

SENATE, No. 1514

STATE OF NEW JERSEY

INTRODUCED SEPTEMBER 19, 1996

By Senators SCOTT and GIRGENTI

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

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:4-6 is amended to read as follows:

9 2C:4-6. Determination of fitness to proceed; Effect of Finding of
10 Unfitness; Proceedings if Fitness is Regained; Post-Commitment
11 Hearing. a. When the issue of the defendant's fitness to proceed is
12 raised, the issue shall be determined by the court. If neither the
13 prosecutor nor counsel for the defendant contests the finding of the
14 report filed pursuant to section 2C:4-5, the court may make the
15 determination on the basis of such report. If the finding is contested
16 or if there is no report, the court shall hold a hearing on the issue. If
17 the report is received in evidence upon such hearing, either party shall
18 have the right to summon and examine the psychiatrists who joined in
19 the report and to offer evidence upon the issue.

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

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

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 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] three
4 months, the court shall hold a hearing on the issue of whether the
5 charges against him shall be dismissed with prejudice or held in
6 abeyance.

7 The hearing shall be held only upon notice to the prosecutor and
8 with an opportunity for the prosecutor to be heard. When the charges
9 are not dismissed, each defendant's case shall be specifically reviewed
10 by the court at 6-month intervals upon notice to the prosecutor and
11 with an opportunity for the prosecutor to be heard until an order is
12 made by the court that the defendant stand trial or that the charges be
13 dismissed.

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

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

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

34 e. [When the court, on its own motion or upon application to the
35 commissioner, his designee, or either party, determines after a hearing,
36 if a hearing is requested, that the defendant has not regained fitness to
37 proceed, the court may order the institution of civil commitment
38 proceedings, or, if it is found that the defendant may be paroled or
39 released on condition without danger to himself or to others, the court
40 may so order. If it is determined that it is not substantially probable
41 that the defendant will regain his competence in the foreseeable future,
42 the court may dismiss the charge and either order the defendant to be
43 discharged, or, subject to the law governing the civil commitment,
44 order the defendant committed to an appropriate institution.] (Deleted
45 by amendment, P.L. , c. (now pending before the Legislature as
46 this bill).

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

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

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

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

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

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

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

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

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

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

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

46 2C:4-9. Release of Persons Committed by Reason of Insanity.

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

18 b. [If the court is satisfied by the report filed pursuant to
19 subsection a. of this section and such testimony of the reporting
20 psychiatrists as the court deems necessary that the committed person
21 may be discharged, released on condition without danger to himself
22 or others, or treated as in civil commitment the court shall order his
23 discharge, his release on such conditions as the court determines to be
24 necessary or his transfer. If the court is not so satisfied, it shall
25 promptly order a hearing to determine whether such person may safely
26 be discharged, released or transferred.] The court shall hold a hearing
27 to determine whether the committed person may be safely discharged,
28 released on condition without danger to himself or others, or treated
29 as in civil commitment. The hearing shall be held upon notice to the
30 prosecutor and with the prosecutor's opportunity to be heard. Any
31 such hearing shall be deemed a civil proceeding. According to the
32 determination of the court upon the hearing, the court shall proceed
33 as in section 2C:4-8b. (1), (2) or (3).

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

38 d. Each defendant's case shall be specifically reviewed as provided
39 by the law governing civil commitment.
40 (cf: P.L.1979, c.178, s.16)

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

44 15. a. If the court finds by clear and convincing evidence that the
45 patient needs continued involuntary commitment, it shall issue an order
46 authorizing the involuntary commitment of the patient and shall

1 schedule a subsequent court hearing in the event the patient is not
2 administratively discharged pursuant to section 17 of P.L.1987, c.116
3 (C.30:4-27.17) prior thereto.

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

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

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

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

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

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

44 d. Notwithstanding subsection a. of this section, or any provision
45 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
46 30:4-27.18), no person committed while serving a term of

1 incarceration shall be discharged by the court or administratively
2 discharged prior to the date on which the person's maximum term
3 would have expired had he not been committed. If the person is no
4 longer in need of involuntary commitment, the person shall be returned
5 to the appropriate State, county or local authority to complete service
6 of the term of incarceration imposed until released in accordance with
7 law, and the person shall be given day for day credit for all time during
8 which the person was committed.

9 e. Notwithstanding subsection a. of this section, or any provision
10 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
11 30:4-27.18), no person committed pursuant to N.J.S.2C:4-8
12 concerning acquittal of a criminal charge by reason of insanity or
13 pursuant to N.J.S.2C:4-6 concerning lack of mental competence to
14 stand trial shall be discharged by the court or administratively
15 discharged unless the prosecuting attorney in the case receives prior
16 notice and an opportunity to be heard.

17 (cf: P.L.1994, c.134, s.9)

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

21 17. a. The treatment team at a short-term care or psychiatric
22 facility or special psychiatric hospital shall, subject to the limitations
23 set forth in [subsection] subsections b. and c. of this section,
24 administratively discharge a patient from involuntary commitment
25 status if the treatment team determines that the patient no longer needs
26 involuntary commitment. If a discharge plan has not been developed
27 pursuant to section 18 of this act, it shall be developed forthwith.

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

42 c. If the patient is confined pursuant to an order entered under
43 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
44 insanity or under N.J.S.2C:4-6 concerning lack of mental competence
45 to stand trial, the treatment team shall, no less than 10 days prior to
46 the proposed date of administrative discharge, provide written notice

1 to the committing court and to the prosecutor. If, within five days of
2 receipt of such notice, the prosecutor files a request for a hearing on
3 the issue of continuing need for commitment and serves notice of that
4 request, in accordance with the provisions of section 13 of P.L.1987,
5 c.116 (C.30:4-27.13), the treatment team shall delay the administrative
6 discharge and the court shall schedule a hearing on the issue. The
7 hearing shall be conducted in the manner provided in section 15 of
8 P.L.1987, c.116 (C.30:4-27.15).
9 (cf: P.L.1994, c.134, s.10)

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11 6. This act shall take effect immediately.

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13
14 STATEMENT

15
16 This bill clarifies the procedures used in cases where a criminal
17 defendant is found mentally incompetent to stand trial. Under the
18 law, a person who lacks the fitness to proceed may be committed to
19 a psychiatric institution for a period of time while the court waits to
20 determine whether he will recover sufficiently in order to stand trial on
21 the charges. If the defendant does not become competent within an
22 amount of time determined by the court, the court then decides
23 whether to dismiss the charges, to release the defendant to the
24 community, or to continue the defendant's civil commitment to a
25 psychiatric institution.

26 However, the statutes do not provide clear guidelines to the courts
27 to assist in the determination as to whether the charges pending
28 against a particular defendant should be dismissed or held in abeyance
29 under these circumstances.

30 A recent New Jersey Supreme Court report (the "Report of the
31 Committee to Review the Conrad Jeffrey Matter," dated October,
32 1995) recommended imposing severe limitations on the circumstances
33 under which the charges would be dismissed. If the charges are held
34 in abeyance and not dismissed, the State would still be able to
35 prosecute the matter at a later date when a once-incompetent
36 defendant regains competence.

37 In accordance with the report's recommendation, this bill
38 establishes a presumption that charges against a defendant who is
39 incompetent to stand trial will not be dismissed. The presumption
40 could be overcome only if the court determines that continuing the
41 criminal prosecution under the particular circumstances would
42 constitute a constitutionally significant injury to the defendant
43 attributable to undue delay in being brought to trial.

44 The bill provides that the factors to be weighed by the court in
45 making this determination include the defendant's prospects for
46 regaining competency; the period of time during which the defendant

1 has remained incompetent; the nature and extent of the defendant's
2 institutionalization; the nature and gravity of the crimes charged; the
3 effects of delay on the prosecution; the effects of delay on the
4 defendant, including any likelihood of prejudice to the defendant in the
5 trial arising out of the delay; and the public interest in prosecuting the
6 charges. Following this determination, the court would be required
7 to hold hearings, with notice to the prosecutor, at six-month intervals,
8 on the issue of the disposition of the pending charges.

9 The Jeffrey report also noted that defendants who are committed to
10 psychiatric institutions on grounds of incompetence to stand trial have
11 a somewhat unclear status. According to the report, mental health
12 professionals working in the institutions are not always aware of the
13 criminal charges against these persons and prosecutors are not always
14 aware of the procedures used in the institutions. Consequently, these
15 defendants may end up administratively discharged from confinement
16 in the psychiatric institutions without input from the criminal justice
17 system.

18 This bill would clarify the roles of prosecutors and mental health
19 professionals with regard to these defendants. The bill requires that
20 prosecutors and victims be notified prior to the proposed release of
21 these persons from confinement in the institutions and establishes
22 standards and procedures to be followed to insure adequate
23 communication between criminal justice and mental health
24 professionals.

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29 Clarifies procedures used in civil commitment of certain criminal
30 defendants.