New Jersey Courts
Independence • Integrity • Fairness • Quality Service

Administrative Office of the Courts

GLENN A. GRANT, J.A.D.
Acting Administrative Director of the Courts

www.njcourts.gov • Phone: 609-376-3000 • Fax: 609-376-3002

DIRECTIVE #17-18

To: **Assignment Judges**
Trial Court Administrators

From: **Glenn A. Grant, J.A.D.**

Subj: **Criminal – New and Revised Form Orders for Competency and Sanity Evaluations**

Date: **November 1, 2018**

This Directive promulgates for immediate use eleven new and revised form orders as approved by the Judicial Council to implement the requirements of N.J.S.A. 2C:4-5 et seq. and N.J.S.A. 2C:4-1 et seq. regarding competency and sanity evaluations in criminal matters. These form orders were drafted by the Forensic Evaluation Workgroup, a group comprised of various criminal practice and forensic evaluation system stakeholders, including representatives from the Judiciary, the Office of the Attorney General, the Office of the Public Defender, county prosecutors, and executive and clinical administration from the Division of Mental Health and Addiction Services.

These form orders will be posted on the Criminal Forms page of the Judiciary's Internet website and the Criminal Division Forms page of the Judiciary's InfoNet.

The following briefly explains the situations in which each order should be used. For a more detailed explanation, please see the text that precedes the orders in each of the subsequent attachments.

1. **Order #1A – Order Mandating Evaluation of Defendant's Fitness to Proceed to Trial (Defendant not Detained)** **Attachment 1**
   This order is to be used for a defendant who is not detained when the court needs a psychiatric report pursuant to N.J.S.A. 2C:4-5 due to questions regarding the defendant's fitness to proceed to trial.

2. **Order #1B - Order Mandating Evaluation of Defendant's Fitness to Proceed to Trial (Defendant Detained)** **Attachment 2**
   This order is to be used when the court needs a psychiatric report pursuant to N.J.S.A. 2C:4-5a due to questions regarding an incarcerated defendant's fitness to proceed to trial.

3. **Order #2 – Order Committing Defendant for Purposes of a Competency Evaluation Pursuant to N.J.S.A. 2C:4-5** **Attachment 3**
   This order commits a defendant to the custody of the Commissioner of the Department of Health for the purposes of a competency evaluation as described in N.J.S.A. 2C:4-5. This form of order is to be used in instances where a qualified psychiatrist or licensed psychologist has already examined the defendant pursuant to screening Orders #1A and #1B but was unable to make a determination as to the defendant's competency.

4. **Order #3 – Order Committing a Defendant Who Is Incompetent to Stand Trial and Dangerous to Self, Others and/or Property for Further Evaluation after 90 Days** **Attachment 4**
   This order is to be used in committing a defendant to the custody of the Commissioner of the Department of Health when the defendant has been found by the court to be incompetent and dangerous to self, others, or property as a result of mental illness. See N.J.S.A. 2C:4-6. The court shall hold a hearing regarding the defendant's condition three months after the defendant has been committed.

5. **Order #4 - Order Committing a Defendant Who Continues to Be Incompetent to Stand Trial and a Danger to Themselves, Others, or Property for Further Evaluation after 180 Days** **Attachment 5**
   This order continues the commitment under N.J.S.A. 2C:4-6 for a defendant who is not competent and continues to be dangerous as a result of mental illness after the three month review in Order #3. This order continues hospitalization for the defendant for six months.

6. **Order #5 - Order Releasing Defendant Who Lacks Fitness to Proceed but Is Not a Danger under Certain Conditions** **Attachment 6**
   This order is to be used in cases where a defendant has been found incompetent, but there is no need for commitment because he/she is not a danger to him/herself, others, or property. Consequently, the defendant may be released on certain conditions set by the court. In accordance with N.J.S.A. 2C:4-6(b), the court may direct the defendant to continue with outpatient treatment while the case is held in abeyance. The order also directs that a follow-up examination be conducted by psychologists from the Ann Klein Forensic Center in 90 days.

7. **Order #6A - Order Discharging the Defendant on Pretrial Release from the Care and Custody of the Commissioner of Health (Defendant not Detained)** **Attachment 7**
   Order #6A is to be used when a defendant has previously been placed in the care of the Commissioner of the Department of Health and is now deemed competent to proceed. Order #6A may be used where there has been a previous determination that the defendant may be released to the community. It would be used to discharge him/her from the hospital under the previous competency order.

8. **Order #6B - Order Mandating the Transfer of the Defendant from the Care and Custody of the Commissioner of Health to a Correctional Facility (Defendant Detained)** **Attachment 8**
   Order #6B is also to be used when a defendant has previously been placed in the care of the Commissioner of the Department of Health and is now deemed competent to proceed. Order #6B may be used where the defendant has either previously been detained until trial on his/her present charge or a detention hearing has not taken place. In either case, the order may be used to return the defendant to the appropriate correctional facility.

9. **Order #7 – Order Mandating the Transfer of Defendant from the Care and Custody of the Commissioner of Health to the Correctional Facility** **Attachment 9**
   This order is to be used to transfer the defendant back to the correctional facility when he/she has gained his/her fitness to proceed to trial and is no longer dangerous to self, others or property by reason of mental illness.

10. **Order Mandating a Psychiatric Evaluation of Defendant's Criminal Responsibility at the Time of the Crime (Sanity Evaluation) – (Defendant Not Detained)** **Attachment 10**
    This order is to be used when the court needs an expert report pursuant to N.J.S.A. 2C:4-1, that is, a sanity evaluation, due to questions regarding a defendant's state of mind at the time of the offense, where the defendant is not detained at the time the order is entered.

11. **Order Mandating a Psychiatric Evaluation of Defendant's Criminal Responsibility at the Time of the Crime (Sanity Evaluation) – (Defendant Detained)** **Attachment 11**
    This order is to be used when the court needs an expert report pursuant to N.J.S.A. 2C:4-1, that is, a sanity evaluation, due to questions regarding a defendant's criminal responsibility at the time of the offense, where the defendant is detained at the time the evaluation is ordered.

Questions or comments regarding this Directive may be directed to Sue Callaghan, Assistant Director for Criminal Practice, by email at sue.callaghan@njcourts.gov or by phone at 609-815-2900, x55300.

Attachments

cc: Chief Justice Stuart Rabner
Attorney General Gurbir S. Grewal
Public Defender Joseph E. Krakora
Criminal Division Judges
Veronica Allende, Director, Div. of Crim. Justice
County Prosecutors
Steven D. Bonville, Chief of Staff
AOC Directors and Assistant Directors
Melaney S. Payne, Special Assistant
Ann Marie Fleury, Special Assistant
Jessica Lewis Kelly, Special Assistant
Criminal Division Managers and Assistants
Vance Hagins, Chief
Maria Pogue, Assistant Chief

Attachment 1

Order #1A – Order Mandating Evaluation of Defendant's Fitness to Proceed to Trial (Defendant not Detained)

Order #1A - Order Mandating an Evaluation of Defendant's Fitness to Proceed to Trial (Defendant not Detained)

The text of the following proposed order has been drafted for use when the court needs a psychiatric or psychological report pursuant to N.J.S.A. 2C:4-5 due to questions regarding a defendant's fitness to proceed to trial. This order is to be used for defendants who are in the community. A qualified psychiatrist or licensed psychologist may conduct the initial evaluation to determine competency. If the defendant is found indeterminate, such that an opinion cannot be rendered, then a subsequent order (see infra Order #2) will be required to determine if the defendant should be placed in the custody of the Commissioner of the Department of Health for inpatient hospitalization.

This order provides a timeframe of 30 days for progress and/or evaluation to be delivered to the court and a 45 day timeframe for a status conference date in the court's discretion for the purpose of maintaining supervision of the progress of the case.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____ County
Indictment Number: _____

Initial Screening Order

Mandating an Evaluation of Defendant's Fitness to Proceed to Trial: Defendant in Community

HAVING FOUND cause to question defendant's fitness to proceed to trial, and in order to determine defendant's capacity to understand the proceedings against him/her and to assist in his/her defense, the defendant being originally charged with _____,

It is on the _____day of _____ , 20 ___ **ORDERED** that:

1. Defendant is hereby ordered pursuant to *N.J.S.A.* 2C:4-5a to be examined by a qualified psychiatrist or licensed psychologist designated by the Commissioner of the Department of Health in order to determine defendant's fitness to proceed to trial. Defense counsel shall provide access to and copies of the defendant's medical records, as available, and as the examiner deems necessary to perform the examination.

2. Arrangements for a place to conduct such an evaluation shall be made by the Ann Klein Jail Program Coordinator at either defense counsel's office or the space made available by the court.

3. Such finding by a qualified psychiatrist or licensed psychologist shall be submitted in a written report to this Court and counsel and shall include:

   (a) description of the nature of the examination;

   (b) A diagnosis of the mental condition of the defendant;

   (c) An opinion as to the defendant's capacity to understand the proceeding against him/her and to assist in his/her own defense; and

(d) An opinion as to whether or not the defendant is presently incompetent to proceed to trial in consideration of the factors listed in *N.J.S.A.* 2C:4-4, and whether defendant's mental condition is such that he/she poses a present danger either to himself/herself or to other persons upon his/her release into the general community.

4. Pursuant to *N.J.S.A.* 2C: 4-4(b), the qualified psychiatrist or licensed psychologist shall render an opinion as to whether the defendant has the mental capacity to appreciate his/her presence in relation to time, place and things and whether the defendant's elementary mental processes are such that he/she comprehend:

   (a) That he/she is in a court of justice charged with a criminal offense;

   (b) That there is a judge on the bench;

   (c) That there is a prosecutor present who will try to convict him/her;

   (d) That he/she has a lawyer who will undertake to defend him/her;

   (e) That he/she will be expected to tell to the best of his/her mental ability the facts surrounding him/her at the time and place where the alleged violation was committed if he/she chooses to testify and understand his/her legal right not to testify;

   (f) That there is a jury present to pass upon evidence that adduced as to guilt or innocence of such charge or, that if he/she should choose to enter into plea negotiations or to plead guilty, that he/she comprehends the consequences of a guilty plea and that he/she be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and

   (g) That he/she has the ability to participate in an adequate presentation of his/her defense.

5. The Prosecutor's Office shall forward all discoverable materials, to the Ann Klein Jail Program Coordinator at the Ann Klein Forensic Center Competency Evaluation Program.

6. The prosecutor and the defense counsel shall report to the court within thirty days (30) of the entry of this order as to the progress of the evaluation. The prosecutor shall serve this court order to the AKFC Jail Coordinator at the Ann Klein Forensic Center within two (2) business days of execution of the order.

7. Upon entry of this order a case conference is scheduled with counsel in this matter within forty-five (45) days of the entry of this order to review the status of the case. The next court date shall be (no longer than 45 days from date of this order) _____.

8. The written report submitted by the qualified psychiatrist or licensed psychologist to this Court shall not include an opinion with respect to whether the defendant was insane at the time of the crime pursuant to *N.J.S.A.* 2C:4-1 and/or whether the defendant suffered from a mental disease or defect at the time of the crime pursuant to *N.J.S.A.* 2C:4-2;

9. [any additional conditions as ordered by the court]_____

_____

_____

_____

A copy of this order will be forwarded by the Clerk of the Court to the County Adjuster's Office within two (2) days of its signing.

_____ Date

_____ Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 2

Order #1B – Order Mandating Evaluation of Defendant's Fitness to Proceed to Trial (Defendant Detained)

Order #1B - Order Mandating a Psychiatric Evaluation of Defendant's Fitness to Proceed to Trial (Defendant Detained)

The text of the following proposed order has been drafted for use when the court needs a psychiatric or psychological report pursuant to N.J.S.A. 2C:4-5a due to questions regarding a defendant's fitness to proceed to trial. This order is to be used for defendants who are incarcerated. A qualified psychiatrist or licensed psychologist may conduct the initial evaluation to determine competency. If the defendant is found indeterminate and a qualified expert designated by the Commissioner determines hospitalization is clinically necessary to perform the examination then the court shall order defendant be placed in the custody of the Commissioner of the Department of Health for such examination. If hospitalization is necessary in this case, the court shall utilize Order #2 infra. If the defendant is found incompetent but a danger to self, others, or property as a result of mental illness, then Order #3 infra, should be utilized.

This order also contemplates a thirty day control date for counsel to inform the court of the status of the examination and a forty-five day date for a conference on the case status. These dates are implemented only to help the court and parties keep track of the case as the defendant awaits commitment and further examination.

Attorney Name _____
NJ Attorney ID Number _____
Address _____

_____

Telephone Number _____
Attorney for _____

State of New Jersey
Plaintiff,

v.

Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____ County
Indictment Number: _____

Criminal Action

Initial Screening Order
Mandating an Evaluation of Defendant's Fitness to Proceed – Defendant Incarcerated

HAVING FOUND cause to question defendant's fitness to proceed to trial, and in order to determine defendant's capacity to understand the proceedings against him/her and to assist in his/her own defense, the defendant, being charged with _____,

It is on the _____day of _____ , 20___ **ORDERED** that:

1. Defendant is hereby ordered pursuant to *N.J.S.A.* 2C:4-5a to be examined by a qualified psychiatrist or licensed psychologist designated by the Commissioner of the Department of Health to determine fitness to proceed. The jail or prison staff where the defendant is incarcerated shall permit such examination at the jail or prison and shall provide access to and copies of the inmate's medical record, as available, and as the examiner deems necessary to perform the examination.

2. Such finding by a qualified psychiatrist or licensed psychologist shall be submitted in a written report to this Court and counsel and shall include:

   (a) A description of the nature of the examination;

   (b) A diagnosis of the mental condition of the defendant;

   (c) An opinion as to whether or not the defendant is presently incompetent to proceed to trial in consideration of the factors listed in *N.J.S.A.* 2C:4-4, and whether defendant's mental condition is such that he/she poses a present danger either to himself/herself or to other persons upon his/her release into the general community.

(d) If examining clinician deems in-patient hospitalization is necessary to complete the examination.

3. Pursuant to *N.J.S.A.* 2C:4-4(b), the qualified psychiatrist or licensed psychologist shall render an opinion as to whether the defendant has the mental capacity to appreciate his/her presence in relation to time, place and things and whether the defendant's elementary mental processes are such that he/she comprehends:

   (a) That he/she is in a court of justice charged with a criminal offense;

   (b) That there is a judge on the bench;

   (c) That there is a prosecutor present who will try to convict him/her;

   (d) That he/she has a lawyer who will undertake to defend him/her;

   (e) That he/she will be expected to tell to the best of their mental ability the facts surrounding him/her at the time and place where the alleged violation was committed if he/she chooses to testify and understand his/her legal right not to testify;

   (f) That there is a jury present to pass upon evidence that adduced as to guilt or innocence of such charge or, that if he/she should choose to enter into plea negotiations or to plead guilty, that he/she comprehends the consequences of a guilty plea and that he/she be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and

   (g) That he/she have the ability to participate in an adequate presentation of his/her defense.

4. The Prosecutor's Office shall forward all discoverable materials, and the reasons the court is seeking this evaluation, to the Ann Klein Forensic Center Jail Program Coordinator.

5. The State psychiatric hospital provide this court and all counsel with his/her determination of competency pursuant to *N.J.S.A.* 2C:4-5.; and

6. The prosecutor shall deliver this court order to the AKFC Jail Coordinator at the Ann Klein Forensic Center within two (2) business days of execution of the order;

7. Upon entry of this order a case conference is scheduled with counsel in this matter within forty-five (45) days of the entry of this order to review the status of the case. The next court date in this matter shall be (no later than 45 days from date of this order) _____;

8. The written report submitted to by the qualified psychiatrist or licensed psychologist to this Court shall not include an opinion with respect to whether the defendant was insane at the time of the crime pursuant to *N.J.S.A.* 2C:4-1 and/or whether the defendant suffered from a mental disease or defect at the time of the crime pursuant to *N.J.S.A.* 2C:4-2;

9. [any additional conditions as ordered by the court]_____

_____

_____

_____

A copy of this Order will be forwarded by the Clerk of the Court to the County Adjuster's Office within two days of its signing.

_____ Date

_____ Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 3

Order #2 – Order Committing Defendant for Purposes of a Competency Evaluation Pursuant to N.J.S.A. 2C:4-5

Order #2

Order Committing Defendant For Purposes of A Competency Evaluation Pursuant to N.J.S.A. 2C:4-5

This order commits a defendant to the custody of the Commissioner of the Department of Health for the purposes of a competency evaluation as described in N.J.S.A. 2C:4-5. Pursuant to N.J.S.A. 2C:4-5, the hospitalization of the defendant for examination purposes is not to exceed thirty (30) days. This form of order is to be used in instances where a qualified psychiatrist or licensed psychologist has already examined the defendant pursuant to screening Orders #1A and #1B but was unable to make a determination as to the competency.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____County
Indictment Number: _____

Criminal Action

Ordering Committing Defendant
Pursuant to *N.J.S.A.* 2C:4-5
Where Hospitalization is Clinically
Necessary to Perform an Evaluation
as to the Defendant's Competency
to Stand Trial

THIS COURT having heard evidence that to conduct a proper evaluation as to the defendant's competency to stand trial hospitalization is necessary, pursuant to *N.J.S.A.* 2C:4-5,

It is on the _____day of _____ , 20___ **ORDERED** that:

1. The defendant is hereby committed into the custody of the Commissioner of the Department of Health for a period of thirty (30) days for purposes a competency evaluation to stand trial,

2. Such finding by a qualified psychiatrist or licensed psychologist shall be submitted in a written report to this court and counsel and shall include:

   (a) A description of the nature of the examination;

   (b) A diagnosis of the mental condition of the defendant;

   (c) An opinion as to the defendant's capacity to understand the proceeding against him/her and to assist in his/her own defense;

   (d) An opinion as to whether or not the defendant is presently incompetent to proceed to trial in consideration of the factors listed in *N.J.S.A.* 2C:4-4, and whether defendant's mental condition is such that he/she poses a present danger either to himself/herself or to other persons upon his/her release into the general community.

3. Pursuant to *N.J.S.A.* 2C:4-4(b), the qualified psychiatrist or licensed psychologist shall render an opinion as to whether the defendant has the mental capacity to appreciate their presence in relation to time, place and things and whether the defendant's elementary mental processes are such that he/she comprehends:

   (a) That he/she is in a court of justice charged with a criminal offense;

   (b) That there is a judge on the bench;

   (c) That there is a prosecutor present who will try to convict him/her;

   (d) That he/she has a lawyer who will undertake to defend him/her

   (e) That he/she will be expected to tell to the best of his/her mental ability the facts surrounding him/her at the time and place where the alleged violation was committed if he/she chooses to testify and understand his/her legal right not to testify;

   (f) That there is a jury present to pass upon evidence that adduced as to guilt or innocence of such charge or, that if he/she should choose to enter into plea negotiations or to plead guilty, that he/she comprehend the consequences of a guilty plea and that he/she be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and

   (g) That he/she have the ability to participate in an adequate presentation of his/her defense.

4. Said report shall be provided no later than thirty (30) days from date of admission; and,

5. The defendant shall not be administratively discharged by the institution without further order of this court; and,

6. A hearing on this matter shall take place on _____.

7. The written report submitted by the qualified psychiatrist or licensed psychologist to this Court shall not include an opinion with respect to whether the defendant was insane at the time of the crime pursuant to *N.J.S.A.* 2C:4-1 and/or whether the defendant suffered from a mental disease or defect at the time of the crime pursuant to *N.J.S.A.* 2C:4-2;

8. [Any additional conditions as ordered by the court]_____

_____

_____

_____

A copy of this Order will be forwarded to the County Adjuster's Office within two (2) days of its signing.

_____ Date

_____ Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 4

Order #3 – Order Committing a Defendant Who Is Incompetent to Stand Trial and Dangerous to Self, Others and/or Property for Further Evaluation after 90 Days

Order #3. Order Committing a Defendant Who is Incompetent to Stand Trial and Dangerous to Self, Others, and/or Property for Further Evaluation after 90 Days.

This order is to be used in committing a defendant to the custody of the Commissioner of the Department of Health when the defendant has been found by the court to be incompetent and dangerous to self, others, or property as a result of mental illness. See, N.J.S.A. 2C:4-6. This order sets up a review period of three (3) months, during which time the defendant is civilly committed for treatment and observations. The court shall hold a hearing three (3) months after the defendant has been committed and the professional staff shall report on the condition of the defendant regarding both competency and dangerousness as a result of mental illness. At the hearing, the court shall determine whether or not the criminal charges should be held in abeyance or dismissed with prejudice. N.J.S.A. 2C:4-6c.

This order also contemplates that if a defendant becomes competent or is no longer dangerous as a result of mental illness before the three (3) month period has expired the facility clinical staff must notify the court. The order prohibits the movement of the defendant from the State psychiatric hospital into the community without an order from the criminal court. However, this order permits a discharge of the defendant back to the jail from the State psychiatric hospital upon completion of the evaluation with notification to the court and counsel. If the court so choses it may recommend the defendant for a competency restoration program based upon the availability of such programs at the facility in which the defendant is housed.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey
_____ Plaintiff,
v.
_____ Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____ County
Indictment Number: _____

Criminal Action

Order Committing Defendant Pursuant to N.J.S.A. 2C:4-6 Who Lacks the Fitness to Proceed to Trial and Who Has Been Found to be Dangerous to Self, Others or Property as a Result of Mental Illness

THIS COURT having found that the defendant lacks the fitness to proceed to trial and that the defendant is so dangerous to self, others or property as a result of mental illness as to require institutionalization, pursuant to *N.J.S.A.* 2C:4-6b, that the proceedings against the defendant shall be suspended and the defendant is hereby committed into the custody of the Commissioner of the Department of Health to be confined in an appropriate institution where the defendant shall undergo an examination of and treatment for, when professionally determined to be clinically appropriate, defendant's psychiatric condition; and

It is on this _____day of _____ , 20___ **ORDERED** that:

1. The defendant's commitment to the custody of the Commissioner of the Department of Health is continued.

2. If it is determined that the defendant has either become fit to stand trial or that the defendant is no longer dangerous to self, others or property as a result of mental illness, the professional staff shall notify this court and counsel identified below and provide each with an evaluation of and expert basis for the professed change in defendant's psychiatric condition including an evaluation whether or not the defendant continues to be dangerous to self, others or property as a result of mental illness; and,

3. If, within three (3) months after confinement pursuant to the terms of this order, it is determined that the defendant has not regained his/her fitness to stand trial, professional staff shall notify the court and counsel and provide each with an evaluation of the defendant's lack of fitness to proceed to trial, whether it is substantially probable that the defendant could regain his competence within the foreseeable future and whether defendant continues to be dangerous to self, others or property as a result of mental illness; and,

4. Pursuant to *N.J.S.A.* 2C:4-4(b), the qualified psychiatrist or licensed psychologist shall render an opinion as to whether the defendant has the mental capacity to appreciate their presence in relation to time, place and things and whether the defendant's elementary mental processes are such that they comprehend:

   (a) That he/she are in a court of justice charged with a criminal offense;

   (b) That there is a judge on the bench;

   (c) That there is a prosecutor present who will try to convict him/her;

   (d) That he/she has a lawyer who will undertake to defend him/her;

   (e) That he/she will be expected to tell to the best of his/her mental ability the facts surrounding him/her at the time and place where the alleged violation was committed if he/she chooses to testify and understand his/her legal right not to testify;

   (f) That there is a jury present to pass upon evidence that adduced as to guilt or innocence of such charge or, that if he/she should choose to enter into plea negotiations or to plead guilty, that he/she comprehends the consequences of a guilty plea and that he/she be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and

   (g) That he/she has the ability to participate in an adequate presentation of his/her defense.

5. The defendant shall not be administratively discharged into the community by the institution without further order of this court; and,

6. The defendant may be discharged to the appropriate jail or transferred upon written notification to this court and counsel by Department of Health's staff.

7. [Any additional conditions as ordered by the court]_____

_____

_____

_____

8. The next court date in this matter shall be _____ with a report to be provided no later than _____ days prior to the hearing.

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of Court within two (2) days of its signing.

_____ Date

_____ Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 5

Order #4 - Order Committing a Defendant Who Continues to Be Incompetent to Stand Trial and a Danger to Themselves, Others, or Property for Further Evaluation after 180 Days

Order #4. Order Committing a Defendant Who Continues to be Incompetent to Stand Trial and a Danger To Themselves, Others, or Property for Further Evaluation after 180 Days.

This order continues the commitment under N.J.S.A. 2C:4-6 for a defendant who is not competent and continues to be dangerous as a result of mental illness after the three (3) month review in form Order #3. This order continues hospitalization for the defendant for six (6) months. This order further requires the court to hold a hearing pursuant to N.J.S.A. 2C:4-6c and make a determination as to whether to hold the charges in abeyance. The charges may be dismissed only if the court finds that "continuing the criminal prosecution under the particular circumstances of the case would constitute a constitutionally significant injury to the defendant attributable to undue delay in being brought trial." Ibid.

This order extends the time of commitment to no more than six (6) months. As in form Order #3, clinical staff must provide the court with a report regarding the competency of the defendant and whether or not the defendant continues to be dangerous as a result of mental illness. In the case of a defendant who remains incompetent, the clinician is to provide an opinion as to whether the defendant is likely to regain competency in the foreseeable future. At any time before the six (6) month period has expired, the treating clinician is to inform the court if the defendant becomes competent and/or is no longer a danger to self, others, or property as a result of mental illness.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____County
Indictment Number: _____

Criminal Action

Order Mandating the Periodic Review of Defendant's Fitness to Proceed to Trial and Dangerousness to Self, Others or Property as a Result of Mental Illness

THIS COURT having found that the defendant has not regained his/her fitness to proceed to trial within the past three (3) months and that the defendant continues to be dangerous to self, others or property as a result of mental illness, it is hereby ordered pursuant to *N.J.S.A.* 2C:4-6c that the charges shall be held in abeyance and that the defendant remain committed to the custody of the Commissioner of the Department of Health to be confined in an appropriate institution where the defendant shall undergo an examination of and treatment for, when professionally determined to be clinically appropriate, defendant's psychiatric condition; and

It is on this _____day of _____ , 20___ **ORDERED** that:

1. The defendant's commitment to the custody of the Commissioner of the Department of Health is continued.

2. If it is determined that defendant has become fit to stand trial, the professional staff who made this determination shall notify this court and counsel identified below and provide each with an evaluation of defendant's fitness to proceed to trial including an evaluation whether or not the defendant continues to be dangerous to self, others or property as a result of mental illness; and

3. If at any time within the six (6) month period of hospitalization mandated by this order the professional staff should determine that the defendant is no longer dangerous to self, other or property as a result of mental illness, they shall notify this court and counsel immediately and provide each with a psychiatric evaluation and a proposed transfer date; and

4. If the defendant has not regained his fitness to stand trial and remains dangerous to self, others or property as a result of mental illness within six (6) months after confinement pursuant to the terms of this Order, the professional staff shall notify the court and counsel and provide each with an evaluation of the defendant's lack of fitness to proceed to trial, whether it is substantially probable that the defendant could regain his competence within the foreseeable future and whether defendant remains dangerous to self, others or property as a result of mental illness; and

5. Pursuant to *N.J.S.A.* 2C:4-4(b) the qualified psychiatrist or licensed psychologist shall render an opinion as to whether the defendant has the mental capacity to appreciate their presence in relation to time, place and things and whether the defendant's elementary mental processes are such that they comprehend:

   (a) That he/she is in a court of justice charged with a criminal offense;

   (b) That there is a judge on the bench;

   (c) That there is a prosecutor present who will try to convict him/her;

   (d) That he/she has a lawyer who will undertake to defend him/her;

   (e) That he/she will be expected to tell to the best of his/her mental ability the facts surrounding him/her at the time and place where the alleged violation was committed if he/she chooses to testify and understand his/her legal right not to testify;

   (f) That there is a jury present to pass upon evidence that adduced as to guilt or innocence of such charge or, that if he/she should choose to enter into plea negotiations or to plead guilty, that he/she comprehends the consequences of a guilty plea and that he/she be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and

   (g) That he/she has the ability to participate in an adequate presentation of his/her defense.

6. The defendant shall not be administratively discharged by the institution without further order of this court; and

7. The defendant may be discharged to the appropriate jail or transferred upon written notification to this court and counsel by Department of Health's staff.

8. [Any additional conditions as ordered by the court]_____

_____

_____

_____

9. The next court date in this matter shall be _____ with a report to be provided no later than _____ days prior to the hearing.

A copy of this order will be forwarded to the County Adjuster's Office by the Court within two (2) days of its signing.

_____
Date

_____
Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 6

Order #5 - Order Releasing Defendant Who Lacks Fitness to Proceed but Is Not a Danger under Certain Conditions

Order #5. Order Releasing Defendant Who Lacks Fitness to Proceed But Is Not A Danger Under Certain Conditions.

This order is to be used in cases where a defendant has been found incompetent but there is no finding that they represent a danger to themselves, others, or property. In accordance with N.J.S.A. 2C:4-6(b) the court may direct the defendant to continue with outpatient treatment in such circumstances. The order states that the case would be held in abeyance. In cases where Ann Klein Forensic Center staff performed the initial evaluation, any follow up competency evaluation would be done by a psychologist from the Ann Klein Forensic Center.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____County
Indictment Number: _____

Criminal Action

Order Mandating Release Upon Conditions of Defendant Who Lacks the Fitness to Proceed to Trial But is Not Dangerous to Self, Others or Property

THIS COURT having found that the defendant lacks the fitness to proceed to trial and that the defendant is not dangerous to self, others or property as a result of mental illness as to require institutionalization,

It is on the _____day of _____ , 20___ **ORDERED** that:

1. Pursuant to *N.J.S.A.* 2C:4-6b that the charges be held in abeyance and that the defendant be released upon the following conditions: _____
_____
_____
_____

2. That the defendant shall be reevaluated within three (3) months in the community by [the Ann Klein Forensic Center (AKFC) Jail Diversion Program][1] who shall furnish this court and the counsel identified below with an evaluation which has determined whether the defendant is fit to proceed to trial, whether it is substantially probable that the defendant could regain his/her competence within the foreseeable future and whether defendant has become dangerous to self, others or property as a result of mental illness; and

1 Ann Klein Forensic Center (AKFC) jail diversion program will complete the competency evaluation if the initial evaluation was completed by AKFC or if the court orders that subsequent evaluations be completed by AKFC.

3. Pursuant to *N.J.S.A.* 2C: 4-4(b), the qualified psychiatrist or licensed psychologist shall render an opinion as to whether the defendant has the mental capacity to appreciate his/her presence in relation to time, place and things and whether the defendant's elementary mental processes are such that he/she comprehends:

   (a) He/she is in a court of justice charged with a criminal offense;

   (b) There is a judge on the bench;

   (c) There is a prosecutor present who will try to convict him/her;

   (d) That he/she has a lawyer who will undertake to defend him/her;

   (e) He/she will be expected to tell to the best of his/her mental ability the facts surrounding him/her at the time and place where the alleged violation was committed if he/she chooses to testify and understand his/her legal right not to testify;

   (f) There is a jury present to pass upon evidence that adduced as to guilt or innocence of such charge or, that if he/she should choose to enter into plea negotiations or to plead guilty, that he/she comprehends the consequences of a guilty plea and that he/she be able to knowingly, intelligently, and voluntarily waive those rights which are waived upon such entry of a guilty plea; and

   (g) They he/she has the ability to participate in an adequate presentation of his/her defense.

4. If the evaluation is to be conducted by AKFC, then staff at AKFC will set the time and location for the evaluation.

5. The next court date in this matter shall be _____ and a report shall be provided no later than _____ days prior to the hearing.

6. **IT IS FURTHER ORDERED** [any additional conditions as ordered by the court]_____

   _____

   _____

   _____

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of the Court within two (2) days of its signing.

_____ _____

Date Judge

Prosecutor's Office:

Name _____

Address _____

_____

Telephone Number _____

Fax _____

Email _____

Defendant's Attorney:

Name _____

Address _____

_____

Telephone Number _____

Fax _____

Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 7

Order #6A - Order Discharging the Defendant on Pretrial Release from the Care and Custody of the Commissioner of Health (Defendant not Detained)

Order #6A – Order Discharging the Defendant on Pretrial Release from the Care and Custody of the Commissioner of Health (Defendant not Detained)

Orders #6A and #6B are to be used where a defendant has been placed in the care of the Commissioner of the Department of Health and is now deemed competent to proceed.

Order #6A may be used where there has been a previous determination that the defendant may be released to the community. In such cases where there is no detainer for a defendant in a psychiatric hospital, the order would be used to discharge him/her from the hospital under the previous competency order.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____County
Indictment Number: _____

Criminal Action

Order Discharging the Defendant on Pretrial Release From the Care and Custody of the Commissioner of Health

THIS COURT having found that the defendant has regained his/her fitness to proceed to trial [or has been determined to be fit to stand trial] and that the defendant is not dangerous to self, others, or property as a result of mental illness,

It is on the _____day of _____ , 20___ **ORDERED** that:

1. The defendant shall be discharged from the care and custody of the Commissioner of Health to await trial, and

2. **IT IS FURTHER ORDERED** [any additional conditions as ordered by the court]_____
_____
_____
_____
_____
_____
_____

3. The next court date for this matter shall be _____.

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of the Court within two (2) days of its signing.

Date _____ Judge _____

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 8

Order #6B - Order Mandating the Transfer of the Defendant from the Care and Custody of the Commissioner of Health to a Correctional Facility (Defendant Detained)

Order #6B – Order Mandating the Transfer of the Defendant From the Care and Custody of the Commissioner of Health to a Correctional Facility (Defendant Detained)

Orders #6A and #6B are to be used where a defendant has been placed in the care of the Commissioner of the Department of Health and is now deemed competent to proceed.

Order #6B may be used where the defendant has either previously been detained until trial on his/her present charge or a detention hearing has not taken place. In either case, the order may be used to return the defendant to the appropriate correctional facility to await a detention hearing or trial.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____ **County**
Indictment Number: _____

Criminal Action

Order Mandating the Transfer of Defendant From the Care and Custody of the Commissioner of Health to the _____ Correctional Facility

THIS COURT having found that the defendant has regained his fitness to proceed to trial [or has been determined to be fit to stand trial] and that the defendant is not dangerous to self, others, or property as a result of mental illness,

It is on the _____day of _____ , 20___ **ORDERED** that:

1. The defendant shall be transferred to the _____ Correctional Facility to await a [detention hearing/trial], and

2. **IT IS FURTHER ORDERED** [any additional conditions as ordered by the court]_____
_____
_____
_____

3. The next hearing in this matter will be held on _____.

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of the Court within two (2) days of its signing.

Date _____ Judge _____

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 9

Order #7 – Order Mandating the Transfer of Defendant from the Care and Custody of the Commissioner of Health to the Correctional Facility

Order #7 – Order Mandating the Transfer of Defendant from the Care and Custody of the Commissioner of Health to the Correctional Facility

This Order is to be used when a defendant has gained his/her fitness to proceed to trial and is no longer dangerous to self, others or property by reason of mental illness. This Order transfers the defendant back to the correctional facility.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____County
Indictment Number: _____

Criminal Action

Order Mandating the Transfer of Defendant From the Care and Custody of the Commissioner of Health to the _____ Correctional Facility

THIS COURT having found that the defendant has regained his/her fitness to proceed to trial [or has been determined to be fit to stand trial] and that the defendant is not dangerous to self, others, or property as a result of mental illness,

It is on the _____day of _____ , 20___ **ORDERED** that:

1. The defendant shall be transferred to the _____ Correctional Facility to await a [detention hearing/trial], and

2. **IT IS FURTHER ORDERED** [any additional conditions as ordered by the court]_____
_____
_____
_____

3. The next hearing in this matter will be held on _____.

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of the Court within two (2) days of its signing.

_____ _____
Date Judge

Prosecutor's Office:
Name _____

Defendant's Attorney:
Name _____

Address _____

_____

Telephone Number _____

Fax _____

Email _____

Address _____

_____

Telephone Number _____

Fax _____

Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 10

Order #S1 - Order Mandating a Psychiatric Evaluation of Defendant's Criminal Responsibility at the Time of the Crime (Sanity Evaluation) – (Defendant not Detained)

Order #S1 – Order Mandating a Psychiatric Evaluation of Defendant's Criminal Responsibility at the Time of the Crime (Sanity Evaluation) - (Defendant not Detained)

The text of the following proposed order has been drafted for use when the court needs an expert report pursuant to N.J.S.A. 2C:4-1 and the prosecutor and defense counsel having agreed that professional staff from the Department of Health should perform a sanity evaluation due to questions regarding a defendant's state of mind at the time of the offense. This form of order is to be used for defendants who are not detained at the time the order is entered and are in the community. The language in the order pertaining to the purpose of the evaluation is found in N.J.S.A. 2C:4-1. The order directs the defendant to undergo an evaluation from an expert designated by the Commissioner of Department of Health. The evaluation is to take place in the community at a place to be determined by the parties taking into account the length of time needed to complete the evaluation and any security concerns. These examinations have previously been conducted at defense counsel's offices and in courthouse settings when circumstances permit. Discovery is to be provided by the prosecutor to the court, who will then furnish it to professional staff at the Department of Health

It should be noted that this order is not to be used for an evaluation as to diminished capacity under N.J.S.A. 2C:4-2.

Attorney Name _____
NJ Attorney ID Number _____
Address _____
_____
Telephone Number _____
Attorney for _____

State of New Jersey
Plaintiff,
v.
_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____County
Indictment Number: _____

Criminal Action

Order Mandating an Expert Evaluation of Criminal Responsibility at the Time of the Crime Pursuant to *N.J.S.A.* 2C:4-1 ~~for a Defendant in the Community~~

HAVING RECEIVED notice pursuant to *N.J.S.A.* 2C:4-3 that the defendant intends to claim that he/she was not responsible for his/her conduct at the time of the crime due to mental disease or defect as provided in *N.J.S.A.* 2C:4-1, the defendant is hereby ordered to undergo an evaluation by professional staff designated by the Commissioner of the Department of Health of his/her sanity of the [specify criminal conduct that the defendant was originally charged with committing] _____
_____
_____
_____; and

It is on the _____day of _____ , 20___ **ORDERED** that:

1. The professional staff shall provide this court and the counsel identified below with a copy of his/her evaluation as to whether, at the time of the offense, the defendant was laboring under such a defect of reason, from disease of the mind as to not know the nature and quality of the act he/she was doing, or if he/she did know it, that he/she did not know what he/she was doing was wrong;

2. The examination shall take place at the location provided below, by a qualified expert from the Department of Health with the time and date to be provided by the Department;_____
_____

_____

_____

3. The Prosecutor's Office shall immediately forward all discoverable materials, including but not limited to the current charges against the defendant and the reasons why counsel is seeking an evaluation and a copy of this order, to this Judge's team leader-for submission to the evaluating expert with two (2) days of the date of this order; and,

4. [Any additional conditions as ordered by the court]_____

_____

_____

_____

5. The next court date in this matter shall be _____.

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of the Court within two (2) days of its signing.

_____ Date

_____ Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____

Attachment 11

Order #S2 - Order Mandating a Psychiatric Evaluation of Defendant's Criminal Responsibility at the Time of the Crime (Sanity Evaluation) – (Defendant Detained)

Order #S2 - Order Mandating a Psychiatric Evaluation of Defendant's Criminal Responsibility at the Time of the Crime (Sanity Evaluation) – (Defendant Detained)

The text of the following proposed order has been drafted for use when the court needs an expert report pursuant to N.J.S.A. 2C:4-1 due to questions regarding a defendant's criminal responsibility at the time of the offense. This order is to be used when the prosecutor and defense counsel agree that professional staff from the Department of Health (DOH) should perform a sanity evaluation. This form of order is to be used for defendants who are currently detained at the time the evaluation is ordered. The language in the order pertaining to what the elements of the evaluation is found in N.J.S.A. 2C:4-1. The Order directs the defendant to undergo an evaluation from a qualified expert designated by the Commissioner of the DOH. The evaluation is to be conducted at the place where the defendant is in custody. Discovery is to be provided by the prosecutor to the Court, who will then furnish it to DOH.

It should be noted that this order is not to be used for an evaluation as to diminished capacity under N.J.S.A. 2C:4-2.

Attorney Name _____
NJ Attorney ID Number _____
Address _____

_____
Telephone Number _____
Attorney for _____

State of New Jersey _____
Plaintiff,

v.

_____
Defendant.

Superior Court of New Jersey
Law Division – Criminal Part
_____ County
Indictment Number: _____

Criminal Action

Consent Order

Order Mandating a Psychiatric Evaluation of Criminal Responsibility at the Time of the Crime Pursuant to *N.J.S.A.* 2C4-1 for a Defendant in Jail

HAVING RECEIVED notice pursuant to *N.J.S.A.* 2C:4-3 that the defendant intends to claim that he/she was not responsible for his/her conduct at the time of the crime due to mental disease or defect as provided in *N.J.S.A.* 2C:4-1, and with agreement between the State and the defense, the defendant is hereby ordered to undergo an evaluation by professional staff designated by the Commissioner of the Department of Health of his/her sanity at the time of the [specify criminal conduct that the defendant was originally charged with committing]_____

_____

_____

_____: and

It is on this _____ day of _____, 20____ **ORDERED** that:

1. The professional staff shall provide this court and the counsel identified below with a copy of his/her evaluation as to whether, at the time of the offense, the defendant was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he/she was doing, or if he/she did know it, that he/she did not know what he/she was doing was wrong;

2. The examination shall take place at the jail or prison by a qualified expert from the Department of Health;

3. The Prosecutor's Office shall immediately forward all discoverable materials, including but not limited to, the current charges against the defendant, the reasons why counsel is seeking an evaluation and a copy of this order, to this Judge's team leader for submission to the evaluating expert with two (2) days of the date of this order; and

4. [Any additional conditions as ordered by the court] _____

_____

_____

_____

5. The next court date in this matter shall be (no longer than 90 days from date of this order) _____.

A copy of this Order will be forwarded to the County Adjuster's Office by the Clerk of the Court within two days of its signing.

_____
Date

_____
Judge

Prosecutor's Office:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Defendant's Attorney:
Name _____
Address _____
_____
Telephone Number _____
Fax _____
Email _____

Interpreter needed? ☐ Yes ☐ No If yes, language _____

ADA accommodation needed? ☐ Yes ☐ No If yes, describe _____