

P.L. 1997, CHAPTER 77, *approved April 24, 1997*
Assembly, No. 1654 (*First Reprint*)
(Corrected Copy)

1 AN ACT permitting licensed psychologists to perform competency
2 evaluations in ¹certain¹ criminal cases and amending N.J.S.2C:4-5,
3 N.J.S.2C:4-6 ¹[, N.J.S.2C:4-8, N.J.S.2C:4-9]¹ 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

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 AJU committee amendments adopted May 20, 1996.

1 to the defendant's capacity to understand the proceedings against him
2 and to assist in his own defense. The [examining psychiatrist or
3 psychiatrists] person or persons conducting the examination may ask
4 questions respecting the crime charged when such questions are
5 necessary to enable formation of an opinion as to a relevant issue,
6 however, the evidentiary character of any inculpatory statement shall
7 be limited expressly to the question of competency and shall not be
8 admissible on the issue of guilt.

9 c. If the examination cannot be conducted by reason of the
10 unwillingness of the defendant to participate therein, the report shall
11 so state and shall include, if possible, an opinion as to whether such
12 unwillingness of the defendant was the result of mental incompetence.
13 Upon the filing of such a report, the court may permit examination
14 without cooperation, may appoint a different psychiatrist or licensed
15 psychologist, or may commit the defendant for observation for a
16 period not exceeding 30 days except on good cause shown, or exclude
17 or limit testimony by the defense psychiatrist ¹or licensed
18 psychologist¹.

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

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

23
24 2. N.J.S.2C:4-6 is amended to read as follows:

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

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

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

1 during which it can be determined whether it is substantially probable
2 that the defendant could regain his competence within the foreseeable
3 future.

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

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

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

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

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

34

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

36 2C:4-8. Commitment of a Person by Reason of Insanity.

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

44 b. The court shall dispose of the defendant in the following
45 manner:

46 (1) If the court finds that the defendant may be released without

1 danger to the community or himself without supervision, the court
2 shall so release the defendant; or

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

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

22 c. No person committed under this section shall be confined within
23 any penal or correctional institution or any part thereof.
24 (cf: P.L.1981, c.290, s.9)]¹

25

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

27 2C:4-9. Release of Persons Committed by Reason of Insanity.

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

44 b. If the court is satisfied by the report filed pursuant to subsection
45 a. of this section and such testimony of the reporting psychiatrists or
46 licensed psychologists as the court deems necessary that the

1 committed person may be discharged, released on condition without
2 danger to himself or others, or treated as in civil commitment the court
3 shall order his discharge, his release on such conditions as the court
4 determines to be necessary or his transfer. If the court is not so
5 satisfied, it shall promptly order a hearing to determine whether such
6 person may safely be discharged, released or transferred. Any such
7 hearing shall be deemed a civil proceeding. According to the
8 determination of the court upon the hearing, the court shall proceed
9 as in section 2C:4-8b. (1), (2) or (3).

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

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

16 (cf: P.L.1979, c.178, s.16)]¹

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18 ¹[5.] 3.¹ N.J.S.2C:4-10 is amended to read as follows:

19 2C:4-10. Statements for Purposes of Examination or Treatment
20 Inadmissible Except on Issue of Mental Condition.

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

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

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35 ¹[6.] 4.¹ This act shall take effect immediately .

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40 Permits licensed psychologists to perform competency evaluations in
41 criminal cases.