

By Senator Perry

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1                   A bill to be entitled  
2       An act relating to expert witnesses; amending s.  
3       393.11, F.S.; requiring the court to pay reasonable  
4       fees to members of the examining committee for their  
5       evaluation and testimony regarding persons with  
6       disabilities; deleting a provision specifying the  
7       source of the fees to be paid; amending s. 744.331,  
8       F.S.; requiring a court, rather than the state, to pay  
9       certain fees if a ward is indigent; amending s.  
10      916.115, F.S.; authorizing a court to initially  
11      appoint one expert under certain circumstances;  
12      authorizing a court to take less restrictive action  
13      than commitment if an expert finds a defendant  
14      incompetent; requiring that a defendant be evaluated  
15      by no fewer than two experts before a court commits  
16      the defendant; providing an exception; authorizing a  
17      court to pay for up to two additional experts  
18      appointed by the court under certain circumstances;  
19      authorizing a party disputing a determination of  
20      competence to request two additional expert  
21      evaluations at that party's expense; providing for  
22      payments to experts for their testimony under certain  
23      circumstances; amending s. 916.12, F.S.; deleting  
24      provisions relating to the evaluation and commitment  
25      of a defendant under certain circumstances; amending  
26      s. 916.17, F.S.; requiring the court to pay for the  
27      evaluation and testimony of an expert for a defendant  
28      on conditional release under certain circumstances;  
29      amending s. 916.301, F.S.; authorizing, rather than

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30 requiring, a court to appoint up to two additional  
31 experts to evaluate a defendant suspected of having an  
32 intellectual disability or autism under certain  
33 circumstances; providing for the payment of additional  
34 experts under certain circumstances; amending s.  
35 916.304, F.S.; requiring the court to pay for the  
36 evaluation and testimony of an expert for a defendant  
37 on conditional release under certain circumstances;  
38 amending s. 921.09, F.S.; authorizing a defendant who  
39 has alleged insanity to retain, at the defendant's  
40 expense rather than the county's, one or more  
41 physicians; deleting a provision requiring fees to be  
42 paid by the county; amending s. 921.12, F.S.;

43 authorizing a defendant who has an alleged pregnancy  
44 to retain, at the defendant's expense rather than the  
45 county's, one or more physicians; amending s. 921.137,  
46 F.S.; requiring the court to pay for the evaluation  
47 and testimony of an expert for a defendant who raises  
48 intellectual disability as a bar to a death sentence  
49 under certain circumstances; amending s. 985.19, F.S.;

50 authorizing a court to initially appoint one expert to  
51 evaluate a child's mental condition, pending certain  
52 determinations; authorizing a court to take less  
53 restrictive action than commitment if an expert finds  
54 a child incompetent; requiring that a child be  
55 evaluated by no fewer than two experts before a court  
56 commits the child; providing an exception; authorizing  
57 a court to appoint up to two additional experts under  
58 certain circumstances; authorizing a court to require

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59 a hearing with certain testimony before ordering the  
60 commitment of a child; requiring the court to pay  
61 reasonable fees to the experts for their evaluations  
62 and testimony; requiring a court to order the Agency  
63 for Persons with Disabilities to select an expert to  
64 examine a child for intellectual disability or autism;  
65 deleting a provision requiring a specific  
66 appropriation before the implementation of specified  
67 provisions; amending ss. 29.006 and 29.007, F.S;  
68 conforming cross-references; providing an effective  
69 date.

70

71 Be It Enacted by the Legislature of the State of Florida:

72

73 Section 1. Paragraph (g) of subsection (5) of section  
74 393.11, Florida Statutes, is amended to read:

75 393.11 Involuntary admission to residential services.-

76 (5) EXAMINING COMMITTEE.-

77 (g) The court ~~Members of the examining committee~~ shall pay  
78 ~~receive a reasonable~~ fees, as fee to be determined by the court,  
79 for the evaluation and testimony by members of the examining  
80 committee. The fees shall be paid from the general revenue fund  
81 ~~of the county in which the person who has the intellectual~~  
82 ~~disability or autism resided when the petition was filed.~~

83 Section 2. Paragraph (b) of subsection (7) of section  
84 744.331, Florida Statutes, is amended, and paragraph (a) of that  
85 subsection is republished, to read:

86 744.331 Procedures to determine incapacity.-

87 (7) FEES.-

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88 (a) The examining committee and any attorney appointed  
89 under subsection (2) are entitled to reasonable fees to be  
90 determined by the court.

91 (b) The fees awarded under paragraph (a) shall be paid by  
92 the guardian from the property of the ward or, if the ward is  
93 indigent, by the court ~~state~~. The state shall have a creditor's  
94 claim against the guardianship property for any amounts paid  
95 under this section. The state may file its claim within 90 days  
96 after the entry of an order awarding attorney ad litem fees. If  
97 the state does not file its claim within the 90-day period, the  
98 state is thereafter barred from asserting the claim. Upon  
99 petition by the state for payment of the claim, the court shall  
100 enter an order authorizing immediate payment out of the property  
101 of the ward. The state shall keep a record of the payments.

102 Section 3. Section 916.115, Florida Statutes, is amended to  
103 read:

104 916.115 Appointment of experts.—

105 (1) The court shall appoint no more than three experts to  
106 determine the mental condition of a defendant in a criminal  
107 case, including competency to proceed, insanity, involuntary  
108 placement, and treatment. The court may initially appoint one  
109 expert for the evaluation, pending a determination of the  
110 defendant's competency and the parties' positions on stipulating  
111 to the findings. The experts may evaluate the defendant in jail  
112 or in another appropriate local facility or in a facility of the  
113 Department of Corrections.

114 (a) To the extent possible, the appointed experts shall  
115 have completed forensic evaluator training approved by the  
116 department, and each shall be a psychiatrist, licensed

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117 psychologist, or physician.

118 (b) The department shall maintain and annually provide the  
119 courts with a list of available mental health professionals who  
120 have completed the approved training as experts.

121 (2) The court may take less restrictive action than  
122 commitment authorized by this chapter or the Florida Rules of  
123 Criminal Procedure based on the determination by one expert that  
124 the defendant is incompetent to proceed. A defendant must be  
125 evaluated by no fewer than two experts before the court commits  
126 the defendant; however, the court may commit the defendant  
127 without further evaluation or hearing if one expert finds that  
128 the defendant is incompetent to proceed and the parties  
129 stipulate to that finding. If the parties do not stipulate to  
130 the finding of the expert that the defendant is incompetent, the  
131 court may appoint no more than two additional experts to  
132 evaluate the defendant. Notwithstanding any stipulation by the  
133 parties, the court may require a hearing with testimony from the  
134 experts before ordering the commitment of a defendant.

135 (3) (a) ~~(2)~~ The court shall pay for any expert that it  
136 appoints by court order, upon motion of counsel for the  
137 defendant or the state or upon its own motion, and up to two  
138 additional experts appointed by the court when the defendant is  
139 found incompetent and the parties do not stipulate to the  
140 findings.

141 (b) If the defense or the state retains an expert and  
142 waives the confidentiality of the expert's report, the court may  
143 pay for no more than two additional experts appointed by court  
144 order.

145 (c) If a first evaluation determines the defendant is

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146 competent to proceed and a party disputes the findings, the  
147 party disputing the determination may request up to two  
148 additional experts to perform evaluations at the party's  
149 expense.

150 (d) If an expert appointed by the court upon motion of  
151 counsel for the defendant specifically to evaluate the  
152 competence of the defendant to proceed also addresses issues  
153 related to sanity as an affirmative defense, the court shall pay  
154 only for that portion of the expert's fees relating to the  
155 evaluation on competency to proceed, and the balance of the fees  
156 shall be chargeable to the defense.

157 (e) If testimony from the expert is ordered by the court,  
158 the court shall pay reasonable fees, as determined by the court,  
159 to the expert. Testimony requested by the state or the defendant  
160 shall be paid by the requesting party.

161 (f)~~(a)~~ Pursuant to s. 29.006, the office of the public  
162 defender shall pay for any expert retained by the office.

163 (g)~~(b)~~ Pursuant to s. 29.005, the office of the state  
164 attorney shall pay for any expert retained by the office and for  
165 any expert whom the office retains and whom the office moves the  
166 court to appoint in order to ensure that the expert has access  
167 to the defendant.

168 (h)~~(c)~~ An expert retained by the defendant who is  
169 represented by private counsel appointed under s. 27.5303 shall  
170 be paid by the Justice Administrative Commission.

171 (i)~~(d)~~ An expert retained by a defendant who is indigent  
172 for costs as determined by the court and who is represented by  
173 private counsel, other than private counsel appointed under s.  
174 27.5303, on a fee or pro bono basis, or who is representing

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175 himself or herself, shall be paid by the Justice Administrative  
176 Commission from funds specifically appropriated for these  
177 expenses.

178 (j)~~(e)~~ State employees shall be reimbursed for expenses  
179 pursuant to s. 112.061.

180 (k)~~(f)~~ The fees shall be taxed as costs in the case.

181 (l)~~(g)~~ In order for an expert to be paid for the services  
182 rendered, the expert's report and testimony must explicitly  
183 address each of the factors and follow the procedures set out in  
184 this chapter and in the Florida Rules of Criminal Procedure.

185 Section 4. Subsection (2) of section 916.12, Florida  
186 Statutes, is amended, and subsection (1) of that section is  
187 republished, to read:

188 916.12 Mental competence to proceed.—

189 (1) A defendant is incompetent to proceed within the  
190 meaning of this chapter if the defendant does not have  
191 sufficient present ability to consult with her or his lawyer  
192 with a reasonable degree of rational understanding or if the  
193 defendant has no rational, as well as factual, understanding of  
194 the proceedings against her or him.

195 (2) Mental health experts appointed pursuant to s. 916.115  
196 shall first determine whether the defendant has a mental illness  
197 and, if so, consider the factors related to the issue of whether  
198 the defendant meets the criteria for competence to proceed as  
199 described in subsection (1). ~~A defendant must be evaluated by no  
200 fewer than two experts before the court commits the defendant or  
201 takes other action authorized by this chapter or the Florida  
202 Rules of Criminal Procedure, except if one expert finds that the  
203 defendant is incompetent to proceed and the parties stipulate to~~

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204 ~~that finding, the court may commit the defendant or take other~~  
205 ~~action authorized by this chapter or the rules without further~~  
206 ~~evaluation or hearing, or the court may appoint no more than two~~  
207 ~~additional experts to evaluate the defendant. Notwithstanding~~  
208 ~~any stipulation by the state and the defendant, the court may~~  
209 ~~require a hearing with testimony from the expert or experts~~  
210 ~~before ordering the commitment of a defendant.~~

211 Section 5. Subsection (2) of section 916.17, Florida  
212 Statutes, is amended to read:

213 916.17 Conditional release.—

214 (2) Upon the filing of an affidavit or statement under oath  
215 by any person that the defendant has failed to comply with the  
216 conditions of release, that the defendant's condition has  
217 deteriorated to the point that inpatient care is required, or  
218 that the release conditions should be modified, the court shall  
219 hold a hearing within 7 days after receipt of the affidavit or  
220 statement under oath. After the hearing, the court may modify  
221 the release conditions. The court may also order that the  
222 defendant be returned to the department if it is found, after  
223 the appointment and report of experts, that the person meets the  
224 criteria for involuntary commitment under s. 916.13 or s.  
225 916.15. The court shall pay reasonable fees, as determined by  
226 the court, for the evaluation and testimony of the expert.

227 Section 6. Subsection (2) of section 916.301, Florida  
228 Statutes, is amended to read:

229 916.301 Appointment of experts.—

230 (2) If a defendant's suspected mental condition is  
231 intellectual disability or autism, the court ~~shall appoint the~~  
232 ~~following:~~



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233           ~~(a) At least one, or at the request of any party, two~~  
234 ~~experts to evaluate whether the defendant meets the definition~~  
235 ~~of intellectual disability or autism and, if so, whether the~~  
236 ~~defendant is competent to proceed; and~~

237           ~~(b)~~ Shall appoint a psychologist selected by the agency who  
238 is licensed or authorized by law to practice in this state, with  
239 experience in evaluating persons suspected of having an  
240 intellectual disability or autism, and a social service  
241 professional, with experience in working with persons who have  
242 an intellectual disability or autism.

243           1. The psychologist shall evaluate whether the defendant  
244 meets the definition of intellectual disability or autism and,  
245 if so, whether the defendant is incompetent to proceed due to  
246 intellectual disability or autism.

247           2. The social service professional shall provide a social  
248 and developmental history of the defendant; and

249           (b) May, at the request of any party that does not  
250 stipulate to findings of incompetence, appoint up to two  
251 additional experts to evaluate whether the defendant meets the  
252 definition of intellectual disability or autism and, if so,  
253 whether the defendant is competent to proceed. The first  
254 additional expert shall be paid by the court and the second  
255 additional expert shall be paid by the requesting party.  
256 However, if the first evaluation determines the defendant is  
257 competent to proceed and a party disputes the findings, that  
258 party may request up to two additional experts to perform  
259 evaluations at the party's expense.

260           Section 7. Subsection (2) of section 916.304, Florida  
261 Statutes, is amended to read:

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262 916.304 Conditional release.—

263 (2) Upon the filing of an affidavit or statement under oath  
264 by any person that the defendant has failed to comply with the  
265 conditions of release, that the defendant's condition has  
266 deteriorated, or that the release conditions should be modified,  
267 the court shall hold a hearing within 7 days after receipt of  
268 the affidavit or statement under oath. With notice to the court  
269 and all parties, the agency may detain a defendant in a forensic  
270 facility until the hearing occurs. After the hearing, the court  
271 may modify the release conditions. The court may also order that  
272 the defendant be placed into more appropriate programs for  
273 further training or may order the defendant to be committed to a  
274 forensic facility if it is found, after the appointment and  
275 report of experts, that the defendant meets the criteria for  
276 placement in a forensic facility. The court shall pay reasonable  
277 fees, as determined by the court, for the evaluation and  
278 testimony of the expert.

279 Section 8. Section 921.09, Florida Statutes, is amended to  
280 read:

281 921.09 Fees of physicians who determine sanity at time of  
282 sentence. ~~The court shall allow reasonable fees to physicians~~  
283 ~~appointed by the court to determine the mental condition of A~~  
284 ~~defendant who has alleged insanity as a cause for not~~  
285 ~~pronouncing sentence~~ may, at the defense's expense, retain one  
286 or more physicians to determine the mental condition of the  
287 defendant. ~~The fees shall be paid by the county in which the~~  
288 ~~indictment was found or the information or affidavit filed.~~

289 Section 9. Section 921.12, Florida Statutes, is amended to  
290 read:

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291           921.12 Fees of physicians when pregnancy is alleged as  
292 cause for not pronouncing sentence. ~~The court shall allow~~  
293 ~~reasonable fees to the physicians appointed to examine~~ A  
294 defendant who has alleged her pregnancy as a cause for not  
295 pronouncing sentence may, at the defense's expense, retain one  
296 or more physicians to examine the defendant. ~~The fees shall be~~  
297 ~~paid by the county in which the indictment was found or the~~  
298 ~~information or affidavit filed.~~

299           Section 10. Subsection (4) of section 921.137, Florida  
300 Statutes, is amended to read:

301           921.137 Imposition of the death sentence upon an  
302 intellectually disabled defendant prohibited.—

303           (4) After a defendant who has given notice of his or her  
304 intention to raise intellectual disability as a bar to the death  
305 sentence is convicted of a capital felony and an advisory jury  
306 has returned a recommended sentence of death, the defendant may  
307 file a motion to determine whether the defendant is  
308 intellectually disabled. Upon receipt of the motion, the court  
309 shall appoint two experts in the field of intellectual  
310 disabilities who shall evaluate the defendant and report their  
311 findings to the court and all interested parties before ~~prior to~~  
312 the final sentencing hearing. The court shall pay reasonable  
313 fees, as determined by the court, for the evaluation and  
314 testimony of the expert regardless of whether the defendant is  
315 indigent. Notwithstanding s. 921.141 or s. 921.142, the final  
316 sentencing hearing shall be held without a jury. At the final  
317 sentencing hearing, the court shall consider the findings of the  
318 court-appointed experts and consider the findings of any other  
319 expert which is offered by the state or the defense on the issue

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320 of whether the defendant has an intellectual disability. If the  
321 court finds, by clear and convincing evidence, that the  
322 defendant has an intellectual disability as defined in  
323 subsection (1), the court may not impose a sentence of death and  
324 shall enter a written order that sets forth with specificity the  
325 findings in support of the determination.

326 Section 11. Paragraphs (b) and (e) of subsection (1) and  
327 subsection (7) of section 985.19, Florida Statutes, are amended  
328 to read:

329 985.19 Incompetency in juvenile delinquency cases.—

330 (1) If, at any time prior to or during a delinquency case,  
331 the court has reason to believe that the child named in the  
332 petition may be incompetent to proceed with the hearing, the  
333 court on its own motion may, or on the motion of the child's  
334 attorney or state attorney must, stay all proceedings and order  
335 an evaluation of the child's mental condition.

336 (b) All determinations of competency shall be made at a  
337 hearing, with findings of fact based on an evaluation of the  
338 child's mental condition made by no ~~not less than two nor~~ more  
339 than three experts appointed by the court. The court may  
340 initially appoint one expert for the evaluation, pending a  
341 determination of the child's competency and the parties'  
342 positions on stipulating to the findings. The basis for the  
343 determination of incompetency must be specifically stated in the  
344 evaluation. In addition, a recommendation as to whether  
345 residential or nonresidential treatment or training is required  
346 must be included in the evaluation. The court may take less  
347 restrictive action than commitment authorized by this chapter or  
348 the Florida Rules of Juvenile Procedure based on the

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349 determination by one expert that the child is incompetent to  
350 proceed. A child must be evaluated by no fewer than two experts  
351 before the court commits the child; however, the court may  
352 commit the child without further evaluation or hearing if one  
353 expert finds that the child is incompetent to proceed and the  
354 parties stipulate to that finding. If the parties do not  
355 stipulate to the finding of the expert that the child is  
356 incompetent, the court may appoint no more than two additional  
357 experts to evaluate the child. Notwithstanding any stipulation  
358 by the parties, the court may require a hearing with testimony  
359 from one or more experts before ordering the commitment of a  
360 child. ~~Experts appointed by The court to determine the mental~~  
361 ~~condition of a child shall pay be allowed reasonable fees, as~~  
362 ~~determined by the court, for the evaluation and testimony of the~~  
363 ~~experts services rendered.~~ State employees may be paid expenses  
364 pursuant to s. 112.061. The fees shall be taxed as costs in the  
365 case.

366 (e) For incompetency evaluations related to intellectual  
367 disability or autism, the court shall order the Agency for  
368 Persons with Disabilities to select the expert to examine the  
369 child to determine if the child meets the definition of  
370 "intellectual disability" or "autism" in s. 393.063 and, if so,  
371 whether the child is competent to proceed with delinquency  
372 proceedings.

373 ~~(7) The provisions of this section shall be implemented~~  
374 ~~only subject to specific appropriation.~~

375 Section 12. Subsection (4) of section 29.006, Florida  
376 Statutes, is amended to read:

377 29.006 Indigent defense costs.—For purposes of implementing

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378 s. 14, Art. V of the State Constitution, the elements of the  
379 public defenders' offices and criminal conflict and civil  
380 regional counsel offices to be provided from state revenues  
381 appropriated by general law are as follows:

382 (4) Mental health professionals appointed pursuant to s.  
383 394.473 and required in a court hearing involving an indigent,  
384 and mental health professionals appointed pursuant to s.  
385 916.115(3) ~~s. 916.115(2)~~ and required in a court hearing  
386 involving an indigent.

387 Section 13. Subsection (5) of section 29.007, Florida  
388 Statutes, is amended to read:

389 29.007 Court-appointed counsel.—For purposes of  
390 implementing s. 14, Art. V of the State Constitution, the  
391 elements of court-appointed counsel to be provided from state  
392 revenues appropriated by general law are as follows:

393 (5) Mental health professionals appointed pursuant to s.  
394 394.473 and required in a court hearing involving an indigent,  
395 mental health professionals appointed pursuant to s. 916.115(3)  
396 ~~s. 916.115(2)~~ and required in a court hearing involving an  
397 indigent, and any other mental health professionals required by  
398 law for the full adjudication of any civil case involving an  
399 indigent person.

400  
401 Subsections (3), (4), (5), (6), and (7) apply when court-  
402 appointed counsel is appointed; when the court determines that  
403 the litigant is indigent for costs; or when the litigant is  
404 acting pro se and the court determines that the litigant is  
405 indigent for costs at the trial or appellate level. This section  
406 applies in any situation in which the court appoints counsel to

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407 protect a litigant's due process rights. The Justice  
408 Administrative Commission shall approve uniform contract forms  
409 for use in processing payments for due process services under  
410 this section. In each case in which a private attorney  
411 represents a person determined by the court to be indigent for  
412 costs, the attorney shall execute the commission's contract for  
413 private attorneys representing persons determined to be indigent  
414 for costs.

415 Section 14. This act shall take effect July 1, 2017.