

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 examining
4 committee fees in intellectual disability and autism
5 cases; deleting a provision specifying the source of
6 the fees to be paid; amending s. 744.331, F.S.;
7 requiring a court, rather than the state, to pay
8 certain fees if a ward is indigent; amending s.
9 916.115, F.S.; authorizing a court to initially
10 appoint one expert to determine a criminal defendant's
11 competency to stand trial 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 criminal defendant under certain circumstances;

26 | amending s. 916.17, F.S.; requiring the court to pay
27 | for the evaluation and testimony of an expert for a
28 | criminal defendant on conditional release under
29 | certain circumstances; amending s. 916.301, F.S.;
30 | authorizing, rather than requiring, a court to appoint
31 | up to two additional experts to evaluate a criminal
32 | defendant suspected of having an intellectual
33 | disability or autism under certain circumstances;
34 | providing for the payment of additional experts under
35 | certain circumstances; amending s. 916.304, F.S.;
36 | requiring the court to pay for the evaluation and
37 | testimony of an expert for a criminal defendant on
38 | conditional release under certain circumstances;
39 | amending s. 921.09, F.S.; authorizing a criminal
40 | defendant who has alleged insanity to retain, at the
41 | defendant's expense rather than the county's, one or
42 | more physicians; deleting a provision requiring fees
43 | to be paid by the county; amending s. 921.12, F.S.;
44 | authorizing the defense to retain and pay for one or
45 | more physicians to examine the criminal defendant when
46 | the defendant alleges pregnancy as a cause for not
47 | pronouncing sentence; amending s. 921.137, F.S.;
48 | requiring the court to pay for the evaluation and
49 | testimony of an expert for a criminal defendant who
50 | raises intellectual disability as a bar to a death

51 sentence under certain circumstances; amending s.
52 985.19, F.S.; authorizing a court to initially appoint
53 one expert to evaluate a child's mental condition,
54 pending certain determinations; authorizing a court to
55 take less restrictive action than commitment if an
56 expert finds a child incompetent; requiring that a
57 child be evaluated by no fewer than two experts before
58 a court commits the child; providing an exception;
59 authorizing a court to appoint up to two additional
60 experts under certain circumstances; authorizing a
61 court to require a hearing with certain testimony
62 before ordering the commitment of a child; requiring
63 the court to pay reasonable fees to the experts for
64 their evaluations and testimony; requiring a court to
65 order the Agency for Persons with Disabilities to
66 select an expert to examine a child for intellectual
67 disability or autism; deleting a provision requiring a
68 specific appropriation before the implementation of
69 specified provisions; amending ss. 29.006 and 29.007,
70 F.S; conforming cross-references; providing an
71 effective date.

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

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75 Section 1. Paragraph (g) of subsection (5) of section

76 | 393.11, Florida Statutes, is amended to read:

77 | 393.11 Involuntary admission to residential services.—

78 | (5) EXAMINING COMMITTEE.—

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

85 | Section 2. Paragraph (b) of subsection (7) of section
 86 | 744.331, Florida Statutes, is amended, and paragraph (a) of that
 87 | subsection is republished, to read:

88 | 744.331 Procedures to determine incapacity.—

89 | (7) FEES.—

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

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

101 petition by the state for payment of the claim, the court shall
102 enter an order authorizing immediate payment out of the property
103 of the ward. The state shall keep a record of the payments.

104 Section 3. Section 916.115, Florida Statutes, is amended
105 to read:

106 916.115 Appointment of experts.-

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

116 (a) To the extent possible, the appointed experts shall
117 have completed forensic evaluator training approved by the
118 department, and each shall be a psychiatrist, licensed
119 psychologist, or physician.

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

123 (2) The court may take less restrictive action than
124 commitment authorized by this chapter or the Florida Rules of
125 Criminal Procedure based on the determination by one expert that

126 the defendant is incompetent to proceed. A defendant must be
127 evaluated by no fewer than two experts before the court commits
128 the defendant. However, the court may commit the defendant
129 without further evaluation or hearing if one expert finds that
130 the defendant is incompetent to proceed and the parties
131 stipulate to that finding. If the parties do not stipulate to
132 the finding of the expert that the defendant is incompetent, the
133 court may appoint no more than two additional experts to
134 evaluate the defendant. Notwithstanding any stipulation by the
135 parties, the court may require a hearing with testimony from the
136 experts before ordering the commitment of a defendant.

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

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

147 (c) If the first evaluation determines the defendant is
148 competent to proceed and a party disputes the findings, the
149 party disputing the determination may request up to two
150 additional experts to perform evaluations at the party's own

151 expense.

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

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

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

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

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

173 (i) ~~(d)~~ An expert retained by a defendant who is indigent
174 for costs as determined by the court and who is represented by
175 private counsel, other than private counsel appointed under s.

176 27.5303, on a fee or pro bono basis, or who is representing
177 himself or herself, shall be paid by the Justice Administrative
178 Commission from funds specifically appropriated for these
179 expenses.

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

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

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

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

190 916.12 Mental competence to proceed.—

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

197 (2) Mental health experts appointed pursuant to s. 916.115
198 shall first determine whether the defendant has a mental illness
199 and, if so, consider the factors related to the issue of whether
200 the defendant meets the criteria for competence to proceed as

201 ~~described in subsection (1). A defendant must be evaluated by no~~
202 ~~fewer than two experts before the court commits the defendant or~~
203 ~~takes other action authorized by this chapter or the Florida~~
204 ~~Rules of Criminal Procedure, except if one expert finds that the~~
205 ~~defendant is incompetent to proceed and the parties stipulate to~~
206 ~~that finding, the court may commit the defendant or take other~~
207 ~~action authorized by this chapter or the rules without further~~
208 ~~evaluation or hearing, or the court may appoint no more than two~~
209 ~~additional experts to evaluate the defendant. Notwithstanding~~
210 ~~any stipulation by the state and the defendant, the court may~~
211 ~~require a hearing with testimony from the expert or experts~~
212 ~~before ordering the commitment of a defendant.~~

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

215 916.17 Conditional release.—

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

226 criteria for involuntary commitment under s. 916.13 or s.
 227 916.15. The court shall pay reasonable fees, as determined by
 228 the court, for the evaluation and testimony of the expert.

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

231 916.301 Appointment of experts.-

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

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

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

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

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

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

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

264 916.304 Conditional release.—

265 (2) Upon the filing of an affidavit or statement under
266 oath by any person that the defendant has failed to comply with
267 the conditions of release, that the defendant's condition has
268 deteriorated, or that the release conditions should be modified,
269 the court shall hold a hearing within 7 days after receipt of
270 the affidavit or statement under oath. With notice to the court
271 and all parties, the agency may detain a defendant in a forensic
272 facility until the hearing occurs. After the hearing, the court
273 may modify the release conditions. The court may also order that
274 the defendant be placed into more appropriate programs for
275 further training or may order the defendant to be committed to a

276 forensic facility if it is found, after the appointment and
277 report of experts, that the defendant meets the criteria for
278 placement in a forensic facility. The court shall pay reasonable
279 fees, as determined by the court, for the evaluation and
280 testimony of the expert.

281 Section 8. Section 921.09, Florida Statutes, is amended to
282 read:

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

291 Section 9. Section 921.12, Florida Statutes, is amended to
292 read:

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

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

303 921.137 Imposition of the death sentence upon an
304 intellectually disabled defendant prohibited.—

305 (4) After a defendant who has given notice of his or her
306 intention to raise intellectual disability as a bar to the death
307 sentence is convicted of a capital felony and an advisory jury
308 has returned a recommended sentence of death, the defendant may
309 file a motion to determine whether the defendant is
310 intellectually disabled. Upon receipt of the motion, the court
311 shall appoint two experts in the field of intellectual
312 disabilities who shall evaluate the defendant and report their
313 findings to the court and all interested parties before ~~prior to~~
314 the final sentencing hearing. The court shall pay reasonable
315 fees, as determined by the court, for the evaluation and
316 testimony of the experts regardless of whether the defendant is
317 indigent. Notwithstanding s. 921.141 or s. 921.142, the final
318 sentencing hearing shall be held without a jury. At the final
319 sentencing hearing, the court shall consider the findings of the
320 court-appointed experts and consider the findings of any other
321 expert which is offered by the state or the defense on the issue
322 of whether the defendant has an intellectual disability. If the
323 court finds, by clear and convincing evidence, that the
324 defendant has an intellectual disability as defined in
325 subsection (1), the court may not impose a sentence of death and

326 shall enter a written order that sets forth with specificity the
 327 findings in support of the determination.

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

331 985.19 Incompetency in juvenile delinquency cases.—

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

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

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

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

375 ~~(7) The provisions of this section shall be implemented~~

376 ~~only subject to specific appropriation.~~

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

379 29.006 Indigent defense costs.—For purposes of
380 implementing s. 14, Art. V of the State Constitution, the
381 elements of the public defenders' offices and criminal conflict
382 and civil regional counsel offices to be provided from state
383 revenues appropriated by general law are as follows:

384 (4) Mental health professionals appointed pursuant to s.
385 394.473 and required in a court hearing involving an indigent,
386 and mental health professionals appointed pursuant to s.
387 916.115(3) ~~916.115(2)~~ and required in a court hearing involving
388 an indigent.

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

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

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

401 indigent person.

402

403 Subsections (3), (4), (5), (6), and (7) apply when court-
404 appointed counsel is appointed; when the court determines that
405 the litigant is indigent for costs; or when the litigant is
406 acting pro se and the court determines that the litigant is
407 indigent for costs at the trial or appellate level. This section
408 applies in any situation in which the court appoints counsel to
409 protect a litigant's due process rights. The Justice
410 Administrative Commission shall approve uniform contract forms
411 for use in processing payments for due process services under
412 this section. In each case in which a private attorney
413 represents a person determined by the court to be indigent for
414 costs, the attorney shall execute the commission's contract for
415 private attorneys representing persons determined to be indigent
416 for costs.

417 Section 14. This act shall take effect July 1, 2018.