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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

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26 treatment for mental health disease or defects;
27 prohibiting such treatment from providing a basis for
28 a sentencing court to depart from the lowest
29 permissible sentence; specifying that certain
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**
38 **to read:**

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

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

50 (a) The defendant had a mental infirmity, disease, or

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51 defect; and

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

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

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

58
59 Mental infirmity, disease, or defect does not constitute a
60 defense of insanity except as provided in this subsection.

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

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

66 916.12 Mental competence to proceed.—

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

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

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

75 (c) Understand the adversarial nature of the legal

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76 process.

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

79 (e) Manifest appropriate courtroom behavior.

80 (f) Testify relevantly.

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

87 **Section 3. Paragraph (d) of subsection (2) of section**
88 **921.0026, Florida Statutes, is amended to read:**

89 921.0026 Mitigating circumstances.—This section applies to
90 any felony offense, except any capital felony, committed on or
91 after October 1, 1998.

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

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

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

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101 921.245 Mental health treatment for convicted defendants.—

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

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

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