

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1405 Session of 2011

INTRODUCED BY GRELL, O'NEILL, BENNINGHOFF, BISHOP, BRIGGS, COHEN, CURRY, DELOZIER, J. EVANS, FABRIZIO, FLECK, FRANKEL, GINGRICH, GODSHALL, HARKINS, HARRIS, HORNAMAN, KAUFFMAN, M. K. KELLER, LONGIETTI, MAHONEY, MAJOR, MANN, MILLER, MULLERY, MUNDY, MURPHY, MURT, MUSTIO, PASHINSKI, PEIFER, PRESTON, PYLE, QUIGLEY, RAPP, ROSS, SANTONI, STEVENSON, STURLA, TOEPEL, VULAKOVICH, WAGNER, WATERS, WATSON, CARROLL, JOSEPHS, GOODMAN, PICKETT, SONNEY AND DONATUCCI, APRIL 28, 2011

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 28, 2011

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

1 following conditions:

2 (1) It shall be conducted as an outpatient examination  
3 unless an inpatient examination is, or has been, authorized  
4 under another provision of this act.

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

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

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

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

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

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

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

30 (f) Experts.--The court may allow a psychiatrist or licensed

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

11 \* \* \*

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

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

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

28 (b) Opinion Evidence on Mental Condition.--At a hearing  
29 under section 403 or upon trial, a psychiatrist or licensed  
30 psychologist appointed by the court may be called as a witness

1 by the attorney for the Commonwealth or by the defendant and  
2 each party may also summon any other psychiatrist or licensed  
3 psychologist or other expert to testify.

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

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

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

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