

***Seizure Disorders Facts and Issues (SDFI)***

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Landover, MD

## **Criminal Justice: Arrest for Seizure-Related Behavior**

Seizures are caused by a sudden malfunction in the electrical system of the brain, which has the effect of swamping part or all of the brain with an electrical overload. This in turn produces temporary changes in behavior and/or consciousness. Seizures may be convulsive or non-convulsive.

A non-convulsive seizure with automatic behavior is called a complex-partial seizure, or a psychomotor or temporal lobe seizure. When a person has this type of seizure, he appears to be in a dazed condition, may mumble or pick at clothing, may pick up an object and put it down again, may walk aimlessly, or even run in apparent fear. During these episodes the person is on "automatic pilot" so far as his actions are concerned, is totally unaware of what is happening, and, when consciousness returns, will have no memory of what occurred during the seizure. After a few minutes, natural systems in the brain subdue the electrical overload which caused the seizure, and consciousness returns. The person will become responsive, but may remain confused for as much as half an hour to an hour.

A major problem in the public handling of psychomotor (complex partial) seizures is recognition of the symptoms. The unusual behavior associated with complex partial seizures is often misinterpreted as stemming from intoxication. A cardinal rule in the handling of any seizure is that the person should not be restrained in any way unless it is essential for his personal safety or the safety of others. The person in the midst of a complex partial seizure may react violently to the restraint while unaware he is doing so. During the seizure the person is in a confused mental state, but is usually amenable to suggestions and comments made in a pleasant and friendly manner.

While in a semi-conscious or unconscious state, an individual with complex-partial seizures may commit an undirected act which may be perceived as "criminal," e.g., shoplifting, disorderly conduct, etc., depending upon the characteristics of his seizure disorder. (People with complex partial seizures may exhibit certain automatic behaviors during their seizures, such as, fiddling with clothing, buttons, grabbing the arm of someone nearby, wandering, lipsmacking, muttering, opening or rattling doors. These characteristics are usually stereotypical, that is, the person does them every time they have the seizure, and the individual usually has impaired consciousness so that they cannot control the movements or behaviors). Whether an individual's alleged criminal behavior was seizure-related is a question that can best be answered by the neurologist who is most familiar with that individual's seizure characteristics. Witnesses' reports of his exact behavior (as well as descriptions of his general behavior during a seizure) will also be very helpful in determining whether he was in the midst of a seizure. An expert familiar with the individual and his seizures will be crucial to defend against any criminal charges.

Note that some criminal defendants have found it useful to present testimony or a written letter from their treating neurologist that describes their seizure history and pattern, particularly if they typically display behavior during a seizure similar to that for which they were criminally charged. Moreover, if such documentation does not already exist, it might be useful to obtain a closed-circuit video recording of the individual actually having a seizure; during this process, an EEG would be used to confirm the seizure occurrence and the video would document the behavior pattern.

There have been many instances in which persons having seizures have been arrested and charged with such crimes as drunk and disorderly conduct, resisting arrest, unlawful entry, even assault on a police officer. The Epilepsy Foundation brought this serious problem to the attention of the House of Representatives Judiciary Committee during hearings on the Americans with Disabilities Act (ADA). In its final report, the Committee stated:

*In order to comply with the non-discrimination mandate, it is often necessary to provide training to public employees about disability. For example, persons who have epilepsy, and a variety of other disabilities, are frequently inappropriately arrested and*

*jailed because police officers have not received proper training in the recognition of and aid for seizures. Often, after being arrested, they are deprived of medications while in jail, resulting in further seizures. Such discriminatory treatment based on disability can be avoided by proper training.*

The possible relationship between an epileptic seizure and criminal behavior beyond the misdemeanor level is extremely controversial. It is generally agreed among neurologists and epileptologists that well-organized, purposeful, complicated, or goal-directed behavior is highly unlikely during a seizure. In order to determine whether an individual has committed a purposeful crime during a seizure, numerous variables must be considered. These include whether the individual has epilepsy, the type of seizure the individual has, the type of behaviors the individual typically exhibits during a seizure, the type of behavior the individual exhibits when not having seizures, and, the most difficult to establish, a connection between the seizure disorder and its behavior and the behavior taking place at the time of the crime. The opinion of the individual's neurologist, who is familiar with his seizure pattern and behavior, will be very important in making this determination.

A comprehensive legal article on the topic is "Automatism or Unconsciousness as Defense to Criminal Charge," Eunice A. Eichelberger, J.D., 27 A.L.R.4th 1067, © 1984 The Lawyers Co-operative Publishing Company, © 2005 West Group - Updated January 2005. As stated in the article, it "collects and analyzes the criminal cases in which the courts have considered the defense of unconsciousness or automatism or other defense based on the defendant's claim that at the time of the crime he was unconscious or in an automatistic state or was subject to a physical state, such as an epileptic seizure, which ordinarily entails a loss, however temporary, of consciousness." For additional legal resources, see Weinberg, C.D., "Epilepsy and the Alternatives for a Criminal Defense," 27 Case W. L. Rev. 771 (1977).

The following book contains chapters on an alleged connection between various neurological disorders, including epilepsy, and violent behaviors: Riley, T. and Roy, A., Pseudoseizures, Williams & Wilkins, Baltimore (1982). Other articles that may be of interest include: Stevens, J. R. & Hermann, B., "Temporal Lobe Epilepsy, Psychopathology and Violence: The State of the Evidence, Neurology, Vol. 31, pages

1127-1132 (September 1981); Hermann, B., et al., "Interictal Psychopathology in Patients with Ictal Fear: A Quantitative Investigation," Neurology, Vol. 32, pages 7-11 (January 1982); Letters to the Editor, Neurology, Vol. 32, pages 574-575 (May 1982); Treiman, D. & Delgado-Escueta, A., "Violence and Epilepsy - A Critical Review," Recent Advances in Epilepsy, Churchill Livingstone (1983); Treiman, D., "Epilepsy and Violence: Medical and Legal Issues," Epilepsia, Vol. 27 (Suppl. 2) S77-S104 (1986); Perlin, "Unpacking the Myths: The Symbolism Mythology of Insanity Defense Jurisprudence," 40 Case Western L. Rev. 599 (1989-1990); Corrado, "Automatism and the Theory of Action," 39 Emory L.J. 1191 (1990).

The Epilepsy Foundation's Jeanne A. Carpenter Epilepsy Legal Defense Fund may have resources available that could be helpful to defense attorneys in responding to criminal charges. If you have an attorney, he may contact the Fund (at 301-459-3700 or [legalrights@efa.org](mailto:legalrights@efa.org)) for assistance. More information about the Fund is available at [www.epilepsylegal.org](http://www.epilepsylegal.org). In addition, your attorney can contact the local affiliate of the Epilepsy Foundation, which may be able to assist in locating a local expert if your own physician is unable to provide the necessary information regarding your condition. Generally speaking, locally-based Epilepsy Foundations provide information and referral services tailored to their communities; sponsor professional education seminars for allied health professionals and educators; mobilize individuals to serve as advocates or expert consultants on medical issues; and participate in public education campaigns. The contact information for the affiliate serving your area can be found on our Web site: <http://www.epilepsyfoundation.org/aboutus/AffiliateLookup.cfm>

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