

ASSEMBLY, No. 450

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblymen DiGAETANO, KELLY, Assemblywoman J. Smith, Assemblymen Roma, O'Toole, Weingarten, Azzolina, DeSopo, Assemblywoman Allen, Assemblymen T. Smith, Lance, Assemblywoman Heck, Assemblyman Zecker, Assemblywoman Crecco, Assemblymen Malone, Cottrell, Gibson, Blee, Corodemus, LeFevre, Geist and Asselta

1 AN ACT concerning the civil commitment of certain criminal
2 defendants and amending various sections of Title 2C of the New
3 Jersey Statutes and Title 30 of the Revised Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. N.J.S.2C:4-6 is amended to read as follows:

9 2C:4-6. Determination of fitness to proceed; Effect of Finding of
10 Unfitness; Proceedings if Fitness is Regained; Post-Commitment
11 Hearing. a. When the issue of the defendant's fitness to proceed is
12 raised, the issue shall be determined by the court. If neither the
13 prosecutor nor counsel for the defendant contests the finding of the
14 report filed pursuant to section 2C:4-5, the court may make the
15 determination on the basis of such report. If the finding is contested
16 or if there is no report, the court shall hold a hearing on the issue. If
17 the report is received in evidence upon such hearing, either party shall
18 have the right to summon and examine the psychiatrists who joined in
19 the report and to offer evidence upon the issue.

20 b. If the court determines that the defendant lacks fitness to
21 proceed, the proceeding against him shall be suspended, except as
22 provided in subsection c. of this section. At this time, the court may
23 commit him to the custody of the Commissioner of Human Services
24 to be placed in an appropriate institution if it is found that the
25 defendant is so dangerous to himself or others as to require
26 institutionalization, or it shall proceed to determine whether placement
27 in an out-patient setting or release is appropriate; provided, however,
28 that no commitment to any institution shall be in excess of such period
29 of time during which it can be determined whether it is substantially

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 probable that the defendant could regain his competence within the
2 foreseeable future.

3 c. If the defendant has not regained his fitness to proceed within
4 [such time as the court may deem adequate from the time that it was
5 determined that the defendant lacked such fitness, the court shall after
6 a hearing, if one is requested, dismiss the charges and either order the
7 defendant discharged, or, subject to law governing civil commitment,
8 order the defendant committed to an appropriate institution] three
9 months, the court shall hold a hearing on the issue of whether the
10 charges against him shall be dismissed with prejudice or held in
11 abeyance.

12 The hearing shall be held only upon notice to the prosecutor and
13 with an opportunity for the prosecutor to be heard. When the charges
14 are not dismissed, each defendant's case shall be specifically reviewed
15 by the court at 6-month intervals upon notice to the prosecutor and
16 with an opportunity for the prosecutor to be heard until an order is
17 made by the court that the defendant stand trial or that the charges be
18 dismissed.

19 There shall be a presumption that charges against a defendant who
20 is not competent to proceed shall be held in abeyance. The
21 presumption can be overcome only if the court determines, using the
22 factors set forth in this subsection, that continuing the criminal
23 prosecution under the particular circumstances of the case would
24 constitute a constitutionally significant injury to the defendant
25 attributable to undue delay in being brought to trial.

26 In determining whether the charges shall be held in abeyance or
27 dismissed, the court shall weigh the following factors: the defendant's
28 prospects for regaining competency; the period of time during which
29 the defendant has remained incompetent; the nature and extent of the
30 defendant's institutionalization; the nature and gravity of the crimes
31 charged; the effects of delay on the prosecution; the effects of delay
32 on the defendant, including any likelihood of prejudice to the
33 defendant in the trial arising out of the delay; and the public interest in
34 prosecuting the charges.

35 d. When the court, on its own motion or upon application of the
36 commissioner, his designee or either party, determines after a hearing,
37 if a hearing is requested, that the defendant has regained fitness to
38 proceed, the proceedings shall be resumed.

39 e. [When the court, on its own motion or upon application to the
40 commissioner, his designee, or either party, determines after a hearing,
41 if a hearing is requested, that the defendant has not regained fitness to
42 proceed, the court may order the institution of civil commitment
43 proceedings, or, if it is found that the defendant may be paroled or
44 released on condition without danger to himself or to others, the court
45 may so order. If it is determined that it is not substantially probable
46 that the defendant will regain his competence in the foreseeable future,

1 the court may dismiss the charge and either order the defendant to be
2 discharged, or, subject to the law governing the civil commitment,
3 order the defendant committed to an appropriate institution.] (Deleted
4 by amendment, P.L. , c. (now pending before the Legislature as
5 this bill).

6 f. The fact that the defendant is unfit to proceed does not preclude
7 determination of any legal objection to the prosecution which is
8 susceptible of fair determination prior to trial and without the
9 personal participation of the defendant.

10 (cf: P.L.1979, c.178, s.13B)

11
12 2. N.J.S.2C:4-8 is amended to read as follows:

13 2C:4-8. Commitment of a Person by Reason of Insanity. a. After
14 acquittal by reason of insanity, the court shall order that the defendant
15 undergo a psychiatric examination by a psychiatrist of the prosecutor's
16 choice. If the examination cannot take place because of the
17 unwillingness of the defendant to participate, the court shall proceed
18 as in section 2C:4-5c. The defendant, pursuant to this section, may
19 also be examined by a psychiatrist of his own choice.

20 b. The court shall dispose of the defendant in the following
21 manner:

22 (1) If the court finds that the defendant may be released without
23 danger to the community or himself without supervision, the court
24 shall so release the defendant; or

25 (2) If the court finds that the defendant may be released without
26 danger to the community or to himself under supervision or under
27 conditions, the court shall so order; or

28 (3) If the court finds that the defendant cannot be released with or
29 without supervision or conditions without posing a danger to the
30 community or to himself, it shall commit the defendant to a mental
31 health facility approved for this purpose by the Commissioner of
32 Human Services to be treated as a person civilly committed. In all
33 proceedings conducted pursuant to this section and pursuant to section
34 N.J.S.2C:4-6 concerning a defendant who lacks the fitness to proceed,
35 including any periodic review proceeding, the prosecuting attorney
36 shall have the right to appear and be heard. The defendant's
37 continued commitment, under the law governing civil commitment,
38 shall be established by a preponderance of the evidence, during the
39 maximum period of imprisonment that could have been imposed, as
40 an ordinary term of imprisonment, for any charge on which the
41 defendant has been acquitted by reason of insanity. Expiration of that
42 maximum period of imprisonment shall be calculated by crediting the
43 defendant with any time spent in confinement for the charge or
44 charges on which the defendant has been acquitted by reason of
45 insanity.

46 c. No person committed under this section shall be confined within

1 any penal or correctional institution or any part thereof.
2 (cf: P.L.1981, c.290, s.9)

3

4 3. N.J.S.2C:4-9 is amended to read as follows:

5 2C:4-9. Release of Persons Committed by Reason of Insanity.

6 a. If a person has been committed pursuant to this [chapter]
7 section or section 2C:4-6 and if the commissioner, or his designee, or
8 the superintendent of the institution to which the person has been
9 committed, is of the view that a person committed to his custody,
10 pursuant to section 2C:4-8 or section 2C:4-6, may be discharged or
11 released on condition without danger to himself or to others, or that
12 he may be transferred to a less restrictive setting for treatment, the
13 commissioner or superintendent shall make application for the
14 discharge or release of such person in a report to the court by which
15 such person was committed and shall transmit a copy of such
16 application and report to the prosecutor, the court, and defense
17 counsel. The court may, in its discretion, appoint at least two
18 qualified psychiatrists, neither of whom may be on the staff of the
19 hospital to which the defendant had been committed, to examine such
20 person and to report within 30 days, or such longer period as the
21 court determines to be necessary for the purpose, their opinion as to
22 his mental condition.

23 b. [If the court is satisfied by the report filed pursuant to
24 subsection a. of this section and such testimony of the reporting
25 psychiatrists as the court deems necessary that the committed person
26 may be discharged, released on condition without danger to himself
27 or others, or treated as in civil commitment the court shall order his
28 discharge, his release on such conditions as the court determines to be
29 necessary or his transfer. If the court is not so satisfied, it shall
30 promptly order a hearing to determine whether such person may safely
31 be discharged, released or transferred.] The court shall hold a hearing
32 to determine whether the committed person may be safely discharged,
33 released on condition without danger to himself or others, or treated
34 as in civil commitment. The hearing shall be held upon notice to the
35 prosecutor and with the prosecutor's opportunity to be heard. Any
36 such hearing shall be deemed a civil proceeding. According to the
37 determination of the court upon the hearing, the court shall proceed
38 as in section 2C:4-8b. (1), (2) or (3).

39 c. A committed person may make application for his discharge or
40 release to the court by which he was committed, and the procedure to
41 be followed upon such application shall be the same as that prescribed
42 above in the case of an application by the commissioner.

43 d. Each defendant's case shall be specifically reviewed as provided
44 by the law governing civil commitment.

45 (cf: P.L.1979, c.178, s.16)

1 4. Section 15 of P.L.1987, c.116 (C.30:4-27.15) is amended to
2 read as follows:

3 15. a. If the court finds by clear and convincing evidence that the
4 patient needs continued involuntary commitment, it shall issue an order
5 authorizing the involuntary commitment of the patient and shall
6 schedule a subsequent court hearing in the event the patient is not
7 administratively discharged pursuant to section 17 of P.L.1987, c.116
8 (C.30:4-27.17) prior thereto.

9 b. If the court finds that the patient does not need continued
10 involuntary commitment, the court shall so order. A patient who is
11 serving a term of incarceration shall be returned to the appropriate
12 State, county or local authority to complete service of the term of
13 incarceration imposed until released in accordance with law, and any
14 other patient shall be discharged by the facility within 48 hours of the
15 court's verbal order or by the end of the next working day, whichever
16 is longer, with a discharge plan prepared pursuant to section 18 of
17 P.L.1987, c.116 (C.30:4-27.18).

18 c. (1) The court may discharge the patient subject to conditions,
19 if the court finds that the person does not need involuntary or
20 continued involuntary commitment and the court finds:

21 (a) that the patient's history indicates a high risk of
22 rehospitalization because of the patient's failure to comply with
23 discharge plans; or

24 (b) that there is substantial likelihood that by reason of mental
25 illness the patient will be dangerous to himself, others or property if
26 the patient does not receive other appropriate and available services
27 that render involuntary commitment unnecessary.

28 (2) Conditions imposed pursuant to this section shall include those
29 recommended by the facility and mental health agency staff and
30 developed with the participation of the patient. Conditions imposed on
31 the patient shall be specific and their duration shall not exceed 90 days
32 unless the court determines, in a case in which the Attorney General
33 or a county prosecutor participated, that the conditions should be
34 imposed for a longer period. If the court imposes conditions for a
35 period exceeding six months, the court shall provide for a review
36 hearing on a date the court deems appropriate but in no event later
37 than six months from the date of the order. The review hearing shall
38 be conducted in the manner provided in this section, and the court may
39 impose any order authorized pursuant to this section.

40 (3) The designated mental health agency staff person shall notify
41 the court if the patient fails to meet the conditions of the discharge
42 plan, and the court shall issue an order directing that the person be
43 taken to a screening service for an assessment. The court shall
44 determine, in conjunction with the findings of a screening service, if
45 the patient needs to be rehospitalized and, if so, the patient shall be
46 returned to the facility. The court shall hold a hearing within 20 days

1 of the day the patient was returned to the facility to determine if the
2 order of conditional discharge should be vacated.

3 d. Notwithstanding subsection a. of this section, or any provision
4 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
5 30:4-27.18), no person committed while serving a term of
6 incarceration shall be discharged by the court or administratively
7 discharged prior to the date on which the person's maximum term
8 would have expired had he not been committed. If the person is no
9 longer in need of involuntary commitment, the person shall be returned
10 to the appropriate State, county or local authority to complete service
11 of the term of incarceration imposed until released in accordance with
12 law, and the person shall be given day for day credit for all time during
13 which the person was committed.

14 e. Notwithstanding subsection a. of this section, or any provision
15 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
16 30:4-27.18), no person committed pursuant to N.J.S.2C:4-8
17 concerning acquittal of a criminal charge by reason of insanity or
18 pursuant to N.J.S.2C:4-6 concerning lack of mental competence to
19 stand trial shall be discharged by the court or administratively
20 discharged unless the prosecuting attorney in the case receives prior
21 notice and an opportunity to be heard.

22 (cf: P.L.1994, c.134, s.9)

23

24 5. Section 17 of P.L.1987, c.116 (C.30:4-27.17) is amended to
25 read as follows:

26 17. a. The treatment team at a short-term care or psychiatric
27 facility or special psychiatric hospital shall, subject to the limitations
28 set forth in [subsection] subsections b. and c. of this section,
29 administratively discharge a patient from involuntary commitment
30 status if the treatment team determines that the patient no longer needs
31 involuntary commitment. If a discharge plan has not been developed
32 pursuant to section 18 of this act, it shall be developed forthwith.

33 b. If the patient is confined pursuant to an order entered under
34 section 15 of P.L.1987, c.116 (C.30:4-27.15) in a case in which the
35 Attorney General or a county prosecutor participated, the treatment
36 team shall, no less than 10 days prior to the proposed date of
37 administrative discharge, provide written notice to the committing
38 court and to the person or persons who presented the case for
39 involuntary commitment. If, within five days of receipt of such notice,
40 a person who presented the case for commitment files a request for a
41 hearing on the issue of continuing need for commitment and serves
42 notice of that request, in accordance with the provisions of section 13
43 of P.L.1987, c.116 (C.30:4-27.13), the treatment team shall delay the
44 administrative discharge and the court shall schedule a hearing on the
45 issue. The hearing shall be conducted in the manner provided in
46 section 15 of P.L.1987, c.116 (C.30:4-27.15).

1 constitute a constitutionally significant injury to the defendant
2 attributable to undue delay in being brought to trial.

3 The bill provides that the factors to be weighed by the court in
4 making this determination include the defendant's prospects for
5 regaining competency; the period of time during which the defendant
6 has remained incompetent; the nature and extent of the defendant's
7 institutionalization; the nature and gravity of the crimes charged; the
8 effects of delay on the prosecution; the effects of delay on the
9 defendant, including any likelihood of prejudice to the defendant in the
10 trial arising out of the delay; and the public interest in prosecuting the
11 charges. Following this determination, the court would be required
12 to hold hearings, with notice to the prosecutor, at six-month intervals,
13 on the issue of the disposition of the pending charges.

14 The Jeffrey report also noted that defendants who are committed to
15 psychiatric institutions on grounds of incompetence to stand trial have
16 a somewhat unclear status. According to the report, mental health
17 professionals working in the institutions are not always aware of the
18 criminal charges against these persons and prosecutors are not always
19 aware of the procedures used in the institutions. Consequently, these
20 defendants may end up administratively discharged from confinement
21 in the psychiatric institutions without input from the criminal justice
22 system.

23 This bill would clarify the roles of prosecutors and mental health
24 professionals with regard to these defendants. The bill requires that
25 prosecutors be notified prior to the proposed release of these persons
26 from confinement in the institutions and establishes standards and
27 procedures to be followed to insure adequate communication between
28 criminal justice and mental health professionals.

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33 Clarifies procedures used in civil commitment of certain criminal
34 defendants.