

4. No statement made by defendant during a court-ordered mental examination (whether the examination was with or without defendant's consent), no testimony by the expert based on that statement, and no fruit of that statement may be admitted against defendant in any criminal proceeding except on an issue respecting mental condition on which defendant has introduced testimony. Fed. R. Crim. P. 12.2(c).
 5. If defendant fails to provide timely notice to the government attorney of his or her intent to introduce expert testimony relating to an insanity defense, or if he or she fails to submit to an examination, the court may exclude the testimony of any expert witness offered by defendant upon the issue of defendant's mental condition at the time of the alleged criminal offense. Fed. R. Crim. P. 12.2(d).
- D. Competency after acquittal by reason of insanity (18 U.S.C. § 4243):
- If a defendant is found not guilty only by reason of insanity, he or she shall be committed to a suitable facility until such time as he or she is eligible for release under 18 U.S.C. § 4243(f). The provisions of § 4243(e) relating to the confinement and release of a defendant acquitted by reason of insanity are detailed and complex. Those provisions must be followed with meticulous care. Any hearing must comply with the provisions of § 4247(d). Any report of a psychiatric or psychological examination must comply with the requirements of § 4247(c).
- E. Competency to be sentenced:
- Because he or she has the right of allocution at sentencing and must be able to understand the nature of the proceedings, defendant cannot be sentenced if he or she does not have the mental capacity to exercise the right of allocution or to understand the nature of the proceedings.
- If there is any question as to defendant's mental competency to be sentenced, an 18 U.S.C. § 4241 examination should be ordered and a hearing held before sentencing. The

NOTE

Serious due process and compulsory process issues may arise if the court excludes expert testimony concerning an insanity defense when a continuance of the trial would be feasible. See *Taliaferro v. Maryland*, 456 A.2d 29, cert. denied, 461 U.S. 948 (1983) (White, J., dissenting).