2A:163-2

March 16, 1967

LEGISLATIVE HISTORY OF R.S. 2A:163-2
(Finding of insanity - disposition)

L. 1922, Chapter 101, § 3 - S234
Introduced February 20 by Mr. Allen.
Not amended during passage.
Bill had statement (copy enclosed).

Revision of 1937
2:190-17

COPY NO. 2

No Revisers notes.

Revision to Title 2A.
In the Tentative Draft, Revision of Titles 2 and 3 (1951) the new section to replace the former 2:190-17 is listed under "Proposed Additional Legislation" (copy of page 705 and 706 enclosed).

In Suggested Changes to the Tentative Draft of the Revision of Titles 2 and 3 (1951) another new section is substituted (copy of pages showing 2A:190-1 enclosed).

We searched without success:

N.J. Judicial Conference, 1950, 1951, 1952.

RS/PC

SENATE, No. 234

(Chap. 237, P. L. 1898, p. 866.)

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1922.

By Mr. ALLEN.

Referred to Committee on Revision and Amendment of the Laws.

A SUPPLEMENT to an act entitled "An act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight.

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

1. Whenever a person is sentenced to the punishment of death for crime and a warrant has been directed to the Principal Keeper of the State Prison stating the conviction and sentence and appointing a week within which such sentence must be executed, commanding the said Principal Keeper of the State Prison, or his deputy, to execute the sentence upon some day within the week so appointed, or whenever any such person is now awaiting, or shall hereafter be awaiting, such execution of his sentence for a time fixed, or, by reason of reprieve or otherwise, to be fixed, has been or shall be found to be insane, so as to be without sufficient degree of reason to be responsible for his crime until the contrary be provide, so as not to have been or be conscious of having committed the crime of which he has been, or may be, convicted, nor aware that he is amenable to punishment and is unappreciative of his situation as one condemned to death, and has been or shall be found and determined so to be by an inquisition held by the trial court by which he has been, or hereafter may be, convicted and sentenced to death, whereby the sentence of execution by death has been, or shall be, stayed and arrested, the trial justice or judge,

or such justice or judge having jurisdiction shall in such case, on his own motion or upon application of the Principal Keeper of the State Prison, the Attorney-General or the prosecutor of the pleas of the county in which the conviction was had, direct, by order, in writing, the transfer by the Principal or Head Keeper of the State Prison or place of execution, of such person condemned to death, whose execution has been stayed or arrested, to the New Jersey State Hospital at Trenton, to be confined in the house of detention for convict or criminal insane, or such other place provided by law for the detention of criminal insane persons, until such time as such condemned person shall be conscious of having committed such crime and shall be aware that he or she is amenable to punishment and is appreciative of his situation as one awaiting the execution of the death penalty for such crime.

2. The trial justice or judge, or the justice or judge having jurisdiction, upon his own motion, or upon information from the Attorney-General, or the medical director of the New Jersey State Hospital at Trenton, or the Principal Keeper of the State Prison, or the prosecutor of the pleas of the county in which the conviction was had, that such condemned person, whose execution has been thus stayed and arrested, has been restored to sufficient reason, shall inquire into his or her mental condition, and if it shall be found that such person is able to understand that he or she has committed the crime for which he or she was convicted, and is aware that he or she is amenable to punishment therefor, and is appreciative of his or her situation as one condemned to death, shall order, in writing, that such condemned person, by name, shall be returned to the State Prison, or the place then provided by law for the putting to death of persons so condemned, which person shall thereupon be forthwith, as therein directed, delivered by the medical director of the New Jersey State Hospital at Trenton, or his duly designated deputy, or by such person having such condemned person in his custody, to the Principal Keeper of the State Prison, or his duly designated deputy or deputies, either at the said place where such condemned person is confined, or to the State Prison, or other place then provided by law for the execution of persons condemned to death, and shall in such order designate the time and place, subject to continuance in open court, as such justice or judge may direct, when and where he will sign and deliver

a warrant for the execution of such person, as otherwise provided by law, when execution has been otherwise stayed and arrested; and such justice or judge shall further direct in such order that a copy thereof shall be published in a newspaper of general circulation in the county in which such conviction was had, at the expense of such county, once in each calendar week for two weeks, commencing not sooner than the calendar week following the making of such order. Following such publication at the time designated in such order, and after publication as aforesaid, the said justice or judge having jurisdiction as aforesaid, shall, unless good cause be shown to his satisfaction to the contrary, make out, sign and deliver a warrant for the execution of the death penalty first imposed upon such condemned person, as otherwise provided by law, which warrant, in the hands of the persons authorized by law for the purpose, shall be sufficient justification in all respects for the execution of the sentence imposed in the first instance.

3. When any person shall have escaped indictment or have been acquitted of the criminal charge upon trial upon the ground of insanity, upon the plea pleaded of insanity or otherwise, the court being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order him in safe custody, and direct such person to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to expense as is otherwise provided for the maintenance of the criminal insane, until such time as he may be restored to reason; but such person shall not be released from confinement except upon the order of the trial justice or judge having jurisdiction to try such person who has escaped indictment or has been acqutted of such criminal charge as aforesaid. Nothing in this section shall be construed to prevent the use of the writ of habeas corpus.

4. This act shall take effect immediately, but if the provisions of section three hereof are found to be invalid in any respect, such section shall be considered as severable and extinguished and the remainder of this act shall stand; the intent being to enact the provisions of sections one and two hereof notwithstanding the provisions contained in section three.

STATEMENT.

This bill is a supplement to the Criminal Procedure Act and provides, first, that persons condemned to death for a capital offense, shall be transferred from the place of execution to a proper place of detention for the criminal insane, if the trial court shall have, by proper common law inquiry, determined that he is insane so as not to be amenable to punishment for the crime for which he was convicted and sentenced and is awaiting execution, and provides that upon his being restored to sufficient reason, such trial justice or judge shall again inquire as to his mental condition, and if restored sufficiently for the purpose, shall direct his return to the place of execution for the purpose of putting him to death. The order of the judge requires the person to be returned forthwith to the place of execution and indicates therein the time when the judge will make out, sign and deliver a warrant authorizing his execution, and setting the time therefor. The order is required to be published twice, once in each week for two weeks, following the making of the order of retransfer of the person to the place of execution. This procedure is outlined in sections two and three of the bill, and is necessary by reason of the fact that the provisions now provided by law for the transfer of criminal insane to the State Hospital are not sufficient in law to apply to persons condemned to death. This proceeding may only be had where the stay of execution could otherwise be had by a common law inquisition by the trial judge. There is a man now in the State Prison sentenced to death in 1908, who it has not been possible to transfer to a place of detention for the criminal insane.

The third section of the bill reincorporates in the law section 33 of the act of 1893, page 218, permitting a justice or judge to commit a person escaping indictment or having been acquitted of a criminal charge because of insanity, to the State Hospital pending his release upon being restored to reason, and the provisions of such section do not apply to capital cases.

The provisions of sections one and two of the bill, and the other provision of section three have been recommended by some of the members of the Court of Errors and Appeals.

2A:114-17.1. Immunity for giving evidence. Any person violating sections R. S. 2:114-14, 2:114-15, 2:114-16 or 2:114-17, who shall as a witness for the prosecution, give relevant and material evidence in the prosecution of another charged with a violation or conspiracy to violate any of the said sections shall not be liable to indictment or conviction under said sections, or for conspiracy therefor.

2A:176-52.1. False representations in permit applications or in purchases. Any person who shall give or cause to be given any false information, or shall sign a fictitious name or address, in applying for a permit to purchase or possess a machine gun or automatic rifle, or in purchasing or otherwise acquiring delivery of the same, shall be guilty of a high misdemeanor.

Note of Reporter. This section is new and is designed to provide criminal sanctions for violations.

2A:178-7.4. Acquittal; disposition of moneys seized; claimant's application for return; application for forfeiture. 4. If the trial or other ultimate disposition of such charge or charges, indictment or indictments, result in an acquittal or other final termination of such proceedings in favor of the person or persons so arrested, as aforesaid, in connection with which arrest the said money, currency or cash was seized or captured, as aforesaid, then, the person or persons claiming to own the said money, currency, or cash, may within 2 years from the date of such acquittal or other final termination, in addition to any other remedy now provided by law, make application, on giving 10 days' prior notice thereof to said county treasurer, to a judge of the county court of said county, for an order declaring such money, currency, or cash to be the property of such person or persons, and ordering the same to be returned by the said county treasurer. At any time after the expiration of said period of 2 years from the date of acquittal or other final determination, the county treasurer may make application to a judge of the county court for an order to show cause why such money, currency or cash so seized or captured shall not be forfeited to the sole use and gain of the county; such order to show cause shall then be served upon the person from whom said money, currency or cash was so seized or captured, in accordance with the rules of practice and procedure. Upon the return of the said rule, hearing shall be conducted in summary manner; provided, however, that proof, to the satisfaction of the court, shall first be established that no suit or proceeding then pending and undetermined, has been filed in any court of competent jurisdiction, seeking recovery.

Source. L. 1941, c. 70, p. 157, §4, as am. L. 1945, c. 296, p. 848, §1.

Note of Reporter. Retain the proviso as at present.

2:178-10. Any person who shall be guilty of an offense under the provisions of section 2:176-60 of this title who shall first give information under oath to the prosecuting authorities or to a magistrate, tending to the conviction of any other person charged with an offense under said section 2:176-60, and who shall give evidence when called, shall be exempt from prosecution or punishment, or, if more than 1 person shall be implicated in any murder, or in the inflicting of any injury or damage by the use of dynamite or any other explosive, with intent to kill or injure, the first of the persons so implicated who shall give information under oath concerning other participants and who shall give testimony thereof whenever called, shall be exempt from prosecution or punishment.

2A:190-1. Repeal and substitute in lieu thereof, the following: If any person in confinement under commitment, indictment or under any process, shall appear to be insane, the assignment judge, or judge of the county court of the county in which such person is confined, may, upon presentation to him of the application and certificates as provided in Title 30, chapter 4, institute an inquiry and take proofs as to the mental condition of such person. The proofs herein referred to may include testimony of qualified psychiatrists to be taken in open court by the judge, either in the presence of a jury specially impanelled to try the issue of insanity alone, or without a jury, as the judge in his discretion may determine. It shall be competent for the judge if sitting without a jury, or the jury, if one is impanelled, to determine not only the sanity of the accused at the time of the hearing, but as well the sanity of the accused at the time the offense charged against him is alleged to have been committed.

If it shall be determined after hearing as aforesaid, that the accused was sane at the time the offense charged against him is alleged to have been committed, but is insane at the time of the hearing, the judge shall order such person removed from imprisonment and to be confined in an institution as provided by Title 30, chapter 4, section 82, and his custody and release from such institution to be governed by the provisions of Title 30, chapter 4, section 82, aforementioned.

If it shall be determined after hearing as aforesaid, that the accused was insane at the time the offense charged against him is alleged to have been committed, the charge against him shall be dismissed on this ground and the records of the proceedings so noted. In this event, the judge or jury, as the case may be, shall also find separately whether his insanity in any degree continues, and, if it does, shall order him into safe custody and direct him to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to expense as is otherwise provided for the maintenance of the criminal insane,

until such time as he may be restored to reason, and no person so confined shall be released from such confinement except upon the order of the court by which he was committed. This section shall not be construed to prevent the use of the writ of habeas corpus.

A finding of sanity at the time of the commission of the offense charged against such person in this proceeding shall not preclude the accused from interposing the defense of insanity at any subsequent trial of the offense charged.

Title 3A. ADMINISTRATION OF ESTATES—DECEDENTS AND OTHERS.

Chapter 2.

3A:2-3. Formal requisites of a will. Except as provided in section 3A:2-7, a will to be valid shall be in writing and signed by the testator, which signature shall be made by the testator, or the making thereof acknowledged by him, and such writing declared to be his last will, in the presence of 2 witnesses present at the same time, who shall subscribe their names thereto, as witnesses, in the presence of the testator.

Source. R. S. 3:2-3, as am. L. 1939, c. 139.

Note of Reporter. The last words of this statute as it stands presently, providing that "a will to be valid"—"shall be probated in the office of the surrogate or in the orphans' court of the county in which the testator resided at the time of his death, or in the prerogative court of the state of New Jersey."—were amended into this statute in 1939. The purpose of the amendment was to prevent a will from having any efficacy, in case it was probated only in a foreign jurisdiction, say, New York; for then the parties in interest might avoid New Jersey transfer inheritance taxes and at any event surrogate's and superior court clerk's fees (those fees are substantial when the fiduciary accounts for a large estate) and the employment of New Jersey counsel, etc. However, the amendment was unconstitutional in so far as the will affected title to real estate. (See R. S. 3:2-13, likewise amended in 1939.) Probate could not be made a condition necessary to the passage of title to real property devised; there is a right to trial by jury as to the validity of a devise, and the jury is the only body which can be permitted to determine its validity. Incidentally the amendment deprives a will of personalty of any validity prior to probate, thus unfortunately (and contrary to the prior law) depriving the executor of any standing until the will is probated.

Because of the unconstitutionality of the 1939 amendment, the substance of the clause has been added to the last sentence of R. S. 3A:2-23 and appears herein as proposed additional legislation.

Repeal R. S. 3:2-6, 3:2-10, 3:2-26 and 3:2-27, all having to do with nuncupative wills. Comment: Nuncupative wills are practically obsolete, the last reported case being In re Male's Will, 49 N. J. Eq. 266 (Prerog. 1892), wherein it was said:

"Nuncupative wills, as a rule, are not favored by courts, for the very obvious reason that they are at best uncertain productions, depending upon the attention, intelligence, memory and honesty of those who surround the dying testator. Not only may the remembrance of language be defective, but its intended meaning may be misapprehended, and, indeed, loose expressions of desire may, either stupidly or dishonestly, be fabricated into a testamentary act, where such an act was not intended."

3A:2-7. Wills made by members of armed forces in time of war. A will made by any person while engaged in active military service as a member of the armed forces of the United States in time of war shall be valid if it be in writing.

Source. R. S. 3:2-7.

Note of Reporter. The present statute R. S. 3:2-7 throws the law back to where it stood prior to the statute of frauds (1676). In re Straulina's Estate, 4 N. J. Misc. 599 (Or. Ct. 1926). Under the law as it stood then, an oral will apparently was sustainable provided there was 1 or perhaps 7 witnesses. At any event a will was valid if it was in writing—even though it was unsigned and unattested.

R. S. 3:2-7 is applicable to soldiers "while in active military service" at the time the will is made. Under In re Beck, 142 N. J. Eq. 15 (Prerog. Ct. 1948) this means "that there must be a war and the soldier in question must, in fact, be engaged in carrying it on". However, under In re Sheridan, 21 N. J. Misc. 473 (Or. Ct. 1943) the words "actual military service" have been held not to extend to one in a training camp far from the stress of enemy operations. The statute codifies the ruling of In re Beck.

As stated in In re Beck, a soldier's informal will is invalid under R. S. 3:2-7 unless the will deals only with personalty or "unless it can be shown that the gifts of personalty were independent of the gifts of realty". The proposed amendment above stated extends the law so as to cover real estate. Unlike the situation prior to 1676, most of our wealth today is in personal estate. If the will is probated in the county court or superior court, then (particularly in view of 3A:2-11) the will should be allowed to pass title to real estate.

Unlike R. S. 3:2-7, the proposed statute above does not cover "a mariner or seaman while at sea". This is, so far as present practices are concerned, an obsolete provision.

Furthermore, the above statute does not include the words "and nothing contained in this chapter shall affect such dispositions". These words were added to the statute by the revisers in 1937. This is a most unfortunate provision. Under it R. S. 3:2-15 and 3:2-16, the provisions as to after-born children, etc., R. S. 3:2-17, the construction of the words "died without issue", and R. S. 3:2-18, the provision against lapsed gifts, etc. are all inapplicable.

3A:2-13. Effect of will made with proper formality. A will made in accordance with the provisions of section 3:2-3 or section 3:2-7 of this title by a person competent to make a will shall be sufficient to devise, pass and bequeath all estates and property, real and personal, including estates pur auter vie, and all rights of any kind, and to appoint a guardian or guardians to a child of the testator during infancy; and a widow may bequeath the crop of her ground, as well of her dower as of her other real estate.

Source. R. S. 3:2-13, as am. L. 1939, c. 139.

Note of Reporter. The above statute was amended in 1939 so as to add "and probated as provided in section 3:2-3 of this Title". These words were eliminated above for the reasons indicated in the Note of Reporter to 3A:2-3. The object sought to be accomplished by these words is to be carried out in 3A:2-23.

ends of justice so require, bind with sufficient surety, all persons who can give testimony against one accused of a criminal offense punishable by death or by imprisonment in state prison, whether the offender be arrested, imprisoned, bailed or not.

Source. R.S. 2:187-19.

2A:187-1 Page 304 — Change number of section to "2A:187-1.1".

2A:187-3 Page 305 — Line 5, omit "or misdemeanor," and insert after "crime" "punishable by death or by imprisonment in the state prison,".
Line 13, omit comma after "day".

Chapter 190 Page 306 — After "Chapter 190." in Index omit present title "Trial; New Trial." and substitute "Insanity."
After "Section 2A:190-1," omit "Blank. See proposed additional legislation." and substitute "Finding of insanity; disposition."

2A:190-1 Page 306 — Omit "2A:190-1. Blank. See proposed additional legislation." and substitute the following:

2A:190-1. Finding of Insanity; Disposition.

If any person in confinement under commitment, indictment or under any process, shall appear to be insane, the assignment judge, or judge of the county court of the county in which such person is confined, may, upon presentation to him of the application and certificates as provided in Title 30, chapter 4, institute an inquiry and take proofs as to the mental condition of such person. The proofs herein referred to may include testimony of qualified psychiatrists to be taken in open court by the judge, either in the presence of a jury specially impanelled to try the issue of insanity alone, or without a jury, as the judge in his discretion may determine. It shall be competent for the judge if sitting without a jury, or the jury, if one is impanelled, to determine not only the sanity of the accused at the time of the hearing, but as well the sanity of the accused at the time the offense charged against him is alleged to have been comitted.

If it shall be determined after hearing as aforesaid, that the accused was sane at the time the offense charged against him is alleged to have been comitted, but is insane at the time of the hearing, the judge shall order such person removed from imprisonment and to be confined in an institution as provided by Title 30, chapter 4, section 82, and his custody and release from such institution to be governed by the provisions of Title 30, chapter 4, section 82, aforementioned.

If it shall be determined after hearing as aforesaid, that the accused was insane at the time the offense charged against him is alleged to have been committed, the charge against him shall be dismissed on this ground and the records of the proceedings so noted. In this event, the judge or jury, as the case may be, shall also find separately whether his insanity in any degree continues, and, if it does, shall order him into safe custody and direct him to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to expense as is otherwise provided for the maintenance of the criminal insane, until such time as he may be restored to reason, and no person so confined shall be released from such confinement except upon the order of the court by which he was committed. This section shall not be construed to prevent the use of the writ of habeas corpus.

A finding of sanity at the time of the comission of the offense charged against such person in this proceeding shall not preclude the accused from interposing the defense of insanity at any subsequent trial of the offense charged.

Source. New - to replace R.S. 2:190-17.

2A:190-2
Page 306

Substitute the following in lieu of present 2A:190-2:

2A:190-2. Findings required; acquittal on grounds of insanity; confinement.

If, upon the trial of any indictment, the defense of insanity is pleaded and it shall be given in evidence that the person charged therein was insane at the time of the commission of the offense charged in such indictment and such person shall be acquitted, the jury shall be required to find specially by their verdict whether or not such person was insane at the time of the commission of such offense and to declare whether or not such person was acquitted by them by reason of the insanity of such person at the time of the commission of such offense and to find specially by their verdict also whether or not such insanity continues and if the jury shall find by their verdict that such insanity does continue, the court shall order such person into safe custody and commit him to the New Jersey State Hospital at Trenton until such time as he may be restored to reason.

Source. L. 1943, c. 41, p. 81, Sec. 1. (R.S. 2:190-17.1).

R.S. 2A : 165-11

November 6, 1967

LEGISLATIVE NOTES ON R.S. 2A:165-11
(Insane prisoners condemned to death)

COPY NO 2

L. 1922, Chapter 101, § 1 - S234
Introduced February 20 by Allen.
Not amended during passage.
Bill had statement.

No further search made.

RS/PC

SENATE, No. 234

(*Chap. 237, P. L. 1898, p. 866.*)

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 20, 1922.

By Mr. ALLEN.

Referred to Committee on Revision and Amendment of the Laws.

A SUPPLEMENT to an act entitled "An act relating to courts having criminal jurisdiction and regulating proceedings in criminal cases" (Revision of 1898), approved June fourteenth, one thousand eight hundred and ninety-eight.

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

1. Whenever a person is sentenced to the punishment of death for crime and a warrant has been directed to the Principal Keeper of the State Prison stating the conviction and sentence and appointing a week within which such sentence must be executed, commanding the said Principal Keeper of the State Prison, or his deputy, to execute the sentence upon some day within the week so appointed, or whenever any such person is now awaiting, or shall hereafter be awaiting, such execution of his sentence for a time fixed, or, by reason of reprieve or otherwise, to be fixed, has been or shall be found to be insane, so as to be without sufficient degree of reason to be responsible for his crime until the contrary be provide, so as not to have been or be conscious of having committed the crime of which he has been, or may be, convicted, nor aware that he is amenable to punishment and is unappreciative of his situation as one condemned to death, and has been or shall be found and determined so to be by an inquisition held by the trial court by which he has been, or hereafter may be, convicted and sentenced to death, whereby the sentence of execution by death has been, or shall be, stayed and arrested, the trial justice or judge,

or such justice or judge having jurisdiction shall in such case, on his own motion or upon application of the Principal Keeper of the State Prison, the Attorney-General or the prosecutor of the pleas of the county in which the conviction was had, direct, by order, in writing, the transfer by the Principal or Head Keeper of the State Prison or place of execution, of such person condemned to death, whose execution has been stayed or arrested, to the New Jersey State Hospital at Trenton, to be confined in the house of detention for convict or criminal insane, or such other place provided by law for the detention of criminal insane persons, until such time as cuch condemned person shall be conscious of having committed such crime and shall be aware that he or she is amenable to punishment and is appreciative of his situation as one awaiting the execution of the death penalty for such crime.

2. The trial justice or judge, or the justice or judge having jurisdiction, upon his own motion, or upon information from the Attorney-General, or the medical director of the New Jersey State Hospital at Trenton, or the Principal Keeper of the State Prison, or the prosecutor of the pleas of the county in which the conviction was had, that such condemned person, whose execution has been thus stayed and arrested, has been restored to sufficient reason, shall inquire into his or her mental condition, and if it shall be found that such person is able to understand that he or she has committed the crime for which he or she was convicted, and is aware that he or she is amenable to punishment therefor, and is appreciative of his or her situation as one condemned to death, shall order, in writing, that such condemned person, by name, shall be returned to the State Prison, or the place then provided by law for the putting to death of persons so condemned, which person shall thereupon be forthwith, as therein directed, delivered by the medical director of the New Jersey State Hospital at Trenton, or his duly designated deputy, or by such person having such condemned person in his custody, to the Principal Keeper of the State Prison, or his duly designated deputy or deputies, either at the said place where such condemned person is confined, or to the State Prison, or other place then provided by law for the execution of persons condemned to death, and shall in such order designate the time and place, subject to continuance in open court, as such justice or judge may direct, when and where he will sign and deliver

a warrant for the execution of such person, as otherwise provided by law, when execution has been otherwise stayed and arrested; and such justice or judge shall further direct in such order that a copy thereof shall be published in a newspaper of general circulation in the county in which such conviction was had, at the expense of such county, once in each calendar week for two weeks, commencing not sooner than the calendar week following the making of such order. Following such publication at the time designated in such order, and after publication as aforesaid, the said justice or judge having jurisdiction as aforesaid, shall, unless good cause be shown to his satisfaction to the contrary, make out, sign and deliver a warrant for the execution of the death penalty first imposed upon such condemned person, as otherwise provided by law, which warrant, in the hands of the persons authorized by law for the purpose, shall be sufficient justification in all respects for the execution of the sentence imposed in the first instance.

3. When any person shall have escaped indictment or have been acquitted of the criminal charge upon trial upon the ground of insanity, upon the plea pleaded of insanity or otherwise, the court being certified by the jury or otherwise of the fact, shall carefully inquire and ascertain whether his insanity in any degree continues, and if it does, shall order him in safe custody, and direct such person to be sent to the New Jersey State Hospital at Trenton, to be confined as otherwise provided by law, and maintained as to expense as is otherwise provided for the maintenance of the criminal insane, until such time as he may be restored to reason; but such person shall not be released from confinement except upon the order of the trial justice or judge having jurisdiction to try such person who has escaped indictment or has been acquitted of such criminal charge as aforesaid. Nothing in this section shall be construed to prevent the use of the writ of habeas corpus.

4. This act shall take effect immediately, but if the provisions of section three hereof are found to be invalid in any respect, such section shall be considered as severable and extinguished and the remainder of this act shall stand; the intent being to enact the provisions of sections one and two hereof notwithstanding the provisions contained in section three.

STATEMENT.

This bill is a supplement to the Criminal Procedure Act and provides, first, that persons condemned to death for a capital offense, shall be transferred from the place of execution to a proper place of detention for the criminal insane, if the trial court shall have, by proper common law inquiry, determined that he is insane so as not to be amenable to punishment for the crime for which he was convicted and sentenced and is awaiting execution, and provides that upon his being restored to sufficient reason, such trial justice or judge shall again inquire as to his mental condition, and if restored sufficiently for the purpose, shall direct his return to the place of execution for the purpose of putting him to death. The order of the judge requires the person to be returned forthwith to the place of execution and indicates therein the time when the judge will make out, sign and deliver a warrant authorizing his execution, and setting the time therefor. The order is required to be published twice, once in each week for two weeks, following the making of the order of retransfer of the person to the place of execution. This procedure is outlined in sections two and three of the bill, and is necessary by reason of the fact that the provisions now provided by law for the transfer of criminal insane to the State Hospital are not sufficient in law to apply to persons condemned to death. This proceeding may only be had where the stay of execution could otherwise be had by a common law inquisition by the trial judge. There is a man now in the State Prison sentenced to death in 1908, who it has not been possible to transfer to a place of detention for the criminal insane.

The third section of the bill reincorporates in the law section 33 of the act of 1893, page 218, permitting a justice or judge to commit a person escaping indictment or having been acquitted of a criminal charge because of insanity, to the State Hospital pending his release upon being restored to reason, and the provisions of such section do not apply to capital cases.

The provisions of sections one and two of the bill, and the other provision of section three have been recommended by some of the members of the Court of Errors and Appeals.