

## CS/SB 1326 – Prosecution of Defendants

This bill amends multiple statutes. First, it amends s. 775.027, F.S., deleting that insanity during the time of the commission of an offense 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...or...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.” In its place, new language is added, stating that “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.” It then amends s. 916.12, F.S., adding the following language (new language in bold): “In addition, an examining expert shall consider and include in his or her report **whether the expert finds that the defendant is malingering, what instrument or method was used as the basis for any such finding, and any other factor deemed relevant by the expert.**” Additionally, it amends s. 916.145, F.S., stating that the charges against a defendant adjudicated incompetent to proceed due to mental illness may not be dismissed unless the defendant remains incompetent for a duration of time equal to the maximum statutory sentence for such charges and the maximum statutory sentence for such charges is more than five years. Also, the court may dismiss such charges at least three years after a determination of incompetency if the defendant’s maximum sentence is equal to or less than five years, unless it is for specific charges. Current language states that the charges against a defendant adjudicated incompetent to proceed due to mental illness shall be dismissed without prejudice to the state if the defendant remains incompetent to proceed for five continuous, uninterrupted years, and after three years allowing the court to dismiss such charges unless it is for specific charges. It then amends s. 916.15, F.S., adding s. 775.027, F.S. to determining whether a defendant is not guilty by reason of insanity. It also replaces “may” with “shall” when those acquitted by reason of insanity should be considered for involuntary commitment. Finally, this bill amends s. 921.0026, F.S., deleting “mental disorder that is unrelated to substance abuse or addiction or for a physical disability, and the defendant is amenable to treatment” from mitigating circumstances that could lead to downward departures from the lowest permissible sentence and replacing it with the following: “Severe physical disability...or...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, F.S. 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, F.S...this paragraph may not be construed to allow a convicted defendant to receive outpatient therapy in lieu of a term of incarceration.”

It is not known what the magnitude of the impact would be to the prison population from the adjustments to mitigating circumstances or changes to adjudicated incompetent.

**CONFERENCE ADOPTED ESTIMATE: Positive Indeterminate**

Requested by: Senate