

CHAPTER 133

AN ACT concerning the civil commitment of certain criminal defendants and amending various sections of Title 2C of the New Jersey Statutes and P.L.1987, c.116.

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

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

Determination of fitness to proceed; effect of finding of unfitness; proceedings if fitness is regained; post-commitment hearing.

2C:4-6. Determination of fitness to proceed; Effect of Finding of Unfitness; Proceedings if Fitness is Regained; Post-Commitment Hearing. a. When the issue of the defendant's fitness to proceed is raised, the issue shall be determined by the court. If neither the prosecutor nor counsel for the defendant contests the finding of the report filed pursuant to section 2C:4-5, the court may make the determination on the basis of such report. If the finding is contested or if there is no report, the court shall hold a hearing on the issue. If the report is received in evidence upon such hearing, either party shall have the right to summon and examine the psychiatrists who joined in the report and to offer evidence upon the issue.

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

c. If the defendant has not regained his fitness to proceed within three months, the court shall hold a hearing on the issue of whether the charges against him shall be dismissed with prejudice or held in abeyance.

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

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

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

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

e. (Deleted by amendment, P.L.1996, c.133).

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

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

Commitment of a person by reason of insanity.

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

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

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

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

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

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

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

Release of persons committed by reason of insanity.

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

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

b. The court shall hold a hearing to determine whether the committed person may be safely discharged, released on condition without danger to himself or others, or treated as in civil commitment. The hearing shall be held upon notice to the prosecutor and with the prosecutor's opportunity to be heard. Any such hearing shall be deemed a civil proceeding. According to the determination of the court upon the hearing, the court shall proceed as in section 2C:4-8b. (1), (2) or (3).

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

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

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

C.30:4-27.15 Court findings relative to involuntary commitment.

15. a. If the court finds by clear and convincing evidence that the patient needs continued involuntary commitment, it shall issue an order authorizing the involuntary commitment of the patient and shall schedule a subsequent court hearing in the event the patient is not administratively discharged pursuant to section 17 of P.L.1987, c.116 (C.30:4-27.17) prior thereto.

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

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

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

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

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

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

d. Notwithstanding subsection a. of this section, or any provision of section 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.16, 30:4-27.17, or 30:4-27.18), no person committed while serving a term of incarceration shall be discharged by the court or administratively discharged prior to the date on which the person's maximum term would have expired had he not been committed. If the person is no longer in need of involuntary commitment, the person shall be returned to the appropriate State, county or local authority to complete service of the term of incarceration imposed until released in accordance with law, and the person shall be given day for day credit for all time during which the person was committed.

e. Notwithstanding subsection a. of this section, or any provision of section 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27.16, 30:4-27.17, or 30:4-27.18), no person committed pursuant to N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or pursuant to N.J.S.2C:4-6 concerning lack of mental competence to stand trial shall be discharged by the court or administratively discharged unless the prosecuting attorney in the case receives prior notice and an opportunity to be heard.

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

C.30:4-27.17 Discharge determination.

17. a. The treatment team at a short-term care or psychiatric facility or special psychiatric

hospital shall, subject to the limitations set forth in subsections b. and c. of this section, administratively discharge a patient from involuntary commitment status if the treatment team determines that the patient no longer needs involuntary commitment. If a discharge plan has not been developed pursuant to section 18 of this act, it shall be developed forthwith.

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

c. If the patient is confined pursuant to an order entered under N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of insanity or under N.J.S.2C:4-6 concerning lack of mental competence to stand trial, the treatment team shall, no less than 10 days prior to the proposed date of administrative discharge, provide written notice to the committing court and to the prosecutor. If, within five days of receipt of such notice, the prosecutor files a request for a hearing on the issue of continuing need for commitment and serves notice of that request, in accordance with the provisions of section 13 of P.L.1987, c.116 (C.30:4-27.13), the treatment team shall delay the administrative discharge and the court shall schedule a hearing on the issue. The hearing shall be conducted in the manner provided in section 15 of P.L.1987, c.116 (C.30:4-27.15).

6. This act shall take effect immediately.

Approved December 5, 1996.