

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

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Prepared By: The Professional Staff of the Committee on Criminal Justice

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BILL: CS/SB 1326

INTRODUCER: Criminal Justice Committee and Senator Martin

SUBJECT: Prosecution of Defendants

DATE: January 27, 2026      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Fav/CS
2.			JU	
3.			RC	

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**Please see Section IX. for Additional Information:**  
COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/SB1326 amends provisions of the Florida Statutes relating to the affirmative defense of not guilty by reason of insanity, competency, and the use of mental illness as a mitigating circumstance.

The bill amends s. 775.027, F.S., to revise the affirmative defense of not guilty by reason of insanity, by removing language that allowed a defendant to present evidence that at the time of the offense, he or she had a mental infirmity, disease, or defect and did not know what he or she was doing was wrong.

The bill amends s. 916.12, F.S., to provide that an expert who examines a defendant for competency to proceed must consider and include in the report whether the expert finds that the defendant is malingering. Additionally, the expert must include what instrument or method was used as the basis of such finding.

The bill amends s. 916.15, F.S., to require a defendant who has been found not guilty by reason of insanity and who meets commitment criteria to be involuntarily committed.

The bill amends s. 921.0026, F.S., to revise mitigating circumstances which permit a court to sentence a defendant to a sentence below the lowest permissible sentence based on sentencing guidelines by narrowing the mitigating circumstance for physical disabilities and mental

disorders. Such mitigating circumstance may not be construed to allow a convicted defendant to receive outpatient therapy in lieu of a term of incarceration.

The bill amends s. 916.145, F.S., to extend the timeframe that the state attorney must wait before dismissing charges against a defendant who has been found incompetent.

The bill will have a negative fiscal impact on the Department of Children and Families and a positive indeterminate fiscal impact upon the Department of Corrections. See Section V. Fiscal Impact Statement.

The bill takes effect on October 1, 2026.

## II. Present Situation:

### Defenses Relating to Mental Illness

#### *Insanity Defense in Florida*

Section 775.027, F.S., contains Florida's insanity defense. The statute declares that all persons are presumed to be sane. The insanity defense is an affirmative defense to a criminal prosecution that, at the time of the commission of the acts constituting the offense, the defendant was insane.

Insanity is established when the defendant had a mental infirmity, disease, or defect, and because of this condition, the defendant:

- Did not know what he or she was doing or its consequences; or
- Although the defendant knew what he or she was doing and its consequences, the defendant did not know that what he or she was doing was wrong.<sup>1</sup>

The defendant has the burden of proving the defense of insanity by clear and convincing evidence.<sup>2</sup> The court must include in its instructions to the jury a statement that whenever a defendant presents evidence which creates a reasonable doubt in the minds of the jury concerning the defendant's sanity, the presumption of sanity *vanishes* and the state then must prove beyond a reasonable doubt that the defendant was sane.<sup>3</sup>

A defendant who is acquitted of criminal charges because of a finding of not guilty by reason of insanity may be involuntarily committed pursuant to such finding if the defendant has a mental illness and, because of the illness, is manifestly dangerous to himself or herself or others.<sup>4</sup> Every defendant acquitted of criminal charges by reason of insanity and found to meet the criteria for

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<sup>1</sup> Section 775.027(1), F.S.

<sup>2</sup> Section 775.027(2), F.S.; Clear and convincing evidence is evidence that is precise, explicit, lacking in confusion, and of such weight that it produces a firm belief, without hesitation, about the matter in issue. *Rodriguez v. State*, 172 So.3d 540 (Fla. 5<sup>th</sup> 2015).

<sup>3</sup> *Matevia v. State*, 564 So. 2d 585 (Fla. 2d DCA 1990).

<sup>4</sup> Section 916.15(2), F.S.

involuntary commitment may be committed and treated in accordance with the provisions of s. 916.15, F.S., and the applicable Florida Rules of Criminal Procedure.<sup>5</sup>

During the 2024/25 FY, there were 377 patients at state mental health treatment facilities who were adjudicated as Not Guilty by Reason of Insanity.<sup>6</sup>

### ***Kansas Law***

Kansas has a different approach to the insanity defense compared to current Florida law. Under Kansas law “It shall be a defense to a prosecution under any statute that the defendant, as a result of mental disease or defect, *lacked the culpable mental state* required as an element of the crime charged. Mental disease or defect is not otherwise a defense.”<sup>7</sup>

The term “culpable mental state” is defined in K.S.A. 21-5202. Culpable mental states are classified according to relative degrees, from highest to lowest, as follows:

- Intentionally;
- Knowingly;
- Recklessly.<sup>8</sup>

In *Kahler v. Kansas*, a challenge to Kansas’ treatment of the insanity defense based on Due Process grounds, the U.S. Supreme Court reviewed the history of the insanity defense and the States’ various approaches to it.<sup>9</sup> The court approved Kansas’ treatment of the insanity test that does not include a defendant’s ability to recognize that his crime was “morally wrong.”<sup>10</sup> The court explained that the insanity defense “should be open to revision over time, as new medical knowledge emerges and as legal and moral norms evolve...it is a project for state governance, not constitutional law.”<sup>11</sup>

### ***Mental states and defenses***

Currently, the affirmative defense of insanity does not require that a defendant demonstrate that he or she did not have the required intent to commit a crime, but such defendant must prove that they did not know what they were doing or its consequences, or that they did not know it was wrong.<sup>12</sup> A defendant may intend to do an act, but under Florida’s Insanity defense, be found not guilty if the defendant could prove that, because of a mental disorder, he or she did not know what they were doing was wrong.

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<sup>5</sup> Section 916.15(3), F.S.; Fla. R.Crim. P. 3.217(b). In making these decisions it is appropriate for the trial court to consider the evidence obtained at trial and prior reports of psychologists, as well as any relevant evidence presented at the commitment hearing. *Tavares v. State*, 871 So.2d 974 (Fla. 5<sup>th</sup> 2004).

<sup>6</sup> E-mail attachment from Chancer Teel, DCF Data, February 2, 2026 (on file with the Senate Committee on Criminal Justice).

<sup>7</sup> K.S.A. 21-5209, Laws 2010, ch. 136, § 20, eff. July 1, 2011. Compare Florida’s insanity law which includes this “right/wrong” prong: Although the defendant knew what he or she was doing and its consequences, the *defendant did not know* that what he or she was doing was *wrong*.” Section 775.027(1), F.S.

<sup>8</sup> K.S.A. 21-5202.

<sup>9</sup> *Kahler v. Kansas*, 589 U.S. 271, 140 S.Ct. 1021, 206 L.Ed.2d 312 (2020).

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Section 775.027, F.S.

States who use a defense of a lack of a culpable mental state do not take into consideration the same elements that Florida's insanity defense requires. While there is no Florida statutory definition of culpable mental state, states using such defense have provided in statute that "a culpable mental state may be established by proof that the conduct of the accused person was committed "intentionally," "knowingly," or "recklessly." The definition of culpable mental state includes general and specific intent crimes.<sup>13</sup>

Under Florida law, crimes require either specific intent or a general intent. The type of required intent may affect which defenses are applicable. For example, the Florida Supreme Court has determined that resisting arrest with violence is not a specific intent crime, meaning that the defense of voluntary intoxication does not apply; the offense only requires a general intent to resist, not a heightened mental state.<sup>14,15</sup> Additionally, Florida courts have held that involuntary intoxication is admissible only to negate the intent required for specific intent crimes.<sup>16</sup>

While Florida has not defined "culpable mental state," Kansas has defined it to include "knowingly," and "recklessly."<sup>17</sup> By defining culpable mental state, it appears Kansas has included general and specific intent crimes.

### **Mental Competence to Proceed**

Competency to proceed is an issue relative to a defendant's *ability to participate* in his or her defense in a criminal case. A defendant is incompetent to proceed if the defendant does not have sufficient present ability to consult with her or his lawyer with a reasonable degree of rational understanding or if the defendant has no rational, as well as factual, understanding of the proceedings against her or him.<sup>18</sup>

A petitioner raising a substantive claim of incompetency is not entitled to a presumption of incompetency and must demonstrate his or her incompetency by a preponderance of the evidence.<sup>19</sup> A defendant is considered *competent to stand trial* if "he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding—and [if] he has a rational as well as factual understanding of the proceedings against him."<sup>20</sup>

"[A] petitioner is entitled to an evidentiary hearing on a substantive incompetency claim if he or she presents clear and convincing evidence to create a real, substantial and legitimate doubt as to his or her competency."<sup>21</sup>

Mental health experts appointed pursuant to s. 916.115, F.S., must first determine whether the defendant has a mental illness and, if so, consider the factors related to the issue of whether the defendant meets the criteria for competence to proceed. In considering the issue of competence

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<sup>13</sup> Section 21-5202, K.S.,

<sup>14</sup> *Goodwin v. State*, 734 So. 2d 1057, (1<sup>st</sup> DCA 1998).

<sup>15</sup> *See also* s. 775.051, F.S., abolishing voluntary intoxication as a defense.

<sup>16</sup> *Daniels v. State*, 313 So. 3d 247 (1<sup>st</sup> DCA 2021).

<sup>17</sup> Section 21-5202, K.S.,

<sup>18</sup> Section 916.12(1), F.S.

<sup>19</sup> *James v. Singletary*, 957 F.2d 1562, 1571 (11th Cir.1992).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

to proceed, an examining expert must first consider and specifically include in his or her report the defendant's capacity to:

- Appreciate the charges or allegations.
- Appreciate the range and nature of possible penalties, if applicable, that may be imposed in the proceedings.
- Understand the adversarial nature of the legal process.
- Disclose to counsel facts pertinent to the proceedings at issue.
- Manifest appropriate courtroom behavior.
- Testify relevantly.

In addition, an examining expert must consider and include in his or her report any other factor deemed relevant by the expert.<sup>22</sup>

If the defendant is incompetent to proceed, the expert must report any recommended treatment for the defendant to attain competency. The expert must specifically report on:

- The mental illness causing incompetence.
- The completion of a clinical assessment by approved mental health experts trained by the Department of Children and Families to ensure safety of the patient and the community.
- The treatment appropriate for the mental illness and an explanation of each possible treatment alternatives, including services that may be provided in a community setting.
- The availability of acceptable treatment, and if treatment is available in the community.
- The likelihood that the defendant will attain competency under the treatment recommended, an assessment of the probable duration of the treatment required, and the probability that the defendant will attain competency in the foreseeable future.

A committing court must retain jurisdiction over any defendant involuntarily committed due to a determination of *incompetency to proceed* due to mental illness or a finding of *not guilty by reason of insanity* pursuant to ch. 916, F.S. The defendant may not be released except by order of the committing court.<sup>23</sup>

During the 2024/25 FY, 1,417 individuals were committed to a competency restoration program, and the total number of patients at state mental health treatment facilities who were adjudicated incompetent was 2,675.<sup>24</sup> An individual who has been committed to the Department of Children and Families for competency training waits on average for 115 days for admittance, while most persons receiving treatment in the community had little or no wait time.<sup>25</sup>

### **Mitigating Circumstances at Sentencing**

Section 921.0026, F.S., provides that a sentencing judge may consider circumstances or factors that reasonably justify a downward departure sentence. The level of proof necessary to establish

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<sup>22</sup> Section 916.12(3), F.S.

<sup>23</sup> Section 916.15(3)(a), F.S.; *See s. 394.467, F.S., Involuntary inpatient placement.*

<sup>24</sup> E-mail attachment from Chancer Teel, DCF Data, February 3, 2026 (on file with the Senate Committee on Criminal Justice).

<sup>25</sup> *Id.*; E-mail from Chancer Teel, DCF Data, February 3, 2026 (on file with the Senate Committee on Criminal Justice).

facts that support a departure from the lowest permissible sentence is a preponderance of the evidence.<sup>26</sup>

The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure.<sup>27</sup> The lowest permissible sentence is any nonstate prison sanction in which the total sentence points equals or is less than 44 points, unless the court determines within its discretion that a prison sentence, which may be up to the statutory maximums for the offenses committed, is appropriate.

Mitigating circumstances include the:

- Departure results from a legitimate, uncoerced plea bargain.
- Defendant was an accomplice to the offense and was a relatively minor participant in the criminal conduct.
- Capacity of the defendant to appreciate the criminal nature of the conduct or to conform that conduct to the requirements of law was substantially impaired.
- Defendant requires specialized treatment for a mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment.
- Need for payment of restitution to the victim outweighs the need for a prison sentence.
- Victim was an initiator, willing participant, aggressor, or provoker of the incident.
- Defendant acted under extreme duress or under the domination of another person.
- Victim was substantially compensated before the identity of the defendant was determined.
- Defendant cooperated with the state to resolve the current offense or any other offense.
- Offense was committed in an unsophisticated manner and was an isolated incident for which the defendant has shown remorse.
- Defendant was too young at the time of the offense to appreciate the consequences.
- Defendant is to be sentenced as a youthful offender.
- Defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024, F.S., are 60 points or fewer, and the court determines that the defendant is amenable to the services of a postadjudicatory treatment-based drug court program and is otherwise qualified to participate in the program as part of the sentence. For purposes of this paragraph, the term "nonviolent felony" has the same meaning as provided in s. 948.08(6), F.S.
- Defendant was making a good faith effort to obtain or provide medical assistance for an individual experiencing a drug-related overdose.<sup>28</sup>

### III. Effect of Proposed Changes:

The bill amends s. 775.027, F.S., to revise the affirmative defense of not guilty by reason of insanity, by removing language that allowed a defendant to present evidence that at the time of the offense, he or she had a mental infirmity, disease, or defect and *did not know what he or she was doing was wrong*.

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<sup>26</sup> Section 921.002(1)(f), and (3), F.S.

<sup>27</sup> Section 921.0024(2), F.S.

<sup>28</sup> *Id.* Except as provided in paragraph (2)(m), the defendant's substance abuse or addiction, including intoxication at the time of the offense, is not a mitigating factor under subsection (2) and does not, under any circumstances, justify a downward departure from the permissible sentencing range. Section 921.0026(3), F.S.

Under the bill, a person may raise the affirmative defense of not guilty by reason of insanity if he or she establishes that at the time of the offense, the defendant had a mental infirmity, disease, or defect and because of this condition, the defendant did not know what he or she was doing or its consequences.

The bill amends s. 916.12, F.S., to provide that an expert who examines a defendant for competency to proceed must consider and include in the report whether the expert finds that the defendant is malingering. Additionally, the expert must include what instrument or method was used as the basis of such finding.

The bill amends s. 916.15, F.S., to require a defendant who has been found not guilty by reason of insanity and who meets commitment criteria to be involuntarily committed.

The bill amends s. 921.0026, F.S., to revise mitigating circumstances which permit a court to sentence a defendant to a sentence below the lowest permissible sentence based on sentencing guidelines by narrowing the mitigating circumstance for physical disabilities and mental disorders. The court may issue such a downward departure if the defendant requires specialized treatment for a:

- Severe physical disability; or
- Severe and persistent mental illness that has been diagnosed by a qualified professional. The court may not depart from the lowest permissible sentence if the defendant is convicted of murder, manslaughter, or for a registerable sex offense, or is a danger to self or others.

The above mitigating circumstance may not be construed to allow a convicted defendant to receive outpatient therapy in lieu of a term of incarceration.

The bill amends s. 916.145, F.S., to extend the timeframe that the state attorney must wait before dismissing charges against a defendant who has been found incompetent. A defendant's charges may not be dismissed unless the defendant remains incompetent to proceed for a duration of time equal to the maximum statutory sentence for his or her charges and such sentence is more than five years.

If the defendant's maximum statutory sentence is equal to or less than 5 years, the court may dismiss charges three years after a determination of incompetency, unless the charge is a specified offense.

The bill takes effect on October 1, 2026.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, s. 18, of the State Constitution.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. State Tax or Fee Increases:**

None.

**E. Other Constitutional Issues:**

None.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

The Department of Corrections has a positive indeterminate fiscal impact.<sup>29</sup> While it is unknown how many individuals will be affected, the bill narrows the mitigating circumstances for defendants with physical disabilities and mental illness. This may result in longer prison sentences and more individuals sentenced to incarceration.

The bill has a negative fiscal impact on the Department of Children and Families. According to the Department of Children and Families, there are 3,104 beds in State Mental Health Treatment Facilities. The average bed day rate based on expenditures for the state-operated mental health treatment facilities for FY 24-25 is \$428.13. The average bed day rate based on expenditures for the contracted state mental health treatment facilities for FY 24-25 is \$357.97. There is no difference in cost at the state mental health facilities that are treating persons found Not Guilty by Reason of Insanity of those found incompetent to proceed.<sup>30</sup>

The bill prohibits the state from dismissing charges of defendants who are found incompetent to proceed unless they have remained incompetent for a duration of time equal to that of the statutory maximum sentence, if such sentence is more than 5 years.

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<sup>29</sup> SB 1326 Strike-all amendment 807564, EDR proposed estimate, (on file with the Senate Committee on Criminal Justice).

<sup>30</sup> E-mail attachment from Chancer Teel, DCF Data, February 3, 2026 (on file with the Senate Committee on Criminal Justice).

This increases the length of time that a defendant must receive competency training before the state may dismiss charges, and may result in competency restoration for the duration of life if a defendant is charged with a life felony, 30 years if the defendant is charged with a first degree felony, or 15 years if the defendant is charged with a second degree felony.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 775.027, 916.12, 921.0026.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Criminal Justice on February 2, 2026:

The committee substitute:

- Removes language in the bill relating to the defense of a lack of culpable mental state and revises the current affirmative defense of not guilty by reason of insanity to remove that a defendant may be found NGRI if the defendant knew what he or she was doing but did not know that it was wrong.
- Adds that an expert must include in a competency report whether a defendant is malingering, and what instrument or method was used in making such determination.
- Provides that a defendant who is acquitted by NGRI must be committed if he or she meets commitment criteria.
- Provides that the court may grant a downward departure if a defendant has a severe and persistent mental illness and is not a danger to self or others, and is not convicted of murder, manslaughter, or a sex offense. The amendment specifies that such downward departure may not allow a convicted defendant to receive outpatient therapy in lieu of a term of incarceration.
- Increases the amount of time that a defendant must remain incompetent before the state may dismiss charges.

**B. Amendments:**

None.