

1                   A bill to be entitled  
2       An act relating to the prosecution of defendants;  
3       amending s. 775.027, F.S.; specifying that it is a  
4       defense to a prosecution under any law that a  
5       defendant, as a result of mental disease or defect,  
6       lacked the culpable mental state required as an  
7       element of the crime charged; specifying that mental  
8       disease or defect is not otherwise a defense to a  
9       prosecution under any law; deleting the affirmative  
10      defense to a criminal prosecution that, at the time of  
11      the commission of the acts constituting the offense,  
12      the defendant was insane; deleting provisions for  
13      establishing the affirmative defense; deleting a  
14      provision relating to the burden of proof relating to  
15      the affirmative defense; amending s. 916.12, F.S.;  
16      requiring an expert examining a defendant's mental  
17      competence to proceed to administer a clinically  
18      recognized instrument to determine whether the  
19      defendant is malingering and include the results in  
20      his or her report; amending s. 921.0026, F.S.;  
21      revising a mitigating circumstance under which a  
22      departure from the lowest permissible sentence is  
23      reasonably justified; creating s. 921.245, F.S.;  
24      authorizing the incorporation into a convicted  
25      defendant's criminal sentence certain specialized

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~~

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

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 malinger~~ing~~ ~~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:**

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.