

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.)

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

BILL: SB 1326

INTRODUCER: Senator Martin

SUBJECT: Prosecution of Defendants

DATE: January 23, 2026

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cellon	Stokes	CJ	Pre-meeting
2.			JU	
3.			RC	

I. Summary:

The bill amends several sections of the Florida Statutes relating to the defendants who have mental illness. Specifically the bill amends:

- Section 775.027, F.S., replacing the current insanity affirmative defense with a defense of lack of a culpable mental state due to a mental disease or defect.
- Section 916.12, F.S., to require an expert who is examining a defendant for competency to proceed to incorporate a clinically recognized instrument to determine whether the defendant is malingering and include the results in the expert's report to the court.
- Section 921.0026(2)(d), F.S., to remove that the court may consider whether a defendant has a mental disorder that requires specialized treatment as a mitigating circumstance at sentencing. The court may consider at sentencing when the defendant requires specialized treatment for a *physical disability* as a mitigating circumstance.

The bill creates s. 921.245, F.S., to provide that the court may incorporate mental health treatment in the defendant's sentence, but treatment may not provide a basis for departure from the sentencing guidelines. The bill also specifies that a sentencing court is not prevented from considering a defendant's mental disease or defect when imposing a sentence within the permissible sentencing range established by the Criminal Punishment Code.

The bill may have 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.¹

The defendant has the burden of proving the defense of insanity by clear and convincing evidence.² 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.³

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.⁴ Every defendant acquitted of criminal charges by reason of insanity and found to meet the criteria for 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.⁵

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."⁶

¹ Section 775.027(1), F.S.

² 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. 5th 2015).

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

⁴ Section 916.15(2), F.S.

⁵ 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. 5th 2004).

⁶ 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.

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.⁷

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.⁸ 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.”⁹ 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.”¹⁰

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.¹¹ 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.

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.¹²

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.^{13,14} Additionally, Florida courts have held that involuntary intoxication is admissible only to negate the intent required for specific intent crimes.¹⁵

⁷ K.S.A. 21-5202.

⁸ *Kahler v. Kansas*, 589 U.S. 271, 140 S.Ct. 1021, 206 L.Ed.2d 312 (2020).

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 775.027, F.S.

¹² Section 21-5202, K.S.,

¹³ *Goodwin v. State*, 734 So. 2d. 1057, (1st DCA 1998).

¹⁴ *See also* s. 775.051, F.S., abolishing voluntary intoxication as a defense.

¹⁵ *Daniels v. State*, 313 So. 3d 247 (1st DCA 2021).

While Florida has not defined “culpable mental state,” Kansas has defined it to include “knowingly,” and “recklessly.”¹⁶ 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.¹⁷

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.¹⁸ 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.”¹⁹

“[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.”²⁰

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 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.²¹

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.

¹⁶ Section 21-5202, K.S.,

¹⁷ Section 916.12(1), F.S.

¹⁸ James v. Singletary, 957 F.2d 1562, 1571 (11th Cir.1992).

¹⁹ *Id.*

²⁰ *Id.*

²¹ Section 916.12(3), F.S.

- 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 available 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.²²

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 facts that support a departure from the lowest permissible sentence is a preponderance of the evidence.²³

The lowest permissible sentence is the minimum sentence that may be imposed by the trial court, absent a valid reason for departure.²⁴ 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.

²² Section 916.15(3)(a), F.S.; *See s. 394.467, F.S., Involuntary inpatient placement.*

²³ Section 921.002(1)(f), and (3), F.S.

²⁴ Section 921.0024(2), F.S.

- 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.²⁵

III. Effect of Proposed Changes:

The bill amends s.775.027, F.S., to eliminate the current insanity affirmative defense and attendant burden of proof, replacing it with a defense of lack of a culpable mental state at the time the crime was committed due to a mental disease or defect.

Specifically, the bill provides that it is a defense to a prosecution under any law that a defendant, *as a result of mental disease or defect, lacked the culpable mental state* required as an element of the crime charged.²⁶ Mental disease or defect is not otherwise a defense to a prosecution under any law.

The bill amends S. 916.12, F.S., to require an expert who examines a defendant to determine competency to proceed must administer a clinically recognized instrument to determine whether the defendant is malingering. Along with any other factor deemed relevant by the expert, he or she expert must include the results of the specified instrument in his or her report to the court.

The bill amends s. 921.0026(2)(d), F.S., to remove that the court may consider whether a defendant has a mental disorder that requires specialized treatment as a mitigating circumstance at sentencing. The court may consider at sentencing when the defendant requires specialized treatment for a *physical disability*.

The bill creates s. 921.245, F.S., regarding mental health treatment for certain defendants upon sentencing. The bill provides that if the convicted defendant requires specialized treatment for a mental disease or defect that is unrelated to substance abuse or addiction, and the defendant is amenable to treatment, such treatment may be incorporated into his or her criminal sentence. The treatment may not provide a basis for a sentencing court to depart from the lowest permissible sentence established by the Criminal Punishment Code.

²⁵ *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.

²⁶ For an example of an “Element of the crime charged,” see the explanation of the elements of the crime of Loitering and Prowling in *Ferguson v. State*, 39 So.3d 551 (Fla. 2nd DCA, 2010): “The offense consists of two elements. The first is that the ‘accused must loiter or prowl in a manner not usual for a law-abiding citizen. This conduct must come close to but fall short of the actual commission or attempted commission of a substantive crime and suggest that a breach of the peace is imminent.’ The second element is that ‘the factual circumstances must establish that the accused's behavior is ‘alarming in nature, creating an imminent threat to public safety.’” (internal citations omitted).

The bill also specifies that a sentencing court is not prevented from considering a defendant's mental disease or defect when imposing a sentence within the permissible sentencing range established by the Criminal Punishment Code.

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 may have a positive indeterminate fiscal impact if the bill results in defendants who may have been sentenced under the lowest permissible sentence due to the mitigating circumstance of needing specialized mental health treatment are now sentenced to prison. Additionally, it is unclear whether revising the insanity defense will result in more or fewer defendants who are convicted.

VI. Technical Deficiencies:

The bill does not amend s. 916.15, F.S., relating to involuntary commitment of defendants adjudicated not guilty by reason of insanity. It is unclear if this provision will be applicable with the bill changing the affirmative defense of insanity to a defense of lack of culpable mental state.

VII. Related Issues:

None.

VIII. Statutes Affected:

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

This bill creates the following sections of the Florida Statutes: 921.245

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

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

None.

B. Amendments:

None.