

By Senator Martin

33-01489-26

20261326

33-01489-26

20261326

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

34

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

36

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

39 775.027 Insanity Defense of lack of culpable mental state.—

40 (1) AFFIRMATIVE DEFENSE. All persons are presumed to be  
41 sane. It is a defense to a prosecution under any law that a  
42 defendant, as a result of mental disease or defect, lacked the  
43 culpable mental state required as an element of the crime  
44 charged. Mental disease or defect is not otherwise a defense to  
45 a prosecution under any law an affirmative defense to a criminal  
46 prosecution that, at the time of the commission of the acts  
47 constituting the offense, the defendant was insane. Insanity is  
48 established when:

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

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

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

54 2. Although the defendant knew what he or she was doing and  
55 its consequences, the defendant did not know that what he or she  
56 was doing was wrong.

57

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

33-01489-26

20261326

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

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

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

65 916.12 Mental competence to proceed.—

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

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

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

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

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

77 (e) Manifest appropriate courtroom behavior.

78 (f) Testify relevantly.

79  
80 In addition, an examining expert shall administer a clinically  
81 recognized instrument to determine whether the defendant is  
82 malingering ~~consider~~ and include the results of this instrument  
83 in his or her report, along with any other factor deemed  
84 relevant by the expert.

85 Section 3. Paragraph (d) of subsection (2) of section  
86 921.0026, Florida Statutes, is amended to read:

87 921.0026 Mitigating circumstances.—This section applies to

33-01489-26

20261326

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

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

93 (d) The defendant requires specialized treatment for a  
94 ~~mental disorder that is unrelated to substance abuse or~~  
95 ~~addiction or for a physical disability, and the defendant is~~  
96 ~~amenable to treatment.~~

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

99 921.245 Mental health treatment for convicted defendants.

100 (1) If a convicted defendant requires specialized treatment  
101 for a mental disease or defect that is unrelated to substance  
102 abuse or addiction, and the defendant is amenable to treatment,  
103 such treatment may be incorporated into his or her criminal  
104 sentence, but the treatment may not provide a basis for a  
105 sentencing court to depart from the lowest permissible sentence  
106 established by the Criminal Punishment Code.

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

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