

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 21 Session of 2013

INTRODUCED BY GRELL, GINGRICH, SWANGER, KAUFFMAN, FABRIZIO, C. HARRIS, KORTZ, DAVIDSON, STEVENSON, O'NEILL, R. BROWN, MARSICO, GROVE, FLECK, ROSS, CLYMER, GIBBONS, MOUL, MILLER, MURT AND MILNE, JANUARY 16, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 16, 2013

AN ACT

1 Amending the act of July 9, 1976 (P.L.817, No.143), entitled "An
 2 act relating to mental health procedures; providing for the
 3 treatment and rights of mentally disabled persons, for
 4 voluntary and involuntary examination and treatment and for
 5 determinations affecting those charged with crime or under
 6 sentence," in criminal justice determinations, further
 7 providing for incompetence and for procedure.

8 The General Assembly of the Commonwealth of Pennsylvania
 9 hereby enacts as follows:

10 Section 1. Section 402(e) and (f) of the act of July 9, 1976
 11 (P.L.817, No.143), known as the Mental Health Procedures Act,
 12 amended November 26, 1978 (P.L.1362, No.324), are amended and
 13 the section is amended by adding a subsection to read:

14 Section 402. Incompetence to Proceed on Criminal Charges and
 15 Lack of Criminal Responsibility as Defense.--* * *

16 (e) Conduct of Examination; Report.--When ordered by the
 17 court, an incompetency examination shall take place under the
 18 following conditions:

19 (1) It shall be conducted as an outpatient examination

1 unless an inpatient examination is, or has been, authorized
2 under another provision of this act.

3 (2) It shall be conducted by at least one psychiatrist or
4 licensed psychologist and may relate both to competency to
5 proceed and to criminal responsibility for the crime charged.

6 (3) The person shall be entitled to have counsel present
7 with him and shall not be required to answer any questions or to
8 perform tests unless he has moved for or agreed to the
9 examination. Nothing said or done by such person during the
10 examination may be used as evidence against him in any criminal
11 proceedings on any issue other than that of his mental
12 condition.

13 (4) A report shall be submitted to the court and to counsel
14 and shall contain a description of the examination, which shall
15 include:

16 (i) diagnosis of the person's mental condition;

17 (ii) an opinion as to his capacity to understand the nature
18 and object of the criminal proceedings against him and to assist
19 in his defense;

20 (iii) when so requested, an opinion as to his mental
21 condition in relation to the standards for criminal
22 responsibility as then provided by law if it appears that the
23 facts concerning his mental condition may also be relevant to
24 the question of legal responsibility; and

25 (iv) when so requested, an opinion as to whether he had the
26 capacity to have a particular state of mind, where such state of
27 mind is a required element of the criminal charge.

28 (f) Experts.--The court may allow a psychiatrist or licensed
29 psychologist retained by the defendant and a psychiatrist or
30 licensed psychologist retained by the Commonwealth to witness

1 and participate in the examination. Whenever a defendant who is
2 financially unable to retain such expert has a substantial
3 objection to the conclusions reached by the court-appointed
4 psychiatrist or licensed psychologist, the court shall allow
5 reasonable compensation for the employment of a psychiatrist or
6 licensed psychologist of his selection, which amount shall be
7 chargeable against the mental health and mental retardation
8 program of the locality.

9 * * *

10 (h) Definition.--As used in this section, the term "licensed
11 psychologist" means an individual licensed under the act of
12 March 23, 1972 (P.L.136, No.52), known as the "Professional
13 Psychologists Practice Act."

14 Section 2. Section 404 of the act is amended to read:

15 Section 404. Hearing and Determination of Criminal
16 Responsibility; Bifurcated Trial.--(a) Criminal Responsibility
17 Determination by Court.--At a hearing under section 403 of this
18 act the court may, in its discretion, also hear evidence on
19 whether the person was criminally responsible for the commission
20 of the crime charged. It shall do so in accordance with the
21 rules governing the consideration and determination of the same
22 issue at criminal trial. If the person is found to have lacked
23 criminal responsibility, an acquittal shall be entered. If the
24 person is not so acquitted, he may raise the defense at such
25 time as he may be tried.

26 (b) Opinion Evidence on Mental Condition.--At a hearing
27 under section 403 or upon trial, a psychiatrist or licensed
28 psychologist appointed by the court may be called as a witness
29 by the attorney for the Commonwealth or by the defendant and
30 each party may also summon any other psychiatrist or licensed

1 psychologist or other expert to testify.

2 (c) Bifurcation of Issues or Trial.--Upon trial, the court,
3 in the interest of justice, may direct that the issue of
4 criminal responsibility be heard and determined separately from
5 the other issues in the case and, in a trial by jury, that the
6 issue of criminal responsibility be submitted to a separate
7 jury. Upon a request for bifurcation, the court shall consider
8 the substantiality of the defense of lack of responsibility and
9 its effect upon other defenses, and the probability of a fair
10 trial.

11 (d) Definition.--As used in this section, the term "licensed
12 psychologist" means an individual licensed under the act of
13 March 23, 1972 (P.L.136, No.52), known as the "Professional
14 Psychologists Practice Act."

15 Section 3. The amendment of sections 402 and 404 of the act
16 shall apply to actions initiated on or after the effective date
17 of this section.

18 Section 4. This act shall take effect in 60 days.