted that the defendant's offense involved multiple false accounting entries spanning several years, providing evidence of planned behavior. Accordingly, the court was unwilling to consider kleptomania as a mitigating factor in sentencing.

One court has been willing to mitigate a defendant's sentence because of kleptomania. In Tennessee, a defendant was convicted of stealing from a department store and sentenced to 11 months in jail.<sup>32</sup> On appeal, she argued that the sentence was excessive. The defendant admitted that she had two prior convictions for theft and that she had probably shoplifted 1000 or 1500 times in her life. The trial court used her history of criminal behavior as an enhancing factor and her kleptomania diagnosis as a mitigating factor. Taking into account the need to protect the public from crime along with the defendant's rehabilitation potential, the appellate court upheld the sentence but allowed her to serve it on probation. By contrast, the court in *People v. Meyers* viewed kleptomania negatively, comparing it with drug addiction and theft committed to support such an addiction.<sup>33</sup> The *Meyers* court noted that individuals who steal to support a drug addiction could also be said to be motivated by mental illness, but that such a diagnosis would be an insufficient reason to dismiss a criminal charge. In distinguishing a psychiatric illness from voluntary behavior that follows from the disorder, the court emphasized that causation is not necessarily compulsion, stating, "in a deterministic sense, all criminals commit the crimes they do because they 'must'" (Ref. 33, p 34).

Because kleptomania is diagnosed on the basis of recurrent criminal behavior, it could be used to establish an enhanced sentence.<sup>30</sup> In the Air Force Court of Criminal Appeals, a military service member convicted of larceny claimed ineffective assistance based on trial counsel's failure to present at sentencing evidence that he had kleptomania.<sup>34</sup> The court stated that if the service member had asserted that he had kleptomania, it would have highlighted uncharged misconduct, reflected poorly on his prospects for rehabilitation, and undermined the impact

of the character letters he had submitted. Therefore, evidence of kleptomania may not be mitigating if it is at odds with the defense strategy for sentencing.

Kleptomania presents a plausible claim for an NGRI defense under the volitional prong of the defense, at least among the criminal defendants who are most severely impaired. Many states, however, repealed volitional tests for legal insanity after the acquittal of John Hinckley. Control tests also raise difficult methodological and conceptual problems. After the Hinckley trial, the American Psychiatric Association stated “the line between an irresistible impulse and an impulse not resisted is probably no sharper than that between twilight and dusk” (Ref. 35, p 685). Over the more than three decades since Mr. Hinckley’s trial the mental health and legal systems have continued to search for objective assessments of a person’s capacity to control his behavior. The legal relevance of neuroimaging studies and experimental tasks measuring self-control, however, is currently limited by several fundamental problems.<sup>36</sup> First, the absence of large-scale datasets makes it difficult to compare an individual’s performance on experimental control tasks with population norms. Second, it is inherently challenging to make inferences about an individual person from group-level neurobiological data (referred to as the “group to individual” or “G2i” problem).<sup>36</sup> For example, neuroimaging studies in kleptomania show evidence of structural deficits in areas of the brain previously implicated in other impulsive or urge-driven behaviors,<sup>37</sup> but these findings may not accurately describe the brain structure of an individual defendant with kleptomania or permit reliable conclusions as to whether he lacks control over his shoplifting behavior. Third, experimental tasks measuring self-control lack ecological validity in that they appear to poorly approximate real-world stealing urges. Even if these methodological problems are solved, defining a “normal” level of self control, and the amount of control that is required for an actor to be held responsible, is ultimately a legal, moral, and political question.<sup>2</sup>

Behavioral criteria are likely to remain central to making determinations about criminal responsibility for the foreseeable future. Only a small proportion of theft is consistent with a kleptomania diagnosis. To distinguish people who steal due to kleptomania from other criminals, forensic examiners should determine the motivation to steal and evaluate the de-

fendant for the presence of antisocial characteristics and behaviors.<sup>30</sup> Once the diagnosis of kleptomania is made, volitional impairment can be assessed through a phenomenological account of the defendant’s distress at the time of the crime. In *Maine v. Giroux*, the defendant reported handcuffing himself to avoid stealing and considered using a Taser on himself when he felt urges to steal.<sup>27</sup> These extreme self-management behaviors suggest that kleptomania may undermine control capacities to the extent that some resulting criminal behavior could be considered involuntary. If so, some individuals with kleptomania may be successful in seeking excuse or mitigation in certain circumstances.

### Behavioral Addictions and the Law

The criminal courts’ response to behavioral addictions has long been ambivalent. In early Texas cases (1885, 1908), kleptomania is defined as an “irresistible impulse to steal” and “a species of insanity” constituting a complete defense to the crime of theft.<sup>38,39</sup> Later courts moved to set sharp limits on a defense they feared would be abused:

If chronic alcoholism is to be accepted as a defense to a charge of drunkenness . . . why not accept a plea of pyromania by an arsonist, or kleptomania by a thief, of nymphomania by a prostitute, or a similar plea of impulse and non-volitional action by the child molester? . . . This Pandora’s box had best be left alone for now” (Ref. 40, p 335).

A federal appellate court has added, “A person is not to be excused for criminally offending simply because he wanted to very, very badly” (Ref. 41, p 245). These statements suggest that at least some courts are more likely to view addiction-related criminal behavior as driven by moral weakness than by irresistible, involuntary urges.

Following the work of Stephen Morse, we think that the law should approach behavioral addiction-related criminal conduct using the same normative criteria that are used to evaluate any other behavior.<sup>2</sup> Broadly speaking, the law is fundamentally concerned with actions and mental states such as beliefs, desires, and plans. The law presupposes that people, including those with behavioral addictions, are moral agents who form and act on intentions. For instance, someone with an intense desire or craving to gamble may intend to steal money to help satisfy that desire. In the absence of very unusual circumstances, criminal offenders with behavioral addictions, such as the gambler just mentioned, are found

to act for intelligible reasons and therefore meet the *prima facie* requirements for criminal responsibility. Nevertheless, the law may decide as a normative matter to excuse an offender or provide mitigation at sentencing if the defendant lacked rationality or was incapable of controlling his behavior at the time of the offense. In the case of behavioral addictions, clinical evidence indicates that an exceedingly strong desire state (craving) may impair a defendant's rationality or subjectively experienced volition, at least at certain times. A patient with kleptomania told one of us (J.E.G.) that her irresistible urges to steal were so strong that she left a relative with dementia in a restaurant by herself so that she could go to a store and steal something. Likewise, a compulsive gambler reported that he stole his child's college fund for gambling despite his strong love for his son. Based on such a phenomenological account of defendants' thoughts, feelings, and behaviors at the time of the addiction-related criminal behavior, courts can determine on a case-by-case basis whether an individual offender with a behavioral addiction meets criteria for legal responsibility. In other words, some people with behavioral addictions deserve excuse or mitigation because concrete behavioral information shows that they lack sufficient rational or control capacities, not because they have gambling disorder or kleptomania (or another DSM-5 diagnosis), *per se*.

Recent years have seen a rapid expansion in our understanding of the neural correlates and pathophysiology of behavioral addictions. Rather than entailing sweeping conclusions about moral or legal responsibility, neurobiology will likely make modest contributions to the adjudication of behavioral addiction-related criminal cases. For example, better understanding of the role of personality dimensions (e.g., impulsivity and sensation-seeking) in behavioral addictions would be relevant to the legal determination of cognitive and control incapacities. Just as important, promising research into psychosocial and pharmacological treatments for gambling disorder and kleptomania may be useful in the rehabilitation of certain offenders. In one double-blind study of participants with kleptomania, the opioid antagonist naltrexone was found to reduce stealing urges and behavior significantly compared with placebo.<sup>42</sup> Cognitive-behavioral therapy (CBT) has also been reported as effective in treating kleptomania.<sup>23</sup>

The high financial and social costs associated with untreated behavioral addictions suggest that certain

offenders with these disorders should be diverted to court-supervised treatment programs in lieu of criminal prosecution and incarceration. The growing therapeutic jurisprudence movement has led to the establishment of specialized "problem-solving courts," such as drug courts, mental health courts, and even one gambling court,<sup>43</sup> that aim to treat the condition thought to underlie the criminal conduct. In certain cases, it may also be appropriate to divert offenders with kleptomania to problem-solving courts, potentially under the auspices of existing mental health courts or other therapeutic courts.

## Conclusion

Behavioral addictions are characterized by strong internal urges or desires that may undermine an individual's capacity for rationality or self-control. Behavioral addictions have been successfully used to mitigate criminal responsibility in cases where the defendant has clinically significant distress or impairment related to the disorder (e.g., severe financial problems), but not if the alleged disorder appears merely to furnish a motive or causal explanation for the illegal behavior. No court, to our knowledge, has yet considered whether kleptomania, which is defined by an illegal activity, should be analyzed differently from gambling disorder, in which the illegal behavior (e.g., embezzlement) is a result of (but not intrinsic to) the mental disorder.

Several promising pharmacological and psychosocial treatments for behavioral addictions, including gambling disorder and kleptomania, may lower the personal and social costs of these conditions and potentially reduce the frequency of illegal activity related to untreated illness. In some cases, diversion from the criminal justice system to court supervised treatment may be cost effective and in the interest of justice.

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