

No. 2014-21

AN ACT

HB 21

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Experts.—The court may allow a psychiatrist *or licensed psychologist* retained by the defendant and a psychiatrist *or licensed psychologist* retained by the Commonwealth to witness and participate in the examination. Whenever a defendant who is financially unable to retain such expert has a substantial objection to the conclusions reached by the court-appointed psychiatrist *or licensed psychologist*, the court shall allow reasonable

compensation for the employment of a psychiatrist *or licensed psychologist* of his selection, which amount shall be chargeable against the mental health and mental retardation program of the locality.

* * *

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

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

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

(b) Opinion Evidence on Mental Condition.—At a hearing under section 403 or upon trial, a psychiatrist *or licensed psychologist* appointed by the court may be called as a witness by the attorney for the Commonwealth or by the defendant and each party may also summon any other psychiatrist *or licensed psychologist* or other expert to testify.

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

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

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

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

APPROVED—The 19th day of March, A.D. 2014

TOM CORBETT