

2A:163-3

November 21, 1968

LEGISLATIVE HISTORY OF R.S. 2A:163-3
(Acquittal on ground of insanity; findings; confinement)

L. 1943, chapter 41, p. 81, section 1 - A162
Introduced March 8 by Glickenhous.
Not amended.
Bill had statement.

COPY NO. 2

Statement

It is the purpose of this act to have the trial jury apprise the court of its findings as to the sanity of the defendant in all criminal cases where the defense of insanity is interposed and the defendant is acquitted because of such insanity so that such person may be committed to the New Jersey State Hospital at Trenton upon the finding of the trial jury that he is insane.

This act is patterned after the statutes in force in Pennsylvania, New York, Illinois and many other leading States in the Union and is in accord with the practice recommended in the "Code of Criminal Procedure" adopted by the American Law Institute.

This bill has been approved by the New Jersey State Bar Association.

We are enclosing xerox copies of American Law Institute Code of Criminal Procedure, sect. 340 and annotations.

R.S. 2:190-17.1 - Unchanged.
R.S. 2A:163-3 - After the word "Trenton" in the line before last the sentence continues on until such time as he may be restored to reason.

No reason given for change in draft to 2A.

HP/PC
Encl.

PROPERTY OF
NEW JERSEY STATE LIBRARY

1968

185 W. State Street

DEPOSITORY COPY
Do Not Remove From Library

ASSEMBLY, No. 162

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1943

By Mr. GLICKENHAUS

Referred to Committee on Judiciary

AN ACT to provide for special verdicts in certain criminal cases, and supplementing chapter one hundred ninety of Title 2 of the Revised Statutes, and amending section 2:190-17 of the Revised Statutes.

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

1 1. If, upon the trial of any indictment, the defense of insanity is pleaded
2 and it shall be given in evidence that the person charged therein was insane
3 at the time of the commission of the offense charged in such indictment and
4 such persons shall be acquitted, the jury shall be required to find specially
5 by their verdict whether or not such person was insane at the time of the
6 commission of such offense and to declare whether or not such person was
7 acquitted by them by reason of the insanity of such person at the time of
8 the commission of such offense and to find specially by their verdict also
9 whether or not such insanity continues and if the jury shall find by their
10 verdict that such insanity does continue, the court shall order such person
11 into safe custody and direct him to be sent to the New Jersey State Hospital
12 at Trenton to be dealt with in the manner required by section 2:190-17 of the
13 Revised Statutes.

1 2. Section 2:190-17 of the Revised Statutes is amended to read as fol-
2 lows:

3 2:190-17. Whenever any person shall have escaped indictment, or shall
4 have been acquitted of the criminal charge against him upon the trial thereof
5 on the ground of insanity, [upon a plea of insanity or otherwise,] the court,
6 being certified by the jury or otherwise of the fact, shall carefully inquire
7 and ascertain whether his insanity in any degree continues, and, if it does,
8 shall order him into safe custody and direct him to be sent to the New Jersey
9 State Hospital at Trenton, to be confined as otherwise provided by law, and
10 maintained as to expense as is otherwise provided for the maintenance of
11 the criminal insane, until such time as he may be restored to reason, and no
12 person so confined shall be released from such confinement except upon the
13 order of the court by which he was committed. This section shall not be con-
14 strued to prevent the use of the writ of habeas corpus.

1 3. This act shall take effect immediately.

STATEMENT

It is the purpose of this act to have the trial jury apprise the court of its findings as to the sanity of the defendant in all criminal cases where the defense of insanity is interposed and the defendant is acquitted because of such insanity so that such person may be committed to the New Jersey State Hospital at Trenton upon the finding of the trial jury that he is insane.

This act is patterned after the statutes in force in Pennsylvania, New York, Illinois and many other leading States in the Union and is in accord with the practice recommended in the "Code of Criminal Procedure" adopted by the American Law Institute.

This bill has been approved by the New Jersey State Bar Association.

[OFFICIAL COPY REPRINT]

ASSEMBLY, No. 162

STATE OF NEW JERSEY

INTRODUCED MARCH 8, 1943

By Mr. GLICKENHAUS

Referred to Committee on Judiciary

AN ACT to provide for special verdicts in certain criminal cases, and supplementing chapter one hundred ninety of Title 2 of the Revised Statutes, and amending section 2:190-17 of the Revised Statutes.

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

1 1. If, upon the trial of any indictment, the defense of insanity is pleaded
2 and it shall be given in evidence that the person charged therein was insane
3 at the time of the commission of the offense charged in such indictment and
4 such persons shall be acquitted, the jury shall be required to find specially
5 by their verdict whether or not such person was insane at the time of the
6 commission of such offense and to declare whether or not such person was
7 acquitted by them by reason of the insanity of such person at the time of
8 the commission of such offense and to find specially by their verdict also
9 whether or not such insanity continues and if the jury shall find by their
10 verdict that such insanity does continue, the court shall order such person
11 into safe custody and direct him to be sent to the New Jersey State Hospital
12 at Trenton to be dealt with in the manner required by section 2:190-17 of the
13 Revised Statutes.

1 2. Section 2:190-17 of the Revised Statutes is amended to read as fol-
2 lows:

3 2:190-17. Whenever any person shall have escaped indictment, or shall
4 have been acquitted of the criminal charge against him upon the trial
5 thereof on the ground of insanity, the court, being certified by the jury
6 or otherwise of the fact, shall carefully inquire and ascertain whether
7 his insanity in any degree continues, and, if it does, shall order him
8 into safe custody and direct him to be sent to the New Jersey State
9 Hospital at Trenton, to be confined as otherwise provided by law, and
10 maintained as to expense as is otherwise provided for the maintenance of
11 the criminal insane, until such time as he may be restored to reason, and no
12 person so confined shall be released from such confinement except upon the
13 order of the court by which he was committed. This section shall not be con-
14 strued to prevent the use of the writ of habeas corpus.

1 3. This act shall take effect immediately.

1 *Section 340. Acquittal because of insanity—form*
2 *of verdict. If the jurors acquit the defendant on the*
3 *ground that he was insane or mentally defective at the*
4 *time of the alleged commission of the offense charged*
5 *their verdict shall so state.*

For commentary see page 1005.

1 *Section 341. Special verdict defined. A special*
2 *verdict is one in which the facts are found by the jurors*
3 *and the conclusion of law therefrom is left to the court.¹*

For commentary see page 1009.

1 *Section 342. Special verdict—form of. A special*
2 *verdict shall be in writing. It need not be in any par-*
3 *ticular form.*

For commentary see page 1010.

1 *Section 343. Sealed verdict—proceedings on. The*
2 *court may, with the consent of the prosecuting attorney*
3 *and the defendant, direct the jurors that if the required*
4 *number should agree upon a verdict during a temporary*
5 *adjournment of the court as to other business they may*
6 *sign the same by their foreman, seal it in an envelope*
7 *and deliver it to the officer in whose charge they are,*
8 *after which they may separate until the next convening*
9 *of the court, at which time they shall reassemble in the*
10 *jury box. The officer shall as soon as convenient de-*
11 *liver the sealed verdict to the clerk. When the jurors*
12 *have reassembled the envelope shall be opened, and the*
13 *same proceedings shall be had as in the declaring of*
14 *other verdicts.*

For commentary see page 1010.

1 *Section 344. Sealed verdict—admonition to jurors.*
2 **When the court authorizes the rendition of a sealed ver-**

¹ In states in which the jury assess the punishment on conviction this section should read: *Section 341. Special verdict defined. A special verdict is one in which the facts are found by the jurors with an ascertainment of the punishment in the event that the court pronounces judgment of guilty on the verdict, and the conclusion of law is left to the court.*

Missouri—State v. Steptoe, 1 Mo. App. 19 (1876).
 Washington—State v. Klein, 38 Wash. 475 (1905).

In Oregon (Code, 1930, sec. 2-320) the provision is: "The verdict shall be in writing. . . ." Section 13-920 provides: "Chapter III of Title II of the Code of Civil Procedure shall apply to and regulate the trial of criminal actions."

In Texas (Rev. Cr. Stat., 1925, Cr. Pr., art. 686) a verdict is defined to be "a written declaration by a jury of their decision of the issues submitted to them in the case."

Verdicts may be delivered either orally or in writing.

Louisiana—State v. Ross, 32 La. Ann. 854 (1880).
 Oklahoma—Petitti v. State, 2 Okl. Cr. 131 (1909).
 Wisconsin—State v. Glass, 50 Wis. 218 (1880).

In North Dakota (Comp. Laws, 1913, sec. 10880) the provision reads: "The verdict of the jury may be rendered orally or in writing as the jury may elect, unless the court, at the time the case is submitted to the jury, requires that it be rendered in writing. When the court so requires, the clerk of the court shall, under the direction of the court, provide blank verdicts of suitable form for any verdict the jury may return in the action and said blank verdicts shall be taken by the jury when it retires."

Written general verdicts in a criminal case are irregular and may be rejected.

New Hampshire—Lord v. State, 16 N. H. 325 (1844).

Oral general verdicts are irregular but a new trial will not be allowed on that ground.

Ohio—Hardy v. State, 1 Oh. St. 579 (1869).

Commentary to Section 340.

A verdict of acquittal on the ground of insanity must state such ground specially:

Alabama—Code, 1923, sec. 4574, (the jury shall render a special verdict to the effect that the defendant is not guilty by reason of insanity).

Arizona—Rev. Code, 1928, sec. 5084, (when the defendant is acquitted on the ground that he was insane at the time of the commission of the act charged, the verdict must be "not guilty by reason of insanity").

Arkansas—Dig. of Stat., 1921, sec. 3215, (If the defense be the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict).

California—Supp., 1927, Pen. Code, sec. 1026, ("When a defendant pleads not guilty by reason of insanity, and also joins with it another plea or pleas, he shall first be tried as if he had en-

tered such other plea or pleas only, and in such trial he shall be conclusively presumed to have been sane at the time the offense is alleged to have been committed. If the jury shall find the defendant guilty, or if the defendant pleads only not guilty by reason of insanity, then the question whether the defendant was sane or insane at the time the offense was committed shall be promptly tried, either before the same jury or before a new jury, in the discretion of the court. In such trial the jury shall return a verdict either that the defendant was sane at the time the offense was committed or that he was insane at the time the offense was committed").

Colorado—Sess. Laws, 1927, ch. 90, p. 297, sec. 4, (If the plea is "not guilty by reason of insanity at the time of the alleged commission of the crime," or "not guilty by reason of insanity at the time of the alleged commission of the crime and since," in addition to the other forms of verdict, the jury shall be given a form with the words "not guilty by reason of insanity").

Florida—Comp. Gen. Laws, 1927, sec. 8399, ("when a person tried for an offense shall be acquitted by the jury for the cause of insanity, the jury, in giving their verdict of not guilty, shall state that it was given for such cause").

Idaho—Comp. Stat., 1919, sec. 8990, (like Arizona).

Illinois—Rev. Stat., 1929, ch. 38, sec. 621, ("If, upon the trial of a person charged with crime, it shall appear from the evidence that the act was committed as charged, but that, at the time of committing the same, the person so charged was lunatic or insane, the jury shall so find by their verdict, and by their verdict shall further find whether such person has or has not entirely and permanently recovered from such lunacy or insanity . . .").

Iowa—Code, 1927, sec. 13932, ("If the defense is insanity of the defendant, the jury must be instructed, if it acquits him on that ground, to state that fact in its verdict").

Kansas—Rev. Stat., 1923, sec. 62-1532, ("Whenever, during the trial of any person on an indictment or information, evidence is introduced to prove that he or she was insane, an idiot, or imbecile, or person of unsound mind, at the time of the commission of the offense, and such person shall be found to have been at the time of the commission of the offense alleged in such indictment or information insane, an idiot, an imbecile, or person of unsound mind, and he or she shall be acquitted on that ground, the jury shall so state in their verdict . . .").

Kentucky—Car. Codes, 1927, Crim. Prac., sec. 268, (like Iowa).

Maine—Rev. Stat., 1930, ch. 149, sec. 2, (when a traverse jury, by reason of his insanity, acquit any person indicted, they shall state that fact to the court when they return their verdict).

Massachusetts—Gen. Laws, 1921, ch. 278, sec. 13, (If a person charged with crime other than murder or manslaughter is acquitted by the jury by reason of insanity, the jury shall state that fact to the court).

Minnesota—Mason's Stat., 1927, sec. 10723, ("Whenever during the trial of any person on an indictment, or information, such person shall be found to have been, at the date of the offense alleged in said indictment, insane, an idiot, or an imbecile and is acquitted on that ground, the jury or the court, as the case may be, shall so state in the verdict, or upon the minutes").

Mississippi—Hem. Code, 1927, sec. 1367, ("When any person shall be indicted for an offense, and acquitted on the ground of insanity, the jury rendering the verdict shall state therein such ground, and whether the accused have since been restored to his reason, and whether he be dangerous to the community").

Montana—Rev. Codes, 1921, sec. 12020, (like Arizona).

Nebraska—Comp. Stat., 1922, sec. 10164, ("When the defense is insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact in their verdict").

Nevada—Rev. Laws, 1919, sec. 7216, (like Arizona).

New Hampshire—Pub. Laws, 1926, ch. 369, sec. 2, ("Any person prosecuted for an offense may plead that he is not guilty by reason of insanity or mental derangement, and such plea . . . may be found true by the verdict of the jury").

New Mexico—Stat., 1929, sec. 105-2227, ("Whenever it shall appear, upon the trial of any person, charged with any crime or misdemeanor, that such person was insane at the time of the commission of the same, and such person shall be acquitted, the jury shall be required to find, specially, whether such person was insane at the time of the commission of such offense, and to declare whether he was acquitted by them on the ground of such insanity").

New York—Gil. Cr. Code, 1930, Cr. Pr., sec. 454, (like Arkansas).

North Dakota—Comp. Laws, 1913, sec. 10881, ("If the defense is the insanity of the defendant, the jury must be instructed, if they acquit him on that ground, to state the fact with their verdict").

Ohio—Code, 1930, sec. 13441-3, (when a defendant pleads "not guilty by reason of insanity" and is acquitted on the sole ground of his insanity, such fact shall be found by the jury in its verdict . . .).

Oklahoma—Comp. Stat., 1921, sec. 2738, (like Arizona).

Oregon—Code, 1930, sec. 13-953, (like Arkansas).

Pennsylvania—West's Stat., 1920, sec. 14445: "In every case in which it shall be given in evidence, upon the trial of any person charged with any crime or misdemeanor, that such person was insane at the time of the commission of such offense, and he shall be acquitted, the jury shall be required to find specially whether such person was insane at the time of the commission of such offense, and to declare whether he was acquitted by them on the ground of such insanity."

South Dakota—Rev. Code, 1919, secs. 4918, 4935, (like Arizona).

Tennessee—Shan. Code, 1917, sec. 2631, ("When, upon the arraignment of any person not previously known or believed to be in-

sane, who may be charged with a criminal offense punishable by imprisonment in the penitentiary or death, the plea of present insanity is urged in his or her behalf, the court shall charge the jury that if, from the evidence, they believe the defendant to be insane, they shall so find . . .").

Texas—Rev. Cr. Stat., 1925, Cr. Pr., art. 700, (when the defendant is acquitted on the grounds of insanity, the jury shall so state in their verdict).

Utah—Comp. Laws, 1917, sec. 9023, (like Arizona).

Virginia—Code, 1930, sec. 4913, (when the defense is insanity or feeble-mindedness of the defendant at the time the offense was committed, the jury shall be instructed, if they acquit him on that ground, to state the fact with their verdict).

Washington—Rem. Comp. Stat., 1922, sec. 2175, ("If the plea of insanity or mental irresponsibility be interposed, and evidence upon that issue be given, the court shall instruct the jury when giving the charge, that in case a verdict of acquittal of the crime charged be returned, they shall also return special verdicts finding (1) whether the defendant committed the crime and if so, (2) whether they acquit him because of his insanity or mental irresponsibility at the time of its commission (3) whether the insanity or mental irresponsibility continues and exists at the time of the trial, and (4) whether, if such condition of insanity or mental irresponsibility does not exist at the time of the trial, there is such likelihood of a relapse or recurrence of the insane or mental irresponsible condition that the defendant is not a safe person to be at large. Forms for the return of the special verdicts shall be submitted to the jury with the forms for the general verdicts").

West Virginia—Code, 1931, ch. 62, art. 3, sec. 12, ("when a prisoner tried for an offense is acquitted by the jury by reason of his being insane, the verdict shall state the fact").

Wisconsin—Stat., 1929, sec. 357.11, ("If such jury shall find upon such special issue that such accused person was so insane, or feeble-minded, or that there is reasonable doubt of his sanity or mental responsibility at the time of the commission of such alleged offense, they shall return a verdict of not guilty because insane, or feeble-minded").

Canada—Houle's Crim. Code, 1917, Vol. 1, sec. 966, ("Whenever evidence is given upon the trial of any person charged with an indictable offense, that such person was insane at the time of the commission of such offense, the jury, if they acquit such person, shall be required to find, specially, whether such person was insane at the time of the commission of such offence, and to declare whether he is acquitted by it on account of such insanity").

New Zealand—Consol. Stat., Act 1908, Vol. 1, sec. 438, ("Where, on the trial of any person for any crime, it appears in evidence that he was lunatic at the time of committing the crime, and

he is acquitted, the jury shall be required to find specially whether he was lunatic at the time of committing the crime, and to declare whether he was acquitted by them on that ground").

Commentary to Section 341.

A special verdict is defined as follows: "A special verdict is that by which the jury find the facts only, leaving the judgment to the Court."

The states having this provision are:

Arizona—Rev. Code, 1928, sec. 5085.

California—Pen. Code, 1925, sec. 1152.

Idaho—Comp. Stat., 1919, sec. 8991.

New York—Gil. Cr. Code, 1930, Cr. Pr., sec. 438.

North Dakota—Comp. Laws, 1913, sec. 10882.

Oregon—Code, 1930, sec. 13-943.

South Dakota—Rev. Code, 1919, sec. 4919.

Wyoming—Comp. Stat., 1920, sec. 5779 (omits "leaving the judgment to the court").

The definition in Arkansas (Dig. of Stat., 1921, sec. 3207) reads: "A special verdict is the finding of the facts only, leaving the law arising on the facts to the judgment of the Court, with an ascertainment of the punishment in the event that the Court pronounces a judgment of conviction on the verdict."

In Kentucky (Car. Codes, 1927, Crim. Prac., sec. 259) the definition reads: "A special verdict is a finding of the facts only, leaving the law arising on the facts to the judgment of the court, with an ascertainment of the punishment in the event that the court pronounces a judgment of conviction on the verdict, in cases in which the jury is required to determine the punishment."

The definition of a special verdict in the following states contains the additional provision that: "The special verdict must present the conclusions of fact as established by the evidence, and not the evidence to prove them, and these conclusions of fact must be so presented as that nothing remains to the court but to draw conclusions of law upon them."

The states so providing are:

Arizona—Rev. Code, 1928, sec. 5085.

California—Pen. Code, 1925, sec. 1152.

Idaho—Comp. Stat., 1919, sec. 8991.

Kentucky—Car. Codes, 1927, Crim. Prac., sec. 260.

New York—Gil. Cr. Code, 1930, Cr. Pr., sec. 438.

North Dakota—Comp. Laws, 1913, sec. 10882.

Oregon—Code, 1930, sec. 13-943.

South Dakota—Rev. Code, 1919, sec. 4919.

In Arkansas (Dig. of Stat., 1921, sec. 3208) the provision reads: "A special verdict must present the conclusions of fact as established by the evidence, and not the evidence of those facts; and the facts must