

[First Reprint]  
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 <sup>1</sup>certain<sup>1</sup> criminal cases and amending N.J.S.2C:4-5,  
3 N.J.S.2C:4-6 <sup>1</sup>[, N.J.S.2C:4-8, N.J.S.2C:4-9]<sup>1</sup> and N.J.S.2C:4-10.

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:4-5 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 condition  
15 of the defendant. The psychiatrist or licensed psychologist so  
16 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

**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:

<sup>1</sup> Assembly AJU committee amendments adopted May 20, 1996.

1 psychiatrists] person or persons conducting the examination may ask  
2 questions respecting the crime charged when such questions are  
3 necessary to enable formation of an opinion as to a relevant issue,  
4 however, the evidentiary character of any inculpatory statement shall  
5 be limited expressly to the question of competency and shall not be  
6 admissible on the issue of guilt.

7 c. If the examination cannot be conducted by reason of the  
8 unwillingness of the defendant to participate therein, the report shall  
9 so state and shall include, if possible, an opinion as to whether such  
10 unwillingness of the defendant was the result of mental incompetence.  
11 Upon the filing of such a report, the court may permit examination  
12 without cooperation, may appoint a different psychiatrist or licensed  
13 psychologist, or may commit the defendant for observation for a  
14 period not exceeding 30 days except on good cause shown, or exclude  
15 or limit testimony by the defense psychiatrist <sup>1</sup>or licensed  
16 psychologist<sup>1</sup>.

17 d. The report of the examination shall be sent by the psychiatrist or  
18 licensed psychologist to the court, the prosecutor and counsel for the  
19 defendant.

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

21

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

23 2C:4-6. Determination of Fitness to Proceed; Effect of Finding of  
24 Unfitness; Proceedings if Fitness is Regained; Post-Commitment  
25 Hearing.

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

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

1 future.

2 c. If the defendant has not regained his fitness to proceed within  
3 such time as the court may deem adequate from the time that it was  
4 determined that the defendant lacked such fitness, the court shall after  
5 a hearing, if one is requested, dismiss the charges and either order the  
6 defendant discharged, or, subject to law governing civil commitment,  
7 order the defendant committed to an appropriate institution. When the  
8 charges are not dismissed, each defendant's case shall be specifically  
9 reviewed by the court at 6-month intervals until an order is made by  
10 the court that the defendant stand trial or that the charges be  
11 dismissed.

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

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

27 f. The fact that the defendant is unfit to proceed does not preclude  
28 determination of any legal objection to the prosecution which is  
29 susceptible of fair determination prior to trial and without the personal  
30 participation of the defendant.

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

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33 <sup>1</sup>[3. N.J.S.2C:4-8 is amended to read as follows:

34 2C:4-8. Commitment of a Person by Reason of Insanity.

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

42 b. The court shall dispose of the defendant in the following  
43 manner:

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

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

4 (3) If the court finds that the defendant cannot be released with or  
5 without supervision or conditions without posing a danger to the  
6 community or to himself, it shall commit the defendant to a mental  
7 health facility approved for this purpose by the Commissioner of  
8 Human Services to be treated as a person civilly committed. In all  
9 proceedings conducted pursuant to this section, including any periodic  
10 review proceeding, the prosecuting attorney shall have the right to  
11 appear and be heard. The defendant's continued commitment, under  
12 the law governing civil commitment, shall be established by a  
13 preponderance of the evidence, during the maximum period of  
14 imprisonment that could have been imposed, as an ordinary term of  
15 imprisonment, for any charge on which the defendant has been  
16 acquitted by reason of insanity. Expiration of that maximum period of  
17 imprisonment shall be calculated by crediting the defendant with any  
18 time spent in confinement for the charge or charges on which the  
19 defendant has been acquitted by reason of insanity.

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

22 (cf: P.L.1981, c.290, s.9)]<sup>1</sup>

23  
24 <sup>1</sup>[4. N.J.S.2C:4-9 is amended to read as follows:

25 2C:4-9. Release of Persons Committed by Reason of Insanity.

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

42 b. If the court is satisfied by the report filed pursuant to subsection  
43 a. of this section and such testimony of the reporting psychiatrists or  
44 licensed psychologists as the court deems necessary that the  
45 committed person may be discharged, released on condition without  
46 danger to himself or others, or treated as in civil commitment the court

1 shall order his discharge, his release on such conditions as the court  
2 determines to be necessary or his transfer. If the court is not so  
3 satisfied, it shall promptly order a hearing to determine whether such  
4 person may safely be discharged, released or transferred. Any such  
5 hearing shall be deemed a civil proceeding. According to the  
6 determination of the court upon the hearing, the court shall proceed  
7 as in section 2C:4-8b. (1), (2) or (3).

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

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

14 (cf: P.L.1979, c.178, s.16)]<sup>1</sup>

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16 <sup>1</sup>[5.] 3.<sup>1</sup> N.J.S.2C:4-10 is amended to read as follows:

17 2C:4-10. Statements for Purposes of Examination or Treatment  
18 Inadmissible Except on Issue of Mental Condition.

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

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

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33 <sup>1</sup>[6.] 4.<sup>1</sup> This act shall take effect immediately .

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39 Permits licensed psychologists to perform competency evaluations in  
criminal cases.