

2C:4-6

LEGISLATIVE HISTORY CHECKLIST
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(Civil commitment)

NJSA: 2C:4-6 et al

LAWS OF: 1996 CHAPTER: 133

BILL NO: A450

SPONSOR(S): DiGaetano

DATE INTRODUCED: May 6, 1996

COMMITTEE: ASSEMBLY: Judiciary

SENATE: Judiciary

AMENDED DURING PASSAGE: No Assembly Committee Substitute
A450/686 enacted

DATE OF PASSAGE: ASSEMBLY: June 24, 1996

SENATE: October 24, 1996

DATE OF APPROVAL: December 5, 1996

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

Report mentioned in statements:

974.90 New Jersey. Committee to review the Conrad Jeffrey Matter.

C929 Report...October, 1995.

1995b [Vol. I - Summary, Vol II - Factual Analysis, Vol. III - Findings &
Recommendations]

See newspaper clippings--attached:

"Whitman signs law on retrying the insane," 12-6-96, Record.

P.L. 1996, CHAPTER 133, *approved December 5, 1996*
Assembly Committee Substitute for
Assembly, Nos. 450 and 686

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.

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 c. If the defendant has not regained his fitness to proceed within
2 such time as the court may deem adequate from the time that it was
3 determined that the defendant lacked such fitness, the court shall after
4 a hearing, if one is requested, dismiss the charges and either order the
5 defendant discharged, or, subject to law governing civil commitment,
6 order the defendant committed to an appropriate institution] three
7 months, the court shall hold a hearing on the issue of whether the
8 charges against him shall be dismissed with prejudice or held in
9 abeyance.

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

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

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

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

37 e. When the court, on its own motion or upon application to the
38 commissioner, his designee, or either party, determines after a hearing,
39 if a hearing is requested, that the defendant has not regained fitness to
40 proceed, the court may order the institution of civil commitment
41 proceedings, or, if it is found that the defendant may be paroled or
42 released on condition without danger to himself or to others, the court
43 may so order. If it is determined that it is not substantially probable
44 that the defendant will regain his competence in the foreseeable future,
45 the court may dismiss the charge and either order the defendant to be
46 discharged, or, subject to the law governing the civil commitment,

1 order the defendant committed to an appropriate institution.] (Deleted
2 by amendment, P.L. , c. (now pending before the Legislature as
3 this bill).

4 f. The fact that the defendant is unfit to proceed does not preclude
5 determination of any legal objection to the prosecution which is
6 susceptible of fair determination prior to trial and without the
7 personal participation of the defendant.
8 (cf: P.L.1979, c.178, s.13B)

9

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

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

18 b. The court shall dispose of the defendant in the following
19 manner:

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

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

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

44 c. No person committed under this section shall be confined within
45 any penal or correctional institution or any part thereof.
46 (cf: P.L.1981, c.290, s.9)

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

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

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

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

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

40 d. Each defendant's case shall be specifically reviewed as provided
41 by the law governing civil commitment.

42 (cf: P.L.1979, c.178, s.16)

43

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

46 15. a. If the court finds by clear and convincing evidence that the

1 patient needs continued involuntary commitment, it shall issue an order
2 authorizing the involuntary commitment of the patient and shall
3 schedule a subsequent court hearing in the event the patient is not
4 administratively discharged pursuant to section 17 of P.L.1987, c.116
5 (C.30:4-27.17) prior thereto.

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

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

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

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

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

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

46 d. Notwithstanding subsection a. of this section, or any provision

1 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
2 30:4-27.18), no person committed while serving a term of
3 incarceration shall be discharged by the court or administratively
4 discharged prior to the date on which the person's maximum term
5 would have expired had he not been committed. If the person is no
6 longer in need of involuntary commitment, the person shall be returned
7 to the appropriate State, county or local authority to complete service
8 of the term of incarceration imposed until released in accordance with
9 law, and the person shall be given day for day credit for all time during
10 which the person was committed.

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

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

20

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

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

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

44 c. If the patient is confined pursuant to an order entered under
45 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
46 insanity or under N.J.S.2C:4-6 concerning lack of mental competence

1 to stand trial, the treatment team shall, no less than 10 days prior to
2 the proposed date of administrative discharge, provide written notice
3 to the committing court and to the prosecutor. If, within five days of
4 receipt of such notice, the prosecutor files a request for a hearing on
5 the issue of continuing need for commitment and serves notice of that
6 request, in accordance with the provisions of section 13 of P.L.1987,
7 c.116 (C.30:4-27.13), the treatment team shall delay the administrative
8 discharge and the court shall schedule a hearing on the issue. The
9 hearing shall be conducted in the manner provided in section 15 of
10 P.L.1987, c.116 (C.30:4-27.15).
11 (cf: P.L.1994, c.134, s.10)

12

13 6. This act shall take effect immediately.

14

15

16

17

18 Clarifies procedures used in civil commitment of certain criminal
19 defendants.

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 450 and 686

STATE OF NEW JERSEY

ADOPTED MAY 20, 1996

Sponsored by Assemblymen DiGAETANO, KELLY, ZISA
Assemblywoman ALLEN and Assemblyman LeFEVRE

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.

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 c. If the defendant has not regained his fitness to proceed within
2 【such time as the court may deem adequate from the time that it was
3 determined that the defendant lacked such fitness, the court shall after
4 a hearing, if one is requested, dismiss the charges and either order the
5 defendant discharged, or, subject to law governing civil commitment,
6 order the defendant committed to an appropriate institution】 three
7 months, the court shall hold a hearing on the issue of whether the
8 charges against him shall be dismissed with prejudice or held in
9 abeyance.

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

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

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

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

37 e. 【When the court, on its own motion or upon application to the
38 commissioner, his designee, or either party, determines after a hearing,
39 if a hearing is requested, that the defendant has not regained fitness to
40 proceed, the court may order the institution of civil commitment
41 proceedings, or, if it is found that the defendant may be paroled or
42 released on condition without danger to himself or to others, the court
43 may so order. If it is determined that it is not substantially probable
44 that the defendant will regain his competence in the foreseeable future,
45 the court may dismiss the charge and either order the defendant to be
46 discharged, or, subject to the law governing the civil commitment,

1 order the defendant committed to an appropriate institution.]
2 (Deleted by amendment, P.L. , c. (now pending before the
3 Legislature as this bill).

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

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

9

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

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

18 b. The court shall dispose of the defendant in the following
19 manner:

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

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

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

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

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

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

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

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

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

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

40 d. Each defendant's case shall be specifically reviewed as provided
41 by the law governing civil commitment.

42 (cf: P.L.1979, c.178, s.16)

43

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

46 15. a. If the court finds by clear and convincing evidence that the

1 patient needs continued involuntary commitment, it shall issue an order
2 authorizing the involuntary commitment of the patient and shall
3 schedule a subsequent court hearing in the event the patient is not
4 administratively discharged pursuant to section 17 of P.L.1987, c.116
5 (C.30:4-27.17) prior thereto.

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

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

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

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

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

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

46 d. Notwithstanding subsection a. of this section, or any provision

1 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
2 30:4-27.18), no person committed while serving a term of
3 incarceration shall be discharged by the court or administratively
4 discharged prior to the date on which the person's maximum term
5 would have expired had he not been committed. If the person is no
6 longer in need of involuntary commitment, the person shall be returned
7 to the appropriate State, county or local authority to complete service
8 of the term of incarceration imposed until released in accordance with
9 law, and the person shall be given day for day credit for all time during
10 which the person was committed.

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

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

20

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

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

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

44 c. If the patient is confined pursuant to an order entered under
45 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
46 insanity or under N.J.S.2C:4-6 concerning lack of mental competence

1 to stand trial, the treatment team shall, no less than 10 days prior to
2 the proposed date of administrative discharge, provide written notice
3 to the committing court and to the prosecutor. If, within five days of
4 receipt of such notice, the prosecutor files a request for a hearing on
5 the issue of continuing need for commitment and serves notice of that
6 request, in accordance with the provisions of section 13 of P.L.1987,
7 c.116 (C.30:4-27.13), the treatment team shall delay the administrative
8 discharge and the court shall schedule a hearing on the issue. The
9 hearing shall be conducted in the manner provided in section 15 of
10 P.L.1987, c.116 (C.30:4-27.15).
11 (cf: P.L.1994, c.134, s.10)
12

13 6. This act shall take effect immediately.
14
15
16
17

18 Clarifies procedures used in civil commitment of certain criminal
19 defendants.

ASSEMBLY, No. 450

STATE OF NEW JERSEY

INTRODUCED MAY 6, 1996

By Assemblymen DiGAETANO, KELLY, Assemblywoman J. Smith, Assemblymen Roma, O'Toole, Weingarten, Azzolina, DeSopo, Assemblywoman Allen, Assemblymen T. Smith, Lance, Assemblywoman Heck, Assemblyman Zecker, Assemblywoman Crecco, Assemblymen Malone, Cottrell, Gibson, Blee, Corodemus, LeFevre, Geist and Asselta

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 Title 30 of the Revised Statutes.

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

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 probable that the defendant could regain his competence within the
2 foreseeable future.

3 c. If the defendant has not regained his fitness to proceed within
4 **【such time as the court may deem adequate from the time that it was**
5 **determined that the defendant lacked such fitness, the court shall after**
6 **a hearing, if one is requested, dismiss the charges and either order the**
7 **defendant discharged, or, subject to law governing civil commitment,**
8 **order the defendant committed to an appropriate institution】** three
9 months, the court shall hold a hearing on the issue of whether the
10 charges against him shall be dismissed with prejudice or held in
11 abeyance.

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

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

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

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

39 e. **【When the court, on its own motion or upon application to the**
40 **commissioner, his designee, or either party, determines after a hearing,**
41 **if a hearing is requested, that the defendant has not regained fitness to**
42 **proceed, the court may order the institution of civil commitment**
43 **proceedings, or, if it is found that the defendant may be paroled or**
44 **released on condition without danger to himself or to others, the court**
45 **may so order. If it is determined that it is not substantially probable**
46 **that the defendant will regain his competence in the foreseeable future,**

1 the court may dismiss the charge and either order the defendant to be
2 discharged, or, subject to the law governing the civil commitment,
3 order the defendant committed to an appropriate institution.】
4 (Deleted by amendment, P.L. , c. (now pending before the
5 Legislature as this bill).

6 f. The fact that the defendant is unfit to proceed does not preclude
7 determination of any legal objection to the prosecution which is
8 susceptible of fair determination prior to trial and without the
9 personal participation of the defendant.
10 (cf: P.L.1979, c.178, s.13B)

11

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

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

20 b. The court shall dispose of the defendant in the following
21 manner:

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

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

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

46 c. No person committed under this section shall be confined within

1 any penal or correctional institution or any part thereof.
2 (cf: P.L.1981, c.290, s.9)

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

5 2C:4-9. Release of Persons Committed by Reason of Insanity.

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

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

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

43 d. Each defendant's case shall be specifically reviewed as provided
44 by the law governing civil commitment.

45 (cf: P.L.1979, c.178, s.16)

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

3 15. a. If the court finds by clear and convincing evidence that the
4 patient needs continued involuntary commitment, it shall issue an order
5 authorizing the involuntary commitment of the patient and shall
6 schedule a subsequent court hearing in the event the patient is not
7 administratively discharged pursuant to section 17 of P.L.1987, c.116
8 (C.30:4-27.17) prior thereto.

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

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

21 (a) that the patient's history indicates a high risk of
22 rehospitalization because of the patient's failure to comply with
23 discharge plans; or

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

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

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

1 of the day the patient was returned to the facility to determine if the
2 order of conditional discharge should be vacated.

3 d. Notwithstanding subsection a. of this section, or any provision
4 of sections 16, 17 or 18 of P.L.1987, c.116 (C.30:4-27. 16 through
5 30:4-27.18), no person committed while serving a term of
6 incarceration shall be discharged by the court or administratively
7 discharged prior to the date on which the person's maximum term
8 would have expired had he not been committed. If the person is no
9 longer in need of involuntary commitment, the person shall be returned
10 to the appropriate State, county or local authority to complete service
11 of the term of incarceration imposed until released in accordance with
12 law, and the person shall be given day for day credit for all time during
13 which the person was committed.

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

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

23

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

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

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

1 c. If the patient is confined pursuant to an order entered under
2 N.J.S.2C:4-8 concerning acquittal of a criminal charge by reason of
3 insanity or under N.J.S.2C:4-6 concerning lack of mental competence
4 to stand trial, the treatment team shall, no less than 10 days prior to
5 the proposed date of administrative discharge, provide written notice
6 to the committing court and to the prosecutor. If, within five days of
7 receipt of such notice, the prosecutor files a request for a hearing on
8 the issue of continuing need for commitment and serves notice of that
9 request, in accordance with the provisions of section 13 of P.L.1987,
10 c.116 (C.30:4-27.13), the treatment team shall delay the administrative
11 discharge and the court shall schedule a hearing on the issue. The
12 hearing shall be conducted in the manner provided in section 15 of
13 P.L.1987, c.116 (C.30:4-27.15).
14 (cf: P.L.1994, c.134, s.10)

15

16 6. This act shall take effect immediately.

17

18

19 STATEMENT

20

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

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

35 A recent New Jersey Supreme Court report (the "Report of the
36 Committee to Review the Conrad Jeffrey Matter," dated October,
37 1995) recommended imposing severe limitations on the circumstances
38 under which the charges would be dismissed. If the charges are held
39 in abeyance and not dismissed, the State would still be able to
40 prosecute the matter at a later date when a once-incompetent
41 defendant regains competence.

42 In accordance with the report's recommendation, this bill
43 establishes a presumption that charges against a defendant who is
44 incompetent to stand trial will not be dismissed. The presumption
45 could be overcome only if the court determines that continuing the
46 criminal prosecution under the particular circumstances would

1 constitute a constitutionally significant injury to the defendant
2 attributable to undue delay in being brought to trial.

3 The bill provides that the factors to be weighed by the court in
4 making this determination include the defendant's prospects for
5 regaining competency; the period of time during which the defendant
6 has remained incompetent; the nature and extent of the defendant's
7 institutionalization; the nature and gravity of the crimes charged; the
8 effects of delay on the prosecution; the effects of delay on the
9 defendant, including any likelihood of prejudice to the defendant in the
10 trial arising out of the delay; and the public interest in prosecuting the
11 charges. Following this determination, the court would be required
12 to hold hearings, with notice to the prosecutor, at six-month intervals,
13 on the issue of the disposition of the pending charges.

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

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

29

30

31

32

33 Clarifies procedures used in civil commitment of certain criminal
34 defendants.

ASSEMBLY JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 450 and 686

STATE OF NEW JERSEY

DATED: MAY 20, 1996

The Assembly Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 450 and 686.

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

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

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

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

The substitute provides that the factors to be weighed by the court in making this determination include the defendant's prospects for regaining competency; the period of time during which the defendant has remained incompetent; the nature and extent of the defendant's institutionalization; the nature and gravity of the crimes charged; the

effects of delay on the prosecution; the effects of delay on the defendant, including any likelihood of prejudice to the defendant in the trial arising out of the delay; and the public interest in prosecuting the charges. Following this determination, the court would be required to hold hearings, with notice to the prosecutor, at six-month intervals, on the issue of the disposition of the pending charges.

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

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

SENATE JUDICIARY COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, Nos. 450 and 686

STATE OF NEW JERSEY

DATED: SEPTEMBER 19, 1996

The Senate Judiciary Committee reports favorably Assembly Committee Substitute for Assembly Bill Nos. 450/686.

This substitute clarifies the procedures used in cases where a criminal defendant is found mentally incompetent to stand trial. Under present law, a person who lacks the fitness to proceed may be committed to a psychiatric institution for a period of time while the court waits to determine whether he will recover sufficiently in order to stand trial on the charges. If the defendant does not become competent within an amount of time determined by the court, the court then decides whether to dismiss the charges, to release the defendant to the community, or to continue the defendant's civil commitment in a psychiatric institution. The statutes do not, however, provide clear guidelines to the courts to assist in the determination as to whether the charges pending against a particular defendant should be dismissed or held in abeyance under these circumstances.

A recent New Jersey Supreme Court report (the "Report of the Committee to Review the Conrad Jeffrey Matter," dated October, 1995) recommended imposing severe limitations on the circumstances under which the charges would be dismissed.

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

The bill provides that the factors to be weighed by the court in making this determination include the defendant's prospects for regaining competency; the period of time during which the defendant has remained incompetent; the nature and extent of the defendant's institutionalization; the nature and gravity of the crimes charged; the effects of delay on the prosecution; the effects of delay on the defendant, including any likelihood of prejudice to the defendant at trial arising out of the delay; and the public interest in prosecuting the charges. Following this determination, the court would be required to

hold hearings, with notice to the prosecutor, at six-month intervals, on the issue of the disposition of the pending charges.

The Jeffrey report also noted that defendants who are committed to psychiatric institutions on grounds of incompetence to stand trial have a somewhat unclear status. According to the report, mental health professionals working in the institutions are not always aware of the criminal charges against these persons and prosecutors are not always aware of the procedures used in the institutions. Consequently, a defendant may end up administratively discharged from confinement in a psychiatric institution without input from the prosecution. The bill would clarify the roles of prosecutors and mental health professions with regard to these defendants. The substitute requires that prosecutors and victims be notified prior to the proposed release of these persons from confinement and establishes standards and procedures to be followed to insure adequate communication between criminal justice and mental health professionals.