§40. Procedure upon plea of not guilty coupled with plea of not criminally responsible by reason of insanity

1. When the defendant enters a plea of not guilty together with a plea of not criminally responsible by reason of insanity, the defendant shall also elect whether the trial must be in 2 stages as provided for in this section, or a unitary trial in which both the issues of guilt and of insanity are submitted simultaneously to the jury. At the defendant's election, the jury must be informed that the 2 pleas have been made and that the trial will be in 2 stages.
[PL 2005, c. 263, §7 (AMD).]

2. If a 2-stage trial is elected by the defendant, there must be a separation of the issue of guilt from the issue of insanity in the following manner.

A. The issue of guilt must be tried first and the issue of insanity tried only if the jury returns a verdict of guilty. If the jury returns a verdict of not guilty, the proceedings must terminate. [PL 2005, c. 263, §7 (AMD).]

B. Evidence of mental disease or defect, as defined in section 39, subsection 2, is not admissible in the guilt or innocence phase of the trial for the purpose of establishing insanity. Such evidence must be admissible for that purpose only in the 2nd phase following a verdict of guilty. [PL 2005, c. 263, §7 (AMD).]

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3. The issue of insanity must be tried before the same jury as tried the issue of guilt. Alternate jurors who were present during the first phase of the trial but who did not participate in the deliberations and verdict thereof may be substituted for jurors who did participate. The defendant may elect to have the issue of insanity tried by the court without a jury.
[PL 2005, c. 263, §7 (AMD).]

4. If the jury in the first phase returns a guilty verdict, the trial must proceed to the 2nd phase. The defendant and the State may rely upon evidence admitted during the first phase or they may recall witnesses. Any evidence relevant to insanity is admissible. The order of proof must reflect that the defendant has the burden of establishing the defendant's lack of criminal responsibility by reason of insanity. The jury shall return a verdict that the defendant is criminally responsible or not criminally responsible by reason of insanity. If the defendant is found criminally responsible, the court shall sentence the defendant according to law.
[PL 2005, c. 263, §7 (AMD).]

5. This section does not apply to cases tried before the court without a jury.
[PL 1981, c. 324, §14 (NEW).]

SECTION HISTORY

PL 1981, c. 324, §14 (NEW). PL 1985, c. 796, §6 (AMD). PL 2005, c. 263, §7 (AMD).

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