

[Passed Both Houses]

[Second Reprint]

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 489 and 685

STATE OF NEW JERSEY

ADOPTED MAY 20, 1996

Sponsored by Assemblymen WEINGARTEN, O'TOOLE, ZISA,
Assemblywoman J.Smith, Assemblymen Roma, DiGaetano,
Azzolina, DeSopo, Asselta, Blee, T.Smith, Corodemus, Lance,
Geist, Zecker, Assemblywomen Crecco, Heck, Assemblymen
Malone, Cottrell, Gibson, Assemblywoman Allen,
Assemblymen LeFevre and Kelly

1 AN ACT concerning preparole and presentence reports and amending
2 and supplementing ² P.L.1979, c.441 and N.J.S.2C:44-6.

3

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

6

7 1. Section 10 of P.L.1979, c.441 (C.30:4-123.54) is amended to
8 read as follows:

9 10. a. At least 120 days but not more than 180 days prior to the
10 parole eligibility date of each adult inmate, a report concerning the
11 inmate shall be filed with the appropriate board panel, by the staff
12 members designated by the superintendent or other chief executive
13 officer of the institution in which the inmate is held.

14 b. (1) The report filed pursuant to subsection a. shall contain
15 preincarceration records of the inmate, including any history of civil
16 commitment ¹[or other], any¹ disposition which arose out of any
17 charges suspended pursuant to N.J.S.2C:4-6 including records of the
18 disposition of those charges and any acquittals by reason of insanity
19 pursuant to N.J.S.2C:4-1, state the conduct of the inmate during the
20 current period of confinement, include a complete report on the

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Assembly AAP committee amendments adopted June 20, 1996.

² Senate SJU committee amendments adopted June 5, 1997.

1 inmate's social[,] and physical [and mental] condition, ¹[include a
2 complete psychiatric evaluation of the inmate,]¹ include an
3 investigation by the Bureau of Parole of the inmate's parole plans, and
4 present information bearing upon the likelihood that the inmate will
5 commit a crime under the laws of this State if released on parole.
6 ¹The report shall also include a complete² [psychiatric]psychological²
7 evaluation of the inmate in any case in which the inmate was convicted
8 of a first or second degree crime involving violence and:

9 (1) the inmate has a prior acquittal by reason of insanity pursuant
10 to N.J.S.2C:4-1 or had charges suspended pursuant to N.J.S.2C:4-6;
11 or

12 (2) the inmate has a prior conviction for murder pursuant to
13 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant to
14 N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1, endangering the
15 welfare of a child which would constitute a crime of the second degree
16 pursuant to N.J.S.2C:24-4, ²[and]or² stalking which would constitute
17 a crime of the third degree pursuant to ²[N.J.S.2C:24-4] P.L.1992,
18 c.209 (C.2C:12-10) ²; or

19 (3) the inmate has a prior diagnosis of psychosis.

20 The inmate shall disclose any information concerning any history
21 of civil commitment.¹

22 (2) At the time of sentencing, the prosecutor shall notify any
23 victim injured as a result of a crime of the first or second degree or the
24 nearest relative of a murder victim of the opportunity to present a
25 statement for the parole report to be considered at the parole hearing
26 or to testify to the parole board concerning his harm at the time of the
27 parole hearing. Each victim or relative shall be responsible for
28 notifying the board of his intention to submit such a statement and to
29 provide an appropriate mailing address.

30 The report may include a statement concerning the continuing
31 nature and extent of any physical harm or psychological or emotional
32 harm or trauma suffered by the victim, the extent of any loss of
33 earnings or ability to work suffered by the victim and the continuing
34 effect of the crime upon the victim's family. At the time public notice
35 is given that an inmate is being considered for parole pursuant to this
36 section, the board shall also notify any victim or nearest relative who
37 has previously contacted the board of the availability to provide a
38 statement for inclusion in the parole report or to present testimony at
39 the parole hearing.

40 The board shall notify such person at his last known mailing
41 address.

42 c. A copy of the report filed pursuant to subsection a. of this
43 section, excepting those documents which have been classified as
44 confidential pursuant to rules and regulations of the board or the
45 Department of Corrections, shall be served on the inmate at the time

1 it is filed with the board panel. The inmate may file with the board
2 panel a written statement regarding the report, but shall do so within
3 105 days prior to the primary parole eligibility date.

4 d. Upon receipt of the public notice pursuant to section 1 of
5 P.L.1979, c.441 (C.30:4-123.45), a county prosecutor may request
6 from the parole board a copy of the report on any adult inmate
7 prepared pursuant to subsection a. of this section, which shall be
8 expeditiously forwarded to the county prosecutor by the parole board
9 by mail, courier, or other means of delivery. Upon receipt of the
10 report, the prosecutor has 10 working days to review the report and
11 notify the parole board of the prosecutor's comments, if any, or notify
12 the parole board of the prosecutor's intent to provide comments. If
13 the county prosecutor does not provide comments or notify the parole
14 board of the prosecutor's intent to provide comments within the 10
15 working days, the parole board may presume that the prosecutor does
16 not wish to provide comments and may proceed with the parole
17 consideration. Any comments provided by a county prosecutor shall
18 be delivered to the parole board by the same method by which the
19 county prosecutor received the report. The confidentiality of the
20 contents in a report which are classified as confidential shall be
21 maintained and shall not be disclosed to any person who is not
22 authorized to receive or review a copy of the report containing the
23 confidential information.

24 e. Any provision of this section to the contrary notwithstanding,
25 the board shall by rule or regulation modify the scope of the required
26 reports and time periods for rendering such reports with reference to
27 county penal institutions.

28 (cf: P.L.1985, c.44, s.2)

29

30 2. N.J.S.2C:44-6 is amended to read as follows:

31 2C:44-6. Procedure on Sentence; Presentence Investigation
32 and Report.

33 a. The court shall not impose sentence without first ordering a
34 presentence investigation of the defendant and according due
35 consideration to a written report of such investigation when required
36 by the Rules of Court. The court may order a presentence
37 investigation in any other case.

38 b. The presentence investigation shall include an analysis of the
39 circumstances attending the commission of the offense, the defendant's
40 history of delinquency or criminality, family situation, financial
41 resources, including whether or not the defendant is an enrollee or
42 covered person under a health insurance contract, policy or plan,
43 debts, including any amount owed for a fine, assessment or restitution
44 ordered in accordance with the provisions of Title 2C, employment
45 history, personal habits, the disposition of any charge made against any

1 codefendants [and may include a report on his physical and mental
2 condition], the defendant's history of civil commitment ¹[or other],
3 any¹ disposition ¹[if any,]¹ which arose out of charges suspended
4 pursuant to N.J.S.2C:4-6 including the records of the disposition of
5 those charges and any acquittal by reason of insanity pursuant to
6 N.J.S.2C:4-1, and any other matters that the probation officer deems
7 relevant or the court directs to be included. ¹The defendant shall
8 disclose any information concerning any history of civil commitment.¹
9 The report shall also include a medical history of the defendant and a
10 complete ²[psychiatric] psychological² evaluation of the defendant ¹in
11 any case in which the defendant is being sentenced for a first or second
12 degree crime involving violence and:

13 (1) the defendant has a prior acquittal by reason of insanity
14 pursuant to N.J.S.2C:4-1 or had charges suspended pursuant to
15 N.J.S.2C:4-6; or

16 (2) the defendant has a prior conviction for murder pursuant to
17 N.J.S.2C:11-3, aggravated sexual assault or sexual assault pursuant to
18 N.J.S.2C:14-2, kidnapping pursuant to N.J.S.2C:13-1, endangering the
19 welfare of a child which would constitute a crime of the second degree
20 pursuant to N.J.S.2C:24-4, ²[and]or² stalking which would constitute
21 a crime of the third degree pursuant to ²[N.J.S.2C:24-4]P.L.1992,
22 c.209 (C.2C:12-10)²; or

23 (3) the defendant has a prior diagnosis of psychosis.

24 The court, in its discretion and considering all the appropriate
25 circumstances, may waive the medical history and ²[psychiatric]
26 psychological² examination in any case in which a term of
27 imprisonment ²[includes] including² a period of parole ineligibility is
28 imposed.¹ In any case involving a conviction of N.J.S.2C:24-4,
29 endangering the welfare of a child; N.J.S.2C:18-3, criminal trespass,
30 where the trespass was committed in a school building or on school
31 property; section 1 of P.L.1993, c.291 (C.2C:13-6), attempting to lure
32 or entice a child with purpose to commit a criminal offense; ²[section
33 1 of P.L.1992, c.209 (C.2C:12-10), stalking;] section 1 of P.L.1992,
34 c.209 (C.2C:12-10), stalking²; or N.J.S.2C:13-1, kidnapping, where
35 the victim of the offense is a child under the age of 18, the
36 investigation shall include a report on the defendant's mental condition
37 [unless the court directs otherwise] ²[In any case involving a
38 conviction of stalking, the investigation shall include a report on the
39 defendant's mental condition.]²

40 The presentence report shall also include a report on any
41 compensation paid by the Victims of Crime Compensation Board as a
42 result of the commission of the offense and, in any case where the
43 victim chooses to provide one, a statement by the victim of the offense
44 for which the defendant is being sentenced. The statement may
45 include the nature and extent of any physical harm or psychological or

1 emotional harm or trauma suffered by the victim, the extent of any loss
2 to include loss of earnings or ability to work suffered by the victim and
3 the effect of the crime upon the victim's family. The probation
4 department shall notify the victim or nearest relative of a homicide
5 victim of his right to make a statement for inclusion in the presentence
6 report if the victim or relative so desires. Any such statement shall be
7 made within 20 days of notification by the probation department.

8 The presentence report shall specifically include an assessment of
9 the gravity and seriousness of harm inflicted on the victim, including
10 whether or not the defendant knew or reasonably should have known
11 that the victim of the offense was particularly vulnerable or incapable
12 of resistance due to advanced age, disability, ill-health, or extreme
13 youth, or was for any other reason substantially incapable of exercising
14 normal physical or mental power of resistance.

15 c. If, after the presentence investigation, the court desires
16 additional information concerning an offender convicted of an offense
17 before imposing sentence, it may order [that he be examined as to his
18 medical or mental condition, except that he may not be committed to
19 an institution for such examination] any additional
20 ²~~[psychiatric]~~psychological² or medical testing of the defendant.

21 d. Disclosure of any presentence investigation report or
22 psychiatric examination report shall be in accordance with law and the
23 Rules of Court, except that information concerning the defendant's
24 financial resources shall be made available upon request to the Victims
25 of Crime Compensation Board or to any officer authorized under the
26 provisions of section 3 of P.L.1979, c.396 (C.2C:46-4) to collect
27 payment on an assessment, restitution or fine and that information
28 concerning the defendant's coverage under any health insurance
29 contract, policy or plan shall be made available, as appropriate to the
30 Commissioner of the Department of Corrections and to the chief
31 administrative officer of a county jail in accordance with the provisions
32 of P.L.1995, c.254 (C.30:7E-1 et al.).

33 e. The court shall not impose a sentence of imprisonment for an
34 extended term unless the ground therefor has been established at a
35 hearing after the conviction of the defendant and on written notice to
36 him of the ground proposed. The defendant shall have the right to
37 hear and controvert the evidence against him and to offer evidence
38 upon the issue.

39 f. (Deleted by amendment, P.L.1986, c.85).
40 (cf: P.L.1996, c.39, s.2)

41

42 ¹3. (New section) a. An inmate who is required to submit to a
43 ²~~[psychiatric]~~psychological² evaluation pursuant to the provisions of
44 Section 10 of P.L.1979, c.441 (C.30:4-123.54) shall be liable for the
45 cost of such evaluation. If the inmate is an enrollee or a covered

1 person under a health insurance contract, policy or plan, the State shall
2 file a claim with the health insurance contract, policy or plan for a
3 reimbursement of the costs of the ²[psychiatric] psychological²
4 evaluation. The claim shall be filed in accordance with the rules and
5 regulations promulgated pursuant to subsection b. of this section. The
6 reimbursement authorized under this section shall be payable to the
7 State Treasurer and shall be used exclusively for the purpose of
8 defraying the costs incurred by the State for the
9 ²[psychiatric]psychological² evaluation.

10 b. The Commissioner of the Department of ²Banking and²
11 Insurance, in accordance with the provisions of the "Administrative
12 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall
13 promulgate rules and regulations to effectuate the purposes of this
14 section.

15 c. In the event that an inmate is not covered under a health
16 insurance contract, policy or plan, or if the inmate's insurance
17 contract, policy or plan does not fully cover the costs of the
18 ²[psychiatric]psychological² evaluation, the State may file a lien for
19 any unpaid amounts due and payable on any and all property and
20 income to which the inmate shall have or may acquire an interest.¹

21 ²Any lien filed shall be in accordance with the rules and regulations
22 promulgated pursuant to subsection b. of this section.²

23
24 ¹ 4. (New section) a. A defendant who is required to submit to
25 a ²[psychiatric] psychological² evaluation pursuant to the provisions
26 of N.J.S.2C:44-6 shall be liable for the cost of such evaluation. If the
27 defendant is an enrollee or a covered person under a health insurance
28 contract, policy or plan, the Administrative Office of the Courts shall
29 file a claim with the health insurance contract, policy or plan for a
30 reimbursement of the costs of the ²[psychiatric]psychological²
31 evaluation. The claim shall be filed in accordance with the rules and
32 regulations promulgated pursuant to subsection b. of this section. The
33 reimbursement authorized under this section shall be payable to the
34 Administrative Office of the Courts and shall be used exclusively for
35 the purpose of defraying the costs incurred for the
36 ²[psychiatric]psychological² evaluation.

37 b. The Commissioner of the Department of ²Banking and²
38 Insurance, in accordance with the provisions of the "Administrative
39 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.), shall
40 promulgate rules and regulations to effectuate the purposes of this
41 section.

42 c. In the event that a defendant is not covered under a health
43 insurance contract, policy or plan, or if the defendant's insurance
44 contract, policy or plan does not fully cover the costs of the
45 ²[psychiatric]psychological² evaluation, a lien may be filed for any

1 unpaid amounts due and payable on any and all property and income
2 to which the ²[inmate] defendant² shall have or may acquire an
3 interest.¹ ²Any lien filed shall be in accordance with the rules and
4 regulations promulgated pursuant to subsection b. of this section.²

5
6 ¹[3.] 5.¹ This act shall take effect immediately.

7
8
9
10
11 Requires preparole and presentence reports to include disposition of
12 prior charges suspended due to mental incompetency; requires
13 defendants and inmates to undergo psychological examinations under
14 certain circumstances; permits the State to obtain reimbursement from
15 defendants, inmates and health insurers.