

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 a court to pay reasonable fees  
4       to members of an 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      requiring a court to pay for the first, rather than  
20      any, expert that it appoints under certain  
21      circumstances; authorizing a party disputing a  
22      determination of competence to request up to two  
23      additional expert evaluations at that party's expense;  
24      providing for payments to experts for their testimony  
25      under certain circumstances; amending s. 916.12, F.S.;  
26      deleting provisions relating to the evaluation and  
27      commitment of a defendant under certain circumstances;  
28      amending s. 916.17, F.S.; requiring the court to pay  
29      for the evaluation and testimony of an expert for a

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30 defendant on conditional release under certain  
31 circumstances; amending s. 916.301, F.S.; authorizing,  
32 rather than requiring, a court to appoint up to two  
33 additional experts to evaluate a defendant suspected  
34 of having an intellectual disability or autism under  
35 certain circumstances; providing for the payment of  
36 additional experts under certain circumstances;  
37 amending s. 916.304, F.S.; requiring the court to pay  
38 for the evaluation and testimony of an expert for a  
39 defendant on conditional release under certain  
40 circumstances; amending s. 921.09, F.S.; authorizing a  
41 defendant who has alleged insanity to retain, at the  
42 defense's expense rather than the county's, one or  
43 more physicians for certain purposes; deleting a  
44 provision requiring fees to be paid by the county;  
45 amending s. 921.12, F.S.; authorizing a defendant who  
46 has an alleged pregnancy to retain, at the defense's  
47 expense rather than the county's, one or more  
48 physicians for certain purposes; amending s. 921.137,  
49 F.S.; requiring the court to pay for the evaluation  
50 and testimony of an expert for a defendant who raises  
51 intellectual disability as a bar to a death sentence  
52 under certain circumstances; amending s. 985.19, F.S.;  
53 authorizing a court to initially appoint one expert to  
54 evaluate a child's mental condition, pending certain  
55 determinations; authorizing a court to take less  
56 restrictive action than commitment if an expert finds  
57 a child incompetent; requiring that a child be  
58 evaluated by no fewer than two experts before a court

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

73

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

75

76 Section 1. Paragraph (g) of subsection (5) of section  
77 393.11, Florida Statutes, is amended to read:

78 393.11 Involuntary admission to residential services.—

79 (5) EXAMINING COMMITTEE.—

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

86

87 Section 2. Paragraph (b) of subsection (7) of section  
744.331, Florida Statutes, is amended, and paragraph (a) of that

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88 subsection is republished, to read:

89 744.331 Procedures to determine incapacity.—

90 (7) FEES.—

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

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

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

107 916.115 Appointment of experts.—

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

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

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

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

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

144 (b) If the defense or the state retains an expert and  
145 waives the confidentiality of the expert's report, the court may

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146 pay for no more than two additional experts appointed by court  
147 order.

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

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

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

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

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

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

174 (i)~~(d)~~ An expert retained by a defendant who is indigent

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175 for costs as determined by the court and who is represented by  
176 private counsel, other than private counsel appointed under s.  
177 27.5303, on a fee or pro bono basis, or who is representing  
178 himself or herself, shall be paid by the Justice Administrative  
179 Commission from funds specifically appropriated for these  
180 expenses.

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

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

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

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

191 916.12 Mental competence to proceed.—

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

198 (2) Mental health experts appointed pursuant to s. 916.115  
199 shall first determine whether the defendant has a mental illness  
200 and, if so, consider the factors related to the issue of whether  
201 the defendant meets the criteria for competence to proceed as  
202 described in subsection (1). ~~A defendant must be evaluated by no~~  
203 ~~fewer than two experts before the court commits the defendant or~~

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

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

216 916.17 Conditional release.—

217 (2) Upon the filing of an affidavit or statement under oath  
218 by any person that the defendant has failed to comply with the  
219 conditions of release, that the defendant's condition has  
220 deteriorated to the point that inpatient care is required, or  
221 that the release conditions should be modified, the court shall  
222 hold a hearing within 7 days after receipt of the affidavit or  
223 statement under oath. After the hearing, the court may modify  
224 the release conditions. The court may also order that the  
225 defendant be returned to the department if it is found, after  
226 the appointment and report of experts, that the person meets the  
227 criteria for involuntary commitment under s. 916.13 or s.  
228 916.15. The court shall pay reasonable fees, as determined by  
229 the court, for the evaluation and testimony of the expert.

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

232 916.301 Appointment of experts.—



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

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

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

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

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

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

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262 evaluations at the party's expense.

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

265 916.304 Conditional release.—

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

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

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

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291 ~~indictment was found or the information or affidavit filed.~~

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

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

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

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

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

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320 sentencing hearing, the court shall consider the findings of the  
321 court-appointed experts and consider the findings of any other  
322 expert which is offered by the state or the defense on the issue  
323 of whether the defendant has an intellectual disability. If the  
324 court finds, by clear and convincing evidence, that the  
325 defendant has an intellectual disability as defined in  
326 subsection (1), the court may not impose a sentence of death and  
327 shall enter a written order that sets forth with specificity the  
328 findings in support of the determination.

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

332 985.19 Incompetency in juvenile delinquency cases.—

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

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

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

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

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

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

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

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

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

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

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

403

404 Subsections (3), (4), (5), (6), and (7) apply when court-  
405 appointed counsel is appointed; when the court determines that  
406 the litigant is indigent for costs; or when the litigant is

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

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