

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.÷

~~(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~~

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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 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 consider and include in his or her report whether the expert finds that the defendant is

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

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

916.145 Dismissal of charges.—

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

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

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

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

(a) Arson;

(b) Sexual battery;

(c) Robbery;

(d) Kidnapping;

(e) Aggravated child abuse;

(f) Aggravated abuse of an elderly person or disabled

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adult;

(g) Aggravated assault with a deadly weapon;

(h) Murder;

(i) Manslaughter;

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

(k) Aggravated manslaughter of a child;

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

(m) Armed burglary;

(n) Aggravated battery;

(o) Aggravated stalking;

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

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

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

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

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

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

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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

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department, whichever is earlier.

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

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

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

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

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

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

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

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

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

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

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a relatively minor participant in the criminal conduct.

(c) The 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.

(d) 1. The defendant requires specialized treatment for a:
a. Severe physical disability; or
b. Severe and persistent mental illness that is unrelated to substance abuse or addiction, and has been diagnosed by a qualified professional, as that term is defined in s. 39.01. The court may not depart from the lowest permissible sentence under this subparagraph if the defendant is a danger to himself or herself or others, or is convicted of murder, manslaughter, or any offense listed in s. 943.0435.

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

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

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

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

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

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

(j) The offense was committed in an unsophisticated manner

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

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

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

(m) The defendant's offense is a nonviolent felony, the defendant's Criminal Punishment Code scoresheet total sentence points under s. 921.0024 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).

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

(3) 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 6. This act shall take effect October 1, 2026.