

CHAPTER 77

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

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

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

Psychiatric or psychological examination of defendant with respect to fitness to proceed.

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

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

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

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

b. The report of the examination shall include at least the following: (1) a description of the nature of the examination; (2) a diagnosis of the mental condition of the defendant; (3) an opinion as to the defendant's capacity to understand the proceedings against him and to assist in his own defense. The person or persons conducting the examination may ask questions respecting the crime charged when such questions are necessary to enable formation of an opinion as to a relevant issue, however, the evidentiary character of any inculpatory statement shall be limited expressly to the question of competency and shall not be admissible on the issue of guilt.

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

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

2. 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 or licensed psychologists 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 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.

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

Statements for purposes of examination or treatment inadmissible except on issue of mental condition.

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

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

4. This act shall take effect immediately .

Approved April 24, 1997.