

By the Committee on Criminal Justice; and Senator Martin

591-02425-26

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A bill to be entitled

An act relating to the prosecution of defendants; amending s. 775.027, F.S.; revising the qualifications for an insanity defense; amending s. 916.12, F.S.; updating reporting requirements for examining experts; amending s. 916.145, F.S.; revising requirements for dismissal of charges; amending s. 916.15, F.S.; requiring involuntary commitment for persons found not guilty by reason of insanity in certain circumstances; amending s. 921.0026, F.S.; revising mitigating circumstances for sentencing; 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.—

(1) AFFIRMATIVE DEFENSE.—All persons are presumed to be sane. It 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. \div

(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

591-02425-26

20261326c1

30 consequences; or

31 ~~2. Although the defendant knew what he or she was doing and~~
32 ~~its consequences, the defendant did not know that what he or she~~
33 ~~was doing was wrong.~~34
35 Mental infirmity, disease, or defect does not constitute a
36 defense ~~of~~ of insanity except as provided in this subsection.37 (2) BURDEN OF PROOF.—The defendant has the burden of
38 proving the defense of insanity by clear and convincing
39 evidence.40 Section 2. Subsection (3) of section 916.12, Florida
41 Statutes, is amended to read:

42 916.12 Mental competence to proceed.—

43 (3) In considering the issue of competence to proceed, an
44 examining expert shall first consider and specifically include
45 in his or her report the defendant's capacity to:46 (a) Appreciate the charges or allegations against the
47 defendant.48 (b) Appreciate the range and nature of possible penalties,
49 if applicable, that may be imposed in the proceedings against
50 the defendant.

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

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

54 (e) Manifest appropriate courtroom behavior.

55 (f) Testify relevantly.

56
57 In addition, an examining expert shall consider and include in
58 his or her report whether the expert finds that the defendant is

591-02425-26

20261326c1

59 malingering, what instrument or method was used as the basis for
60 any such finding, and any other factor deemed relevant by the
61 expert.

62 Section 3. Section 916.145, Florida Statutes, is amended to
63 read:

64 916.145 Dismissal of charges.—

65 (1) Except as provided in subsection (2), the charges
66 against a defendant adjudicated incompetent to proceed due to
67 mental illness ~~may not~~ shall be dismissed unless: without
68 prejudice to the state if

69 (a) The defendant remains incompetent to proceed for a
70 duration of time equal to the maximum statutory sentence for
71 such charges; and

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

74 (2) If the defendant's maximum statutory sentence is equal
75 to or less than 5 years, 5 continuous, uninterrupted years after
76 such determination, unless the court in its order specifies its
77 reasons for believing that the defendant will become competent
78 to proceed within the foreseeable future and specifies the time
79 within which the defendant is expected to become competent to
80 proceed. the court may dismiss such charges at least 3 years
81 after such determination of incompetency, unless the charge is:

82 (a) Arson;

83 (b) Sexual battery;

84 (c) Robbery;

85 (d) Kidnapping;

86 (e) Aggravated child abuse;

87 (f) Aggravated abuse of an elderly person or disabled

591-02425-26

20261326c1

88 adult;

89 (g) Aggravated assault with a deadly weapon;

90 (h) Murder;

91 (i) Manslaughter;

92 (j) Aggravated manslaughter of an elderly person or
93 disabled adult;

94 (k) Aggravated manslaughter of a child;

95 (l) Unlawful throwing, projecting, placing, or discharging
96 of a destructive device or bomb;

97 (m) Armed burglary;

98 (n) Aggravated battery;

99 (o) Aggravated stalking;

100 (p) A forcible felony as defined in s. 776.08 and not
101 listed elsewhere in this subsection;

102 (q) An offense where an element of the offense requires the
103 possession, use, or discharge of a firearm;

104 (r) An attempt to commit an offense listed in this
105 subsection;

106 (s) An offense allegedly committed by a defendant who has
107 had a forcible or violent felony conviction within the 5 years
108 immediately preceding the date of arrest for the nonviolent
109 felony sought to be dismissed;

110 (t) An offense allegedly committed by a defendant who,
111 after having been found incompetent and placed under court
112 supervision in a community-based program, is formally charged by
113 a state attorney or the Office of the Statewide Prosecutor with
114 a new felony offense; or

115 (u) An offense for which there is an identifiable victim
116 and such victim has not consented to the dismissal.

591-02425-26

20261326c1

117 (3)-(2) This section does not prohibit the state from
118 refiling dismissed charges if the defendant is declared to be
119 competent to proceed in the future.

120 Section 4. Section 916.15, Florida Statutes, is amended to
121 read:

122 916.15 Involuntary commitment of defendant adjudicated not
123 guilty by reason of insanity.—

124 (1) The determination of whether a defendant is not guilty
125 by reason of insanity shall be determined in accordance with s.
126 775.027 and the applicable Rule 3.217, Florida Rules of Criminal
127 Procedure.

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

133 (3) (a) Every defendant acquitted of criminal charges by
134 reason of insanity and found to meet the criteria for
135 involuntary commitment shall may be committed and treated in
136 accordance with the provisions of this section and the
137 applicable Florida Rules of Criminal Procedure.

138 (b) Immediately after receipt of a completed copy of the
139 court commitment order containing all documentation required by
140 the applicable Florida Rules of Criminal Procedure, the
141 department shall request all medical information relating to the
142 defendant from the jail. The jail shall provide the department
143 with all medical information relating to the defendant within 3
144 business days after receipt of the department's request or at
145 the time the defendant enters the physical custody of the

591-02425-26

20261326c1

146 department, whichever is earlier.

147 (c) The department shall admit a defendant so adjudicated
148 to an appropriate facility or program for treatment and shall
149 retain and treat such defendant. No later than 6 months after
150 the date of admission, prior to the end of any period of
151 extended commitment, or at any time that the administrator or
152 his or her designee determines that the defendant no longer
153 meets the criteria for continued commitment placement, the
154 administrator or designee shall file a report with the court
155 pursuant to the applicable Florida Rules of Criminal Procedure.

156 (4) In all proceedings under this section, both the
157 defendant and the state shall have the right to a hearing before
158 the committing court. Evidence at such hearing may be presented
159 by the hospital administrator or the administrator's designee as
160 well as by the state and the defendant. The defendant shall have
161 the right to counsel at any such hearing. In the event that a
162 defendant is determined to be indigent pursuant to s. 27.52, the
163 public defender shall represent the defendant. The parties shall
164 have access to the defendant's records at the treating
165 facilities and may interview or depose personnel who have had
166 contact with the defendant at the treating facilities.

167 (5) The commitment hearing shall be held within 30 days
168 after the court receives notification that the defendant no
169 longer meets the criteria for continued commitment. The
170 defendant must be transported to the committing court's
171 jurisdiction for the hearing. Each defendant returning to a jail
172 shall continue to receive the same psychotropic medications as
173 prescribed by the facility physician at the time of discharge
174 from a forensic or civil facility, unless the jail physician

591-02425-26

20261326c1

175 determines there is a compelling medical reason to change or
176 discontinue the medication for the health and safety of the
177 defendant. If the jail physician changes or discontinues the
178 medication and the defendant is later determined at the
179 competency hearing to be incompetent to stand trial and is
180 recommitted to the department, the jail physician may not change
181 or discontinue the defendant's prescribed psychotropic
182 medication upon the defendant's next discharge from the forensic
183 or civil facility.

184 Section 5. Section 921.0026, Florida Statutes, is amended
185 to read:

186 921.0026 Mitigating circumstances.—This section applies to
187 any felony offense, except any capital felony, committed on or
188 after October 1, 1998.

189 (1) A downward departure from the lowest permissible
190 sentence, as calculated according to the total sentence points
191 pursuant to s. 921.0024, is prohibited unless there are
192 circumstances or factors that reasonably justify the downward
193 departure. Mitigating factors to be considered include, but are
194 not limited to, those listed in subsection (2). The imposition
195 of a sentence below the lowest permissible sentence is subject
196 to appellate review under chapter 924, but the extent of
197 downward departure is not subject to appellate review.

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

201 (a) The departure results from a legitimate, uncoerced plea
202 bargain.

203 (b) The defendant was an accomplice to the offense and was

591-02425-26

20261326c1

204 a relatively minor participant in the criminal conduct.

205 (c) The capacity of the defendant to appreciate the
206 criminal nature of the conduct or to conform that conduct to the
207 requirements of law was substantially impaired.

208 (d) 1. The defendant requires specialized treatment for a:

209 a. Severe physical disability; or

210 b. Severe and persistent mental illness that is unrelated
211 to substance abuse or addiction, and has been diagnosed by a
212 qualified professional, as that term is defined in s. 39.01. The
213 court may not depart from the lowest permissible sentence under
214 this subparagraph if the defendant is a danger to himself or
215 herself or others, or is convicted of murder, manslaughter, or
216 any offense listed in s. 943.0435.

217 2. This paragraph may not be construed to allow a convicted
218 defendant to receive outpatient therapy in lieu of a term of
219 incarceration. mental disorder that is unrelated to substance
220 abuse or addiction or for a physical disability, and the
221 defendant is amenable to treatment.

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

224 (f) The victim was an initiator, willing participant,
225 aggressor, or provoker of the incident.

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

228 (h) Before the identity of the defendant was determined,
229 the victim was substantially compensated.

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

232 (j) The offense was committed in an unsophisticated manner

591-02425-26

20261326c1

233 and was an isolated incident for which the defendant has shown
234 remorse.

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

237 (l) The defendant is to be sentenced as a youthful
238 offender.

239 (m) The defendant's offense is a nonviolent felony, the
240 defendant's Criminal Punishment Code scoresheet total sentence
241 points under s. 921.0024 are 60 points or fewer, and the court
242 determines that the defendant is amenable to the services of a
243 postadjudicatory treatment-based drug court program and is
244 otherwise qualified to participate in the program as part of the
245 sentence. For purposes of this paragraph, the term "nonviolent
246 felony" has the same meaning as provided in s. 948.08(6).

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

250 (3) Except as provided in paragraph (2) (m), the defendant's
251 substance abuse or addiction, including intoxication at the time
252 of the offense, is not a mitigating factor under subsection (2)
253 and does not, under any circumstances, justify a downward
254 departure from the permissible sentencing range.

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