



LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/02/2026	.	
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The Committee on Criminal Justice (Martin) recommended the following:

1                   **Senate Amendment (with title amendment)**

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3                   Delete everything after the enacting clause  
4 and insert:

5                   Section 1. Section 775.027, Florida Statutes, is amended to  
6 read:

7                   775.027 Insanity defense.—

8                   (1) AFFIRMATIVE DEFENSE.—All persons are presumed to be  
9 sane. It is an affirmative defense to a criminal prosecution  
10 that, at the time of the commission of the acts constituting the



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11 offense, the defendant was insane. Insanity is established when  
12 the defendant had a mental infirmity, disease, or defect and  
13 because of this condition, the defendant did not know what he or  
14 she was doing or its consequences.+

15 (a) ~~The defendant had a mental infirmity, disease, or~~  
16 ~~defect; and~~

17 (b) ~~Because of this condition, the defendant:~~

18 1. ~~Did not know what he or she was doing or its~~  
19 ~~consequences; or~~

20 2. ~~Although the defendant knew what he or she was doing and~~  
21 ~~its consequences, the defendant did not know that what he or she~~  
22 ~~was doing was wrong.~~

23  
24 Mental infirmity, disease, or defect does not constitute a  
25 ~~defense of insanity~~ except as provided in this subsection.

26 (2) BURDEN OF PROOF.—The defendant has the burden of  
27 proving the defense of insanity by clear and convincing  
28 evidence.

29 Section 2. Subsection (3) of section 916.12, Florida  
30 Statutes, is amended to read:

31 916.12 Mental competence to proceed.—

32 (3) In considering the issue of competence to proceed, an  
33 examining expert shall first consider and specifically include  
34 in his or her report the defendant's capacity to:

35 (a) Appreciate the charges or allegations against the  
36 defendant.

37 (b) Appreciate the range and nature of possible penalties,  
38 if applicable, that may be imposed in the proceedings against  
39 the defendant.



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- 40 (c) Understand the adversarial nature of the legal process.
- 41 (d) Disclose to counsel facts pertinent to the proceedings
- 42 at issue.
- 43 (e) Manifest appropriate courtroom behavior.
- 44 (f) Testify relevantly.

46 In addition, an examining expert shall consider and include in  
47 his or her report whether the expert finds that the defendant is  
48 malingering, what instrument or method was used as the basis for  
49 any such finding, and any other factor deemed relevant by the  
50 expert.

51           Section 3. Section 916.15, Florida Statutes, is amended to  
52 read:

53            916.15 Involuntary commitment of defendant adjudicated not  
54 guilty by reason of insanity.-

55 (1) The determination of whether a defendant is not guilty  
56 by reason of insanity shall be determined in accordance with s.  
57 775.027 and the applicable Rule 3.217, Florida Rules of Criminal  
58 Procedure.

59 (2) A defendant who is acquitted of criminal charges  
60 because of a finding of not guilty by reason of insanity shall  
61 may be involuntarily committed pursuant to such finding if the  
62 defendant has a mental illness and, because of the illness, is  
63 manifestly dangerous to himself or herself or others.

64 (3) (a) Every defendant acquitted of criminal charges by  
65 reason of insanity and found to meet the criteria for  
66 involuntary commitment shall ~~may~~ be committed and treated in  
67 accordance with the provisions of this section and the  
68 applicable Florida Rules of Criminal Procedure.



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69        (b) Immediately after receipt of a completed copy of the  
70 court commitment order containing all documentation required by  
71 the applicable Florida Rules of Criminal Procedure, the  
72 department shall request all medical information relating to the  
73 defendant from the jail. The jail shall provide the department  
74 with all medical information relating to the defendant within 3  
75 business days after receipt of the department's request or at  
76 the time the defendant enters the physical custody of the  
77 department, whichever is earlier.

78        (c) The department shall admit a defendant so adjudicated  
79 to an appropriate facility or program for treatment and shall  
80 retain and treat such defendant. No later than 6 months after  
81 the date of admission, prior to the end of any period of  
82 extended commitment, or at any time that the administrator or  
83 his or her designee determines that the defendant no longer  
84 meets the criteria for continued commitment placement, the  
85 administrator or designee shall file a report with the court  
86 pursuant to the applicable Florida Rules of Criminal Procedure.

87        (4) In all proceedings under this section, both the  
88 defendant and the state shall have the right to a hearing before  
89 the committing court. Evidence at such hearing may be presented  
90 by the hospital administrator or the administrator's designee as  
91 well as by the state and the defendant. The defendant shall have  
92 the right to counsel at any such hearing. In the event that a  
93 defendant is determined to be indigent pursuant to s. 27.52, the  
94 public defender shall represent the defendant. The parties shall  
95 have access to the defendant's records at the treating  
96 facilities and may interview or depose personnel who have had  
97 contact with the defendant at the treating facilities.



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98       (5) The commitment hearing shall be held within 30 days  
99 after the court receives notification that the defendant no  
100 longer meets the criteria for continued commitment. The  
101 defendant must be transported to the committing court's  
102 jurisdiction for the hearing. Each defendant returning to a jail  
103 shall continue to receive the same psychotropic medications as  
104 prescribed by the facility physician at the time of discharge  
105 from a forensic or civil facility, unless the jail physician  
106 determines there is a compelling medical reason to change or  
107 discontinue the medication for the health and safety of the  
108 defendant. If the jail physician changes or discontinues the  
109 medication and the defendant is later determined at the  
110 competency hearing to be incompetent to stand trial and is  
111 recommitted to the department, the jail physician may not change  
112 or discontinue the defendant's prescribed psychotropic  
113 medication upon the defendant's next discharge from the forensic  
114 or civil facility.

115       Section 4. Section 921.0026, Florida Statutes, is amended  
116 to read:

117       921.0026 Mitigating circumstances.—This section applies to  
118 any felony offense, except any capital felony, committed on or  
119 after October 1, 1998.

120       (1) A downward departure from the lowest permissible  
121 sentence, as calculated according to the total sentence points  
122 pursuant to s. 921.0024, is prohibited unless there are  
123 circumstances or factors that reasonably justify the downward  
124 departure. Mitigating factors to be considered include, but are  
125 not limited to, those listed in subsection (2). The imposition  
126 of a sentence below the lowest permissible sentence is subject



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127 to appellate review under chapter 924, but the extent of  
128 downward departure is not subject to appellate review.

129 (2) Mitigating circumstances under which a departure from  
130 the lowest permissible sentence is reasonably justified include,  
131 but are not limited to:

132 (a) The departure results from a legitimate, uncoerced plea  
133 bargain.

134 (b) The defendant was an accomplice to the offense and was  
135 a relatively minor participant in the criminal conduct.

136 (c) The capacity of the defendant to appreciate the  
137 criminal nature of the conduct or to conform that conduct to the  
138 requirements of law was substantially impaired.

139 (d) The defendant requires specialized treatment for a:

140 1. Severe physical disability; or

141 2. Severe and persistent mental illness that is unrelated  
142 to substance abuse or addiction, and has been diagnosed by a  
143 qualified professional, as that term is defined in s. 39.01. The  
144 court may not depart from the lowest permissible sentence under  
145 this subparagraph if the defendant is a danger to himself or  
146 herself or others, or is convicted of murder, manslaughter, or  
147 any offense listed in s. 943.0435.

148 3. This section shall not be construed to allow a convicted  
149 defendant to receive outpatient therapy in lieu of a term of  
150 incarceration. mental disorder that is unrelated to substance  
151 abuse or addiction or for a physical disability, and the  
152 defendant is amenable to treatment.

153 (e) The need for payment of restitution to the victim  
154 outweighs the need for a prison sentence.

155 (f) The victim was an initiator, willing participant,



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156 aggressor, or provoker of the incident.

157 (g) The defendant acted under extreme duress or under the  
158 domination of another person.

159 (h) Before the identity of the defendant was determined,  
160 the victim was substantially compensated.

161 (i) The defendant cooperated with the state to resolve the  
162 current offense or any other offense.

163 (j) The offense was committed in an unsophisticated manner  
164 and was an isolated incident for which the defendant has shown  
165 remorse.

166 (k) At the time of the offense the defendant was too young  
167 to appreciate the consequences of the offense.

168 (l) The defendant is to be sentenced as a youthful  
169 offender.

170 (m) The defendant's offense is a nonviolent felony, the  
171 defendant's Criminal Punishment Code scoresheet total sentence  
172 points under s. 921.0024 are 60 points or fewer, and the court  
173 determines that the defendant is amenable to the services of a  
174 postadjudicatory treatment-based drug court program and is  
175 otherwise qualified to participate in the program as part of the  
176 sentence. For purposes of this paragraph, the term "nonviolent  
177 felony" has the same meaning as provided in s. 948.08(6).

178 (n) The defendant was making a good faith effort to obtain  
179 or provide medical assistance for an individual experiencing a  
180 drug-related overdose.

181 (3) Except as provided in paragraph (2) (m), the defendant's  
182 substance abuse or addiction, including intoxication at the time  
183 of the offense, is not a mitigating factor under subsection (2)  
184 and does not, under any circumstances, justify a downward



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185 departure from the permissible sentencing range.

186 Section 5. Section 916.145, Florida Statutes, is amended to  
187 read:

188 916.145 Dismissal of charges.—

189 (1) Except as provided in subsection (2), the charges  
190 against a defendant adjudicated incompetent to proceed due to  
191 mental illness may not shall be dismissed unless: without  
192 prejudice to the state if

193 (a) The defendant remains incompetent to proceed for a  
194 duration of time equal to the maximum statutory sentence for  
195 such charges; and

196 (b) The maximum statutory sentence for such charges is more  
197 than 5 years.

198 (2) If the defendant's maximum statutory sentence is equal  
199 to or less than 5 years, 5 continuous, uninterrupted years after  
200 such determination, unless the court in its order specifies its  
201 reasons for believing that the defendant will become competent  
202 to proceed within the foreseeable future and specifies the time  
203 within which the defendant is expected to become competent to  
204 proceed. the court may dismiss such charges at least 3 years  
205 after such determination of incompetency, unless the charge is:

206 (a) Arson;

207 (b) Sexual battery;

208 (c) Robbery;

209 (d) Kidnapping;

210 (e) Aggravated child abuse;

211 (f) Aggravated abuse of an elderly person or disabled  
212 adult;

213 (g) Aggravated assault with a deadly weapon;



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- (h) Murder;
- (i) Manslaughter;
- (j) Aggravated manslaughter of an elderly person or disabled adult;
- (k) Aggravated manslaughter of a child;
- (l) Unlawful throwing, projecting, placing, or discharging of a destructive device or bomb;
- (m) Armed burglary;
- (n) Aggravated battery;
- (o) Aggravated stalking;
- (p) A forcible felony as defined in s. 776.08 and not listed elsewhere in this subsection;
- (q) An offense where an element of the offense requires the possession, use, or discharge of a firearm;
- (r) An attempt to commit an offense listed in this subsection;
- (s) An offense allegedly committed by a defendant who has had a forcible or violent felony conviction within the 5 years immediately preceding the date of arrest for the nonviolent felony sought to be dismissed;
- (t) An offense allegedly committed by a defendant who, after having been found incompetent and placed under court supervision in a community-based program, is formally charged by a state attorney or the Office of the Statewide Prosecutor with a new felony offense; or
- (u) An offense for which there is an identifiable victim and such victim has not consented to the dismissal.

(3) ~~(2)~~ This section does not prohibit the state from refiling dismissed charges if the defendant is declared to be



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243 competent to proceed in the future.

244

245 Section 6. This act shall take effect October 1, 2026

246

247 ===== T I T L E A M E N D M E N T =====

248 And the title is amended as follows:

249 Delete everything before the enacting clause  
250 and insert:

251 A bill to be entitled

252 An act relating to the prosecution of defendants;  
253 amending s. 775.027, F.S.; revising the qualifications  
254 for an insanity defense; amending s. 916.12, F.S.;  
255 updating reporting requirements for examining experts;  
256 amending s. 916.15; requiring involuntary commitment  
257 for persons found not guilty by reason of insanity in  
258 certain circumstances; amending s. 916.145, F.S.;  
259 revising requirements for dismissal of charges;  
260 amending s. 921.0026, F.S.; revising mitigating  
261 circumstances for sentencing; providing an effective  
262 date.