§ 730.10 Fitness to proceed; definitions.

As used in this article, the following terms have the following meanings:

1. "Incapacitated person" means a defendant who as a result of mental disease or defect lacks capacity to understand the proceedings against him or to assist in his own defense.

2. "Order of examination" means an order issued to an appropriate director by a criminal court wherein a criminal action is pending against a defendant or by a court evaluating the capacity of an alleged violator in a parole revocation proceeding pursuant to subparagraph (xii) of paragraph (f) of subdivision three of section two hundred fifty-nine-i of the executive law, or by a family court pursuant to section 322.1 of the family court act wherein a juvenile delinquency proceeding is pending against a juvenile, directing that such person be examined for the purpose of determining if he is an incapacitated person.

3. "Commissioner" means the state commissioner of mental health or the state commissioner of the office for people with developmental disabilities.

4. "Director" means (a) the director of a state hospital operated by the office of mental health or the director of a developmental center operated by the office for people with developmental disabilities, or (b) the director of a hospital operated by any local government of the state that has been certified by the commissioner as having adequate facilities to examine a defendant to determine if he is an incapacitated person, or (c) the director of community mental health services.

5. "Qualified psychiatrist" means a physician who:

(a) is a diplomate of the American board of psychiatry and neurology or is eligible to be certified by that board; or,

(b) is certified by the American osteopathic board of neurology and psychiatry or is eligible to be certified by that board.

6. "Certified psychologist" means a person who is registered as a certified psychologist under article one hundred fifty-three of the education law.

7. "Psychiatric examiner" means a qualified psychiatrist or a certified psychologist who has been designated by a director to examine a defendant pursuant to an order of examination.

8. "Examination report" means a report made by a psychiatric examiner wherein he sets forth his opinion as to whether the defendant is or is not an incapacitated person, the nature and extent of his examination and, if he finds that the defendant is an incapacitated person, his diagnosis and prognosis and a detailed statement of the reasons for his opinion by making particular reference to those aspects of the proceedings wherein the defendant lacks capacity to understand or to assist in his own defense. The state administrator and the commissioner must jointly adopt the form of the examination report; and the state administrator shall prescribe the number of copies thereof that must be submitted to the court by the director.

9. "Appropriate institution" means: (a) a hospital operated by the office of mental health or a developmental center operated by the office for people with developmental disabilities; or (b) a hospital licensed by the department of health which operates a psychiatric unit licensed by the office of mental health, as determined by the commissioner provided, however, that any such hospital that is not operated by the state shall qualify as an "appropriate institution" only pursuant to the terms of an agreement between the commissioner and the hospital. Nothing in this article shall be construed as requiring a hospital to consent to providing care and treatment to an incapacitated person at such hospital.