

LEGISLATIVE HISTORY CHECKLIST
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NJSA: 2C:4-2

(Criminal defense
of mental disease
of defect)

LAWS OF: 1990

CHAPTER: 63

Bill No: S2335

Sponsor(s): O'Connor

Date Introduced: Pre-filed

Committee: Assembly: Judiciary

Senate: Judiciary

Amended during passage: Yes Senate Committee Substitute for
S2335/S2074 enacted.

Date of Passage: Assembly: June 28, 1990
Senate: April 30, 1990

Date of Approval: July 17, 1990

Following statements are attached if available:

Sponsor statement: Yes
Committee Statement: Assembly: Yes
Senate: Yes 3-5-90 & 3-29-90

Fiscal Note: No

Veto Message: No

Message on signing: No

Following were printed:

Reports: No

Hearings: No

See newspaper clipping--attached:
"Acquittal-committee revisions clear in cases involving mental defect." 6-29-90
"Burden of proof lifted..." 7-18-90 Star Ledger Star Ledger

SLJ

[CORRECTED COPY]
[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2335 and 2074

STATE OF NEW JERSEY

ADOPTED MARCH 5, 1990

Sponsored by Senators O'CONNOR and CONNORS

1 AN ACT concerning the ¹[defense of diminished capacity and
2 amending N.J.S.2C:2-2 and repealing] admissibility of evidence
3 of mental disease or defect in criminal cases and amending¹
4 N.J.S.2C:4-2.

5

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

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

9 2C:2-2. General Requirements of Culpability.

10 a. Minimum Requirements of Culpability. Except as provided
11 in subsection c.(3) of this section, a person is not guilty of an
12 offense unless he acted purposely, knowingly, recklessly or
13 negligently, as the law may require, with respect to each
14 material element of the offense.

15 b. Kinds of culpability defined.

16 (1) Purposely. A person acts purposely with respect to the
17 nature of his conduct or a result thereof if it is his conscious
18 object to engage in conduct of that nature or to cause such a
19 result. A person acts purposely with respect to attendant
20 circumstances if he is aware of the existence of such
21 circumstances or he believes or hopes that they exist. "With
22 purpose," "designed," "with design" or equivalent terms have
23 the same meaning.

24 (2) Knowingly. A person acts knowingly with respect to the
25 nature of his conduct or the attendant circumstances if he is
26 aware that his conduct is of that nature, or that such
27 circumstances exist, or he is aware of a high probability of their
28 existence. A person acts knowingly with respect to a result of his
29 conduct if he is aware that it is practically certain that his
30 conduct will cause such a result. "Knowing," "with knowledge"
31 or equivalent terms have the same meaning.

32 (3) Recklessly. A person acts recklessly with respect to a
33 material element of an offense when he consciously disregards a
34 substantial and unjustifiable risk that the material element exists
35 or will result from his conduct. The risk must be of such a nature
36 and degree that, considering the nature and purpose of the
37 actor's conduct and the circumstances known to him, its

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SJU committee amendments adopted March 29, 1990.

1 disregard involves a gross deviation from the standard of conduct
2 that a reasonable person would observe in the actor's situation.
3 "Recklessness," "with recklessness" or equivalent terms have
4 the same meaning.

5 (4) Negligently. A person acts negligently with respect to a
6 material element of an offense when he should be aware of a
7 substantial and unjustifiable risk that the material element exists
8 or will result from his conduct. The risk must be of such a nature
9 and degree that the actor's failure to perceive it, considering the
10 nature and purpose of his conduct and the circumstances known
11 to him, involves a gross deviation from the standard of care that
12 a reasonable person would observe in the actor's situation.
13 "Negligently" or "negligence" when used in this code, shall refer
14 to the standard set forth in this section and not to the standards
15 applied in civil cases.

16 c. Construction of statutes with respect to culpability
17 requirements.

18 (1) Prescribed culpability requirement applies to all material
19 elements. When the law defining an offense prescribes the kind of
20 culpability that is sufficient for the commission of an offense,
21 without distinguishing among the material elements thereof, such
22 provision shall apply to all the material elements of the offense,
23 unless a contrary purpose plainly appears.

24 (2) Substitutes for kinds of culpability. When the law provides
25 that a particular kind of culpability suffices to establish an
26 element of an offense such element is also established if a person
27 acts with higher kind of culpability.

28 (3) Construction of statutes not stating culpability
29 requirement. Although no culpable mental state is expressly
30 designated in a statute defining an offense, a culpable mental
31 state may nevertheless be required for the commission of such
32 offense, or with respect to some or all of the material elements
33 thereof, if the proscribed conduct necessarily involves such
34 culpable mental state. A statute defining a crime, unless clearly
35 indicating a legislative intent to impose strict liability, should be
36 construed as defining a crime with the culpability defined in
37 paragraph b.(2) of this section. This provision applies to offenses
38 defined both within and outside of this code.

39 Except as specifically provided in N.J.S.2C:4-1, the existence
40 of a mental disease or defect is not a defense unless the mental
41 disease or defect actually prevented the defendant from acting
42 with the required culpability and evidence of any such mental
43 disease or defect is only relevant, if at all, as to whether the
44 defendant had the state of mind which is an element of the
45 offense.

46 d. Culpability as to illegality of conduct. Neither knowledge
47 nor recklessness nor negligence as to whether conduct constitutes
48 an offense or as to the existence, meaning or application of the
49 law determining the elements of an offense is an element of such

1 offense, unless the definition of the offense or the code so
2 provides.

3 e. Culpability as determinant of grade of offense. When the
4 grade or degree of an offense depends on whether the offense is
5 committed purposely, knowingly, recklessly or criminally
6 negligently, its grade or degree shall be the lowest for which the
7 determinative kind of culpability is established with respect to
8 any material element of the offense.

9 (cf: P.L.1981, c.290, s.4)]¹

10 ¹[2. N.J.S.2C:4-2 is repealed.]¹

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

12 2C:4-2. Evidence of mental disease or defect admissible when
13 relevant to element of the offense.

14 Evidence that the defendant suffered from a mental disease or
15 defect is admissible whenever it is relevant to prove that the
16 defendant did not have a state of mind which is an element of the
17 offense. In the absence of such evidence, it may be presumed
18 that the defendant had no mental disease or defect which would
19 negate a state of mind which is an element of the offense.
20 [Mental disease or defect is an affirmative defense which must be
21 proved by a preponderance of the evidence.]¹

22 (cf: P.L.1981, c.290, s.8)

23 ¹[3.] 2.¹ This act shall take effect immediately.

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26 CRIMINAL JUSTICE

27

28 Modifies the law with regard to the introduction of evidence of
29 mental disease or defect in criminal prosecutions.

SENATE, No. 2335

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 15, 1990

By Senator O'CONNOR

1 AN ACT concerning the admissibility of evidence of mental
2 disease or defect in criminal cases and amending N.J.S.2C:4-2.

3

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

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

7 2C:4-2. Evidence of mental disease or defect admissible when
8 relevant to element of the offense.

9 Evidence that the defendant suffered from a mental disease or
10 defect is admissible whenever it is relevant to prove that the
11 defendant did not have a state of mind which is an element of the
12 offense. In the absence of such evidence, it may be presumed
13 that the defendant had no mental disease or defect which would
14 negate a state of mind which is an element of the offense.
15 [Mental disease or defect is an affirmative defense which must be
16 proved by a preponderance of the evidence.]

17 (cf: P.L.1981, c.290, s.8)

18 2. This act shall take effect immediately.

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STATEMENT

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23 N.J.S.2C:4-2 permits a criminal defendant to introduce
24 evidence that the defendant suffered from a mental disease or
25 defect when that evidence is relevant to prove that the defendant
26 did not have the state of mind required for the offense charged.
27 N.J.S.2C:4-2 further provides that mental disease or defect is an
28 affirmative defense which must be proved by the defendant by a
29 preponderance of the evidence.

30 In Humanik v. Beyer, 871 F.2d. 432 (3rd Cir. 1989), the United
31 States Court of Appeals held that the portion of 2C:4-2 which
32 places the burden of proof with regard to mental disease or
33 defect on the defendant violated due process and was thus
34 unconstitutional. The Court of Appeals reasoned that since the
35 prosecution has the burden of proving every element of an
36 offense beyond a reasonable doubt in order to obtain a conviction,
37 requiring the defendant to prove mental disease or defect
38 impermissibly relieved the prosecution of some of that burden.

39 In order to address the constitutional issues raised in Humanik,

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 this bill would eliminate the language from 2C:4-2 indicating that
2 mental disease or defect is an affirmative defense which must be
3 proved by a preponderance of the evidence. As amended, 2C:4-2
4 would simply permit introduction of evidence of mental disease
5 or defect if that evidence is relevant to the state of mind
6 required for the offense charged.

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9 CRIMINAL JUSTICE

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11 Modifies the law with regard to the introduction of evidence of
12 mental disease or defect in criminal prosecutions.

SENATE, No. 2074

STATE OF NEW JERSEY

PRE-FILED FOR INTRODUCTION IN THE 1990 SESSION

By Senator CONNORS

1 AN ACT concerning the defense of diminished capacity and
2 repealing N.J.S. 2C:4-2.

3

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

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1. N.J.S.2C:4-2 is repealed.

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2. This act shall take effect immediately.

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STATEMENT

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12 This bill would repeal N.J.S. 2C:4-2, which allows a criminal
13 defendant to introduce evidence that he suffered from a mental
14 disease or defect when the evidence is relevant to prove that the
15 defendant did not have a state of mind which is an element of the
16 offense. This statute is known as the "diminished capacity"
17 defense.

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The United States Court of Appeals recently held the statute unconstitutional. Because the prosecution has the burden in every criminal case of proving all the elements of an offense beyond a reasonable doubt, including elements relating to the defendant's state of mind, the court ruled that the statute impermissibly relieves the prosecution of some of its burden of proof. (Humanik v. Beyer, 871 F.2d. 432 (3rd Cir. 1989), cert. denied ___ U.S. ___ (1989)).

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In addition, N.J.S. 2C:4-2 has been criticized by the Appellate Division of our Superior Court. In State v. Junta, 224 N.J. Super. 711 (App. Div. 1988), the court noted disparities in the effects of a successful insanity defense on a defendant's treatment after the verdict compared with the effects of a successful diminished capacity offense. The court commented that while a defendant acquitted by reason of insanity must undergo post-verdict commitment and evaluation procedures, there is no such requirement for a defendant acquitted by reason of mental disease or defect. In the opinion, the court called upon the Legislature "to review these matters expeditiously."

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By repealing N.J.S. 2C:4-2, the bill would rectify the problems raised by the United States Court of Appeals and the Appellate Division. The repealer would have no effect on the insanity defense, which would continue to be available for use by defendants.

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CRIMINAL JUSTICE

Repeals N.J.S. 2C:4-2 concerning the criminal defense of mental disease or defect.

SENATE JUDICIARY COMMITTEE
STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 2335 and 2074

STATE OF NEW JERSEY

DATED: MARCH 5, 1990

The Senate Judiciary Committee reports favorably a committee substitute for Senate Bill Nos. 2335 and 2074.

The committee substitute repeals N.J.S. 2C:4-2 which establishes the so-called "diminished capacity" defense in criminal cases. The substitute clarifies that the existence of a mental disease or defect is technically not a separate defense and that such evidence is only relevant in a criminal case to show whether the alleged mental disease or defect actually prevented the defendant from acting with the state of mind which is an element of the offense.

SENATE JUDICIARY COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 2335 and 2074

with committee amendments

STATE OF NEW JERSEY

DATED: MARCH 29, 1990

The Senate Judiciary Committee reports favorably and with committee amendments Senate Committee Substitute for Senate Bill Nos. 2335 and 2074.

N.J.S.2C:4-2 provides that evidence of mental disease or defect is admissible in a criminal trial when that evidence is relevant to the "state of mind" required for the offense charged. In Humanik v. Beyer, 871 F. 2d. (3rd Cir. 1989), the United States Court of Appeals held the portion of N.J.S.2C:4-2 which provides that mental disease or defect is an affirmative defense which must be proved by a defendant by a preponderance of the evidence violated due process and was thus unconstitutional. The Court of Appeals reasoned that since the prosecution has the burden of proving every element of an offense beyond a reasonable doubt in order to obtain a conviction, requiring the defendant to prove mental disease or defect impermissibly relieved the prosecution of some of that burden.

Earlier this session, this committee released Senate Committee Substitute for Senate Bill Nos. 2335 and 2074 which attempted to address the issue raised by the Humanik decision by repealing N.J.S.2C:4-2 and adding clarifying language to another statute, N.J.S.2C:2-2 (General Requirements of Culpability). This committee substitute was placed back in committee for further review. As amended by the committee, the committee substitute would amend rather than repeal N.J.S.2C:4-2. The amendments would delete the language from N.J.S.2C:4-2 indicating that mental disease or defect is an affirmative defense which must be proved by a preponderance of the evidence. As amended, N.J.S.2C:4-2 would simply permit introduction of evidence of mental disease or defect if that evidence is relevant to the "state of mind" required for the offense charged. Under these amendments, the sections of the committee substitute amending N.J.S.2C:2-2 (General Requirements of Culpability) and repealing N.J.S.2C:2-4 would be deleted.

ASSEMBLY JUDICIARY, LAW AND PUBLIC SAFETY
COMMITTEE

STATEMENT TO

[FIRST REPRINT]

SENATE COMMITTEE SUBSTITUTE FOR

SENATE, Nos. 2335 and 2074

STATE OF NEW JERSEY

DATED: JUNE 7, 1990

The Assembly Judiciary, Law and Public Safety Committee reports favorably the first reprint to Senate Committee Substitute for Senate Nos. 2335 and 2074.

This bill eliminates the language from N.J.S.A.2C:4-2 indicating that mental disease or defect is an affirmative defense which must be proved by a preponderance of the evidence. N.J.S.A.2C:4-2 permits a criminal defendant to introduce evidence that the defendant suffered from a mental disease or defect when that evidence is relevant to prove that the defendant did not have the state of mind required for the offense charged.

In Humanik v. Beyer, 871 F.2d. 432 (3rd Cir. 1989), the United States Court of Appeals held that the portion of 2C:4-2 which places the burden of proof with regard to mental disease or defect on the defendant violated due process and was thus unconstitutional. The Court of Appeals reasoned that since the prosecution has the burden of proving every element of an offense beyond a reasonable doubt in order to obtain a conviction, requiring the defendant to prove mental disease or defect impermissibly relieved the prosecution of some of that burden.

In order to address the constitutional issues raised in Humanik, this bill would eliminate the language from N.J.S.A.2C:4-2 indicating that mental disease or defect is an affirmative defense which must be proved by a preponderance of the evidence. As amended, N.J.S.A.2C:4-2 would simply permit introduction of evidence of mental disease or defect if that evidence is relevant to the state of mind required for the offense charged.

This bill is identical to Assembly Bill No. 3108.