S T A T E O F N E W Y O R K

7051

2015-2016 Regular Sessions

I N A S S E M B L Y

April 22, 2015

Introduced by M. of A. LAVINE -- (at request of the Office of Court Administration) -- read once and referred to the Committee on Codes

AN ACT to amend the criminal procedure law, in relation to assessing a defendant's mental fitness to proceed pro se in a criminal proceeding

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The criminal procedure law is amended by adding a new article 731 to read as follows:

ARTICLE 731

MENTAL DISEASE OR DEFECT EXCLUDING FITNESS TO PROCEED PRO SE

SECTION 731.10 FITNESS TO PROCEED PRO SE; DEFINITIONS.

731.15 FITNESS TO PROCEED PRO SE; ORDER OF EXAMINATION AND FINDINGS.

S 731.10 FITNESS TO PROCEED PRO SE; DEFINITIONS.

1. "PERSON INCAPACITATED TO PROCEED PRO SE" MEANS A DEFENDANT WHO AS A RESULT OF MENTAL DISEASE OR DEFECT LACKS CAPACITY TO UNDERSTAND THE PROCEEDINGS AGAINST HIM OR HER, OR TO KNOWINGLY, VOLUNTARILY AND INTELLIGENTLY WAIVE THE CONSTITUTIONAL RIGHT TO COUNSEL, OR TO APPRECIATE THE CONSEQUENCES OF THE DECISION TO PROCEED WITHOUT REPRESENTATION BY COUNSEL, OR TO COMPREHEND THE RANGE OF APPLICABLE PUNISHMENTS OR TO CARRY OUT THE BASIC TASKS NEEDED TO PRESENT HIS OR HER OWN DEFENSE WITHOUT THE HELP OF COUNSEL.

2. "PRO SE EXAMINATION REPORT" MEANS A REPORT MADE BY A PSYCHIATRIC EXAMINER SETTING FORTH HIS OR HER OPINION AS TO WHETHER THE DEFENDANT IS OR IS NOT A PERSON INCAPACITATED TO PROCEED PRO SE. THE REPORT SHALL INCLUDE THE NATURE AND EXTENT OF THE EXAMINATION AND, IF THE EXAMINER FINDS THAT THE DEFENDANT IS A PERSON INCAPACITATED TO PROCEED PRO SE, A DETAILED STATEMENT OF THE REASONS FOR HIS OR HER OPINION BY MAKING PARTICULAR REFERENCE TO THE DEFENDANT'S LACK OF CAPACITY TO UNDERSTAND THE PROCEEDINGS AGAINST HIM OR HER OR THE DEFENDANT'S IMPAIRMENT, TO A

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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SIGNIFICANT DEGREE, IN THE ABILITIES WHICH ARE NECESSARY FOR SELF-REPRESENTATION, INCLUDING BUT NOT LIMITED TO THE ABILITY TO FORMULATE AND COMMUNICATE COHERENT THOUGHTS, TO MAKE DECISIONS IN A TRIAL CONTEXT, TO WITHSTAND THE STRESS OF TRIAL, TO RELATE TO THE COURT OR A JURY AND TO COOPERATE WITH STANDBY COUNSEL IF ONE IS APPOINTED.

S 731.15 FITNESS TO PROCEED PRO SE; ORDER OF EXAMINATION AND FINDINGS.

NOTWITHSTANDING ANY FINDING OF FITNESS UNDER THIS ARTICLE, IF A CRIMINAL COURT HAS REASON TO BELIEVE THAT A DEFENDANT WHO ELECTS TO PROCEED PRO SE MAY BE A PERSON INCAPACITATED TO PROCEED PRO SE, THE COURT SHALL ISSUE AN ORDER OF EXAMINATION TO DETERMINE IF THE DEFENDANT IS A PERSON INCAPACITATED TO PROCEED PRO SE. EXCEPT AS OTHERWISE PROVIDED IN THIS ARTICLE, THE PROVISIONS OF SECTIONS 730.10, 730.20 AND 730.30 OF THIS TITLE GOVERNING THE PROCEDURE FOR AN ORDER OF EXAMINATION SHALL APPLY TO THE PROCEDURE FOR AN ORDER OF EXAMINATION UNDER THIS SECTION.

WHEN A CRIMINAL COURT IS SATISFIED THAT THE DEFENDANT IS NOT A PERSON INCAPACITATED TO PROCEED PRO SE, THE CRIMINAL ACTION AGAINST THE DEFENDANT MUST PROCEED. IF IT IS SATISFIED THAT THE DEFENDANT IS A PERSON INCAPACITATED TO PROCEED PRO SE, THE COURT MUST DENY THE DEFENDANT'S APPLICATION TO PROCEED PRO SE.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.