

By Senator Martin

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A bill to be entitled
An act relating to the prosecution of defendants;
amending s. 775.027, F.S.; specifying 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; specifying that mental
disease or defect is not otherwise a defense to a
prosecution under any law; deleting the affirmative
defense to a criminal prosecution that, at the time of
the commission of the acts constituting the offense,
the defendant was insane; deleting provisions for
establishing the affirmative defense; deleting a
provision relating to the burden of proof relating to
the affirmative defense; amending s. 916.12, F.S.;
requiring an expert examining a defendant's mental
competence to proceed to administer a clinically
recognized instrument to determine whether the
defendant is malingering and include the results in
his or her report; amending s. 921.0026, F.S.;
revising a mitigating circumstance under which a
departure from the lowest permissible sentence is
reasonably justified; creating s. 921.245, F.S.;
authorizing the incorporation into a convicted
defendant's criminal sentence certain specialized
treatment for mental health disease or defects;
prohibiting such treatment from providing a basis for
a sentencing court to depart from the lowest
permissible sentence; specifying that certain

33-01489-26

20261326__

provisions do not prevent a sentencing court from considering a defendant's mental disease or defect when imposing a sentence within the permissible sentencing range; providing an effective date.

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

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

775.027 ~~Insanity~~ Defense of lack of culpable mental state.

~~(1) AFFIRMATIVE DEFENSE.~~ All persons are presumed to be sane. 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. Mental disease or defect is not otherwise a defense to a prosecution under any law ~~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:~~

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

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

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

~~2. 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.~~

~~Mental infirmity, disease, or defect does not constitute a~~

33-01489-26

20261326__

~~defense of insanity except as provided in this subsection.~~

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

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

916.12 Mental competence to proceed.—

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

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

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

(c) Understand the adversarial nature of the legal process.

(d) Disclose to counsel facts pertinent to the proceedings at issue.

(e) Manifest appropriate courtroom behavior.

(f) Testify relevantly.

In addition, an examining expert shall administer a clinically recognized instrument to determine whether the defendant is malingering ~~consider~~ and include the results of this instrument in his or her report, along with any other factor deemed relevant by the expert.

Section 3. Paragraph (d) of subsection (2) of section 921.0026, Florida Statutes, is amended to read:

921.0026 Mitigating circumstances.—This section applies to

33-01489-26

20261326__

any felony offense, except any capital felony, committed on or after October 1, 1998.

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

(d) The 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.~~

Section 4. Section 921.245, Florida Statutes, is created to read:

921.245 Mental health treatment for convicted defendants.—

(1) If a 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, but the treatment may not provide a basis for a sentencing court to depart from the lowest permissible sentence established by the Criminal Punishment Code.

(2) This section does not prevent a sentencing court from considering a defendant's mental disease or defect when imposing a sentence within the permissible sentencing range established by the Criminal Punishment Code.

Section 5. This act shall take effect October 1, 2026.