

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 450 and 686

STATE OF NEW JERSEY

ADOPTED MAY 20, 1996

Sponsored by Assemblymen DiGAETANO, KELLY, ZISA
Assemblywoman ALLEN and Assemblyman LeFEVRE

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 P.L.1987, c.116.

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
30 probable that the defendant could regain his competence within the
31 foreseeable future.

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

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

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

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

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

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

1 order the defendant committed to an appropriate institution.] (Deleted
2 by amendment, P.L. , c. (now pending before the Legislature as
3 this bill).

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

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

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

11 2C:4-8. Commitment of a Person by Reason of Insanity. a. After
12 acquittal by reason of insanity, the court shall order that the defendant
13 undergo a psychiatric examination by a psychiatrist of the prosecutor's
14 choice. If the examination cannot take place because of the
15 unwillingness of the defendant to participate, the court shall proceed
16 as in section 2C:4-5c. The defendant, pursuant to this section, may
17 also be examined by a psychiatrist of his own choice.

18 b. The court shall dispose of the defendant in the following
19 manner:

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

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

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

44 c. No person committed under this section shall be confined within
45 any penal or correctional institution or any part thereof.

46 (cf: P.L.1981, c.290, s.9)

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

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

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

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

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

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

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

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

46 15. a. If the court finds by clear and convincing evidence that the

1 patient needs continued involuntary commitment, it shall issue an order
2 authorizing the involuntary commitment of the patient and shall
3 schedule a subsequent court hearing in the event the patient is not
4 administratively discharged pursuant to section 17 of P.L.1987, c.116
5 (C.30:4-27.17) prior thereto.

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

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

18 (a) that the patient's history indicates a high risk of
19 rehospitalization because of the patient's failure to comply with
20 discharge plans; or

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

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

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

46 d. Notwithstanding subsection a. of this section, or any provision

1 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
2 30:4-27.18), no person committed while serving a term of
3 incarceration shall be discharged by the court or administratively
4 discharged prior to the date on which the person's maximum term
5 would have expired had he not been committed. If the person is no
6 longer in need of involuntary commitment, the person shall be returned
7 to the appropriate State, county or local authority to complete service
8 of the term of incarceration imposed until released in accordance with
9 law, and the person shall be given day for day credit for all time during
10 which the person was committed.

11 e. Notwithstanding subsection a. of this section, or any provision
12 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
13 30:4-27.18), no person committed pursuant to N.J.S.2C:4-8
14 concerning acquittal of a criminal charge by reason of insanity or
15 pursuant to N.J.S.2C:4-6 concerning lack of mental competence to
16 stand trial shall be discharged by the court or administratively
17 discharged unless the prosecuting attorney in the case receives prior
18 notice and an opportunity to be heard.

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

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

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

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

44 c. If the patient is confined pursuant to an order entered under
45 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
46 insanity or under N.J.S.2C:4-6 concerning lack of mental competence

1 to stand trial, the treatment team shall, no less than 10 days prior to
2 the proposed date of administrative discharge, provide written notice
3 to the committing court and to the prosecutor. If, within five days of
4 receipt of such notice, the prosecutor files a request for a hearing on
5 the issue of continuing need for commitment and serves notice of that
6 request, in accordance with the provisions of section 13 of P.L.1987,
7 c.116 (C.30:4-27.13), the treatment team shall delay the administrative
8 discharge and the court shall schedule a hearing on the issue. The
9 hearing shall be conducted in the manner provided in section 15 of
10 P.L.1987, c.116 (C.30:4-27.15).

11 (cf: P.L.1994, c.134, s.10)

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13 6. This act shall take effect immediately.

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16

17

18 Clarifies procedures used in civil commitment of certain criminal
19 defendants.