

ASSEMBLY, No. 1654

STATE OF NEW JERSEY

INTRODUCED MARCH 4, 1996

By Assemblyman CORODEMUS

1 AN ACT permitting licensed psychologists to perform competency
2 evaluations in criminal cases and amending N.J.S.2C:4-5,
3 N.J.S.2C:4-6, N.J.S.2C:4-8, N.J.S.2C:4-9 and N.J.S.2C:4-10.

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

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8 1. N.J.S.2C:4-5 is amended to read as follows:

9 2C:4-5. Psychiatric or Psychological Examination of Defendant
10 With Respect to Fitness to Proceed.

11 a. Whenever there is reason to doubt the defendant's fitness to
12 proceed, the court may on motion by the prosecutor, the defendant or
13 on its own motion, appoint at least one qualified psychiatrist or
14 licensed psychologist to examine and report upon the mental
15 condition of the defendant. The psychiatrist or licensed psychologist
16 so appointed shall be either:

17 (1) From a list agreed to by the court, the prosecutor and the
18 defendant; or

19 (2) Agreed to by the court, prosecutor and defendant. The court
20 may order the defendant to be committed to a hospital or other
21 suitable facility for the purpose of the examination for a period of not
22 exceeding 30 days. A qualified psychiatrist or licensed psychologist
23 retained by the defendant or by the prosecution shall, if requested, be
24 permitted to examine the defendant. Upon showing of particular need,
25 upon motion, the court may order commitment for an additional period
26 not exceeding 15 days.

27 b. The report of the examination shall include at least the
28 following: (1) a description of the nature of the examination; (2) a
29 diagnosis of the mental condition of the defendant; (3) an opinion as
30 to the defendant's capacity to understand the proceedings against him
31 and to assist in his own defense. The **[examining psychiatrist or**
32 **psychiatrists] person or persons conducting the examination** may ask
33 questions respecting the crime charged when such questions are
34 necessary to enable formation of an opinion as to a relevant issue,

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 however, the evidentiary character of any inculpatory statement shall
2 be limited expressly to the question of competency and shall not be
3 admissible on the issue of guilt.

4 c. If the examination cannot be conducted by reason of the
5 unwillingness of the defendant to participate therein, the report shall
6 so state and shall include, if possible, an opinion as to whether such
7 unwillingness of the defendant was the result of mental incompetence.
8 Upon the filing of such a report, the court may permit examination
9 without cooperation, may appoint a different psychiatrist or licensed
10 psychologist, or may commit the defendant for observation for a
11 period not exceeding 30 days except on good cause shown, or exclude
12 or limit testimony by the defense psychiatrist.

13 d. The report of the examination shall be sent by the psychiatrist or
14 licensed psychologist to the court, the prosecutor and counsel for the
15 defendant.

16 (cf: P.L.1979, c.178, s.13A)

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

19 2C:4-6. Determination of Fitness to Proceed; Effect of Finding
20 of Unfitness; Proceedings if Fitness is Regained; Post-Commitment
21 Hearing.

22 a. When the issue of the defendant's fitness to proceed is raised, the
23 issue shall be determined by the court. If neither the prosecutor nor
24 counsel for the defendant contests the finding of the report filed
25 pursuant to section 2C:4-5, the court may make the determination on
26 the basis of such report. If the finding is contested or if there is no
27 report, the court shall hold a hearing on the issue. If the report is
28 received in evidence upon such hearing, either party shall have the
29 right to summon and examine the psychiatrists or licensed
30 psychologists who joined in the report and to offer evidence upon the
31 issue.

32 b. If the court determines that the defendant lacks fitness to
33 proceed, the proceeding against him shall be suspended, except as
34 provided in subsection c. of this section. At this time, the court may
35 commit him to the custody of the Commissioner of Human Services
36 to be placed in an appropriate institution if it is found that the
37 defendant is so dangerous to himself or others as to require
38 institutionalization, or it shall proceed to determine whether placement
39 in an out-patient setting or release is appropriate; provided, however,
40 that no commitment to any institution shall be in excess of such period
41 of time during which it can be determined whether it is substantially
42 probable that the defendant could regain his competence within the
43 foreseeable future.

44 c. If the defendant has not regained his fitness to proceed within
45 such time as the court may deem adequate from the time that it was
46 determined that the defendant lacked such fitness, the court shall after

1 a hearing, if one is requested, dismiss the charges and either order the
2 defendant discharged, or, subject to law governing civil commitment,
3 order the defendant committed to an appropriate institution. When the
4 charges are not dismissed, each defendant's case shall be specifically
5 reviewed by the court at 6-month intervals until an order is made by
6 the court that the defendant stand trial or that the charges be
7 dismissed.

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

12 e. When the court, on its own motion or upon application to the
13 commissioner, his designee, or either party, determines after a hearing,
14 if a hearing is requested, that the defendant has not regained fitness to
15 proceed, the court may order the institution of civil commitment
16 proceedings, or, if it is found that the defendant may be paroled or
17 released on condition without danger to himself or to others, the court
18 may so order. If it is determined that it is not substantially probable
19 that the defendant will regain his competence in the foreseeable future,
20 the court may dismiss the charge and either order the defendant to be
21 discharged, or, subject to the law governing the civil commitment,
22 order the defendant committed to an appropriate institution.

23 f. The fact that the defendant is unfit to proceed does not preclude
24 determination of any legal objection to the prosecution which is
25 susceptible of fair determination prior to trial and without the
26 personal participation of the defendant.

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

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

30 2C:4-8. Commitment of a Person by Reason of Insanity.

31 a. After acquittal by reason of insanity, the court shall order that
32 the defendant undergo a psychiatric or psychological examination by
33 a psychiatrist or licensed psychologist of the prosecutor's choice. If
34 the examination cannot take place because of the unwillingness of the
35 defendant to participate, the court shall proceed as in section 2C:4-5c.
36 The defendant, pursuant to this section, may also be examined by a
37 psychiatrist or licensed psychologist of his own choice.

38 b. The court shall dispose of the defendant in the following
39 manner:

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

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

46 (3) If the court finds that the defendant cannot be released with or

1 without supervision or conditions without posing a danger to the
2 community or to himself, it shall commit the defendant to a mental
3 health facility approved for this purpose by the Commissioner of
4 Human Services to be treated as a person civilly committed. In all
5 proceedings conducted pursuant to this section, including any periodic
6 review proceeding, the prosecuting attorney shall have the right to
7 appear and be heard. The defendant's continued commitment, under
8 the law governing civil commitment, shall be established by a
9 preponderance of the evidence, during the maximum period of
10 imprisonment that could have been imposed, as an ordinary term of
11 imprisonment, for any charge on which the defendant has been
12 acquitted by reason of insanity. Expiration of that maximum period of
13 imprisonment shall be calculated by crediting the defendant with any
14 time spent in confinement for the charge or charges on which the
15 defendant has been acquitted by reason of insanity.

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

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

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

21 2C:4-9. Release of Persons Committed by Reason of Insanity.

22 a. If a person has been committed pursuant to this chapter and if
23 the commissioner, or his designee, or the superintendent of the
24 institution to which the person has been committed, is of the view that
25 a person committed to his custody, pursuant to section 2C:4-8, may
26 be discharged or released on condition without danger to himself or to
27 others, or that he may be transferred to a less restrictive setting for
28 treatment, the commissioner or superintendent shall make application
29 for the discharge or release of such person in a report to the court by
30 which such person was committed and shall transmit a copy of such
31 application and report to the prosecutor, the court, and defense
32 counsel. The court may, in its discretion, appoint at least two
33 qualified psychiatrists or licensed psychologists, neither of whom may
34 be on the staff of the hospital to which the defendant had been
35 committed, to examine such person and to report within 30 days, or
36 such longer period as the court determines to be necessary for the
37 purpose, their opinion as to his mental condition.

38 b. If the court is satisfied by the report filed pursuant to subsection
39 a. of this section and such testimony of the reporting psychiatrists or
40 licensed psychologists as the court deems necessary that the
41 committed person may be discharged, released on condition without
42 danger to himself or others, or treated as in civil commitment the court
43 shall order his discharge, his release on such conditions as the court
44 determines to be necessary or his transfer. If the court is not so
45 satisfied, it shall promptly order a hearing to determine whether such
46 person may safely be discharged, released or transferred. Any such

1 hearing shall be deemed a civil proceeding. According to the
2 determination of the court upon the hearing, the court shall proceed
3 as in section 2C:4-8b. (1), (2) or (3).

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

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

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

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

13 2C:4-10. Statements for Purposes of Examination or Treatment
14 Inadmissible Except on Issue of Mental Condition.

15 A statement made by a person subjected to psychiatric or
16 psychological examination or treatment pursuant to sections 2C:4-5,
17 2C:4-6 or 2C:4-9 for the purposes of such examination or treatment
18 shall not be admissible in evidence against him in any criminal
19 proceeding on any issue other than that of his mental condition but it
20 shall be admissible upon that issue, whether or not it would otherwise
21 be deemed a privileged communication. When such a statement
22 constitutes an admission of guilt of the crime charged or of an element
23 thereof, it shall only be admissible where it appears at trial that
24 conversations with the examining psychiatrist or licensed psychologist
25 were necessary to enable him to form an opinion as to a matter in
26 issue.

27 (cf: P.L.1978, c.95, s.2C:4-10)

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29 6. This act shall take effect immediately .

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STATEMENT

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34 Under the present provisions of New Jersey's criminal code, only
35 psychiatrists are authorized to perform competency evaluations of
36 defendants in criminal cases. This bill would permit licensed
37 psychologists, as well as psychiatrists, to conduct such evaluations.
38 This bill would conform New Jersey law with that of the majority of
39 other states which permit psychologists to perform competency
40 evaluations.

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45 Permits licensed psychologists to perform competency evaluations in
46 criminal cases.