

1 State of Arkansas
2 92nd General Assembly
3 Regular Session, 2019
4

A Bill

HOUSE BILL 1494

5 By: Representatives V. Flowers, F. Allen, Blake, Burch, Clowney, A. Collins, D. Garner, Godfrey, M.
6 Hodges, Love, McCullough, Murdock, Nicks, Richardson, Richey, Scott, Walker, D. Whitaker
7

For An Act To Be Entitled

9 AN ACT CONCERNING THE IMPOSITION OF THE DEATH PENALTY
10 ON A DEFENDANT WITH A SERIOUS MENTAL ILLNESS; AND FOR
11 OTHER PURPOSES.
12
13

Subtitle

15 CONCERNING THE IMPOSITION OF THE DEATH
16 PENALTY ON A DEFENDANT WITH A SERIOUS
17 MENTAL ILLNESS.
18
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
21

22 SECTION 1. Arkansas Code § 5-4-101, concerning definitions used
23 regarding the disposition of criminal offenders, is amended to add new
24 definitions to read as follows:

25 (7) "Active symptoms" means symptoms of a serious mental
26 illness, including without limitation:

27 (A) A delusion;

28 (B) A hallucination;

29 (C) Extremely disorganized thinking;

30 (D) Mania; or

31 (E) Very significant disruptions of consciousness, memory,
32 and perception of the environment;

33 (8) "Delusion" means a fixed and clearly false belief;

34 (9) "Hallucination" means a clearly erroneous perception of
35 reality;

36 (10)(A) "Person with a serious mental illness" means a person



1 who, at the time of an offense, had active symptoms of a serious mental
 2 illness that substantially impaired his or her capacity to:

3 (i) Appreciate the nature, consequences, or
 4 wrongfulness of his or her conduct;

5 (ii) Exercise rational judgment in relation to his
 6 or her conduct; or

7 (iii) Conform his or her conduct to the requirements
 8 of the law.

9 (B) "Person with a serious mental illness" includes a
 10 person diagnosed with a serious mental illness before and after commission of
 11 an offense;

12 (11)(A) "Serious mental illness" means one (1) or more of the
 13 following disorders as classified in the American Psychiatric Association's
 14 Diagnostic and Statistical Manual of Mental Disorders as it existed on
 15 January 1, 2017:

16 (i) Schizophrenia spectrum and other psychotic
 17 disorders;

18 (ii) Bipolar disorder;

19 (iii) Major depressive disorder;

20 (iv) Delusional disorder;

21 (v) Post-traumatic stress disorder; or

22 (vi) Traumatic brain injury.

23 (B) "Serious mental illness" does not include a disorder
 24 manifested primarily by repeated criminal conduct or attributable solely to
 25 the acute effects of the voluntary use of alcohol or other drugs.

26
 27 SECTION 2. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended
 28 to add an additional section to read as follows:

29 5-4-609. Serious mental illness.

30 (a) This section applies to a person:

31 (1) Charged with an offense for which the state seeks the death
 32 penalty; or

33 (2) Convicted of an offense and sentenced to death.

34 (b)(1) Except as provided under subsection (h) of this section, a
 35 person may file a petition with the trial court alleging that the person has
 36 a serious mental illness.

1 (2) If a person files a petition under this subsection, the
2 trial court shall order an evaluation of the person to provide evidence of
3 whether the person has a serious mental illness.

4 (3) The trial court shall appoint two (2) examiners, each of
5 whom shall be a psychiatrist or psychologist licensed by the Arkansas State
6 Medical Board as a health service provider in psychiatry or psychology and
7 experienced in the diagnosis and treatment of individuals with a serious
8 mental illness.

9 (4) The examiners shall provide a written report to the trial
10 court offering an opinion as to whether the person has a serious mental
11 illness.

12 (c)(1) A statement that a person makes as part of an evaluation or at
13 a hearing under this section may be used against the person on the issue of
14 guilt in a criminal proceeding.

15 (2) However, the person or the state may call an examiner as a
16 witness in the criminal proceeding.

17 (d) This section does not preclude the person or the state from
18 presenting other evidence on the issue of whether the person suffers from a
19 serious mental illness.

20 (e)(1) The trial court shall conduct a hearing on a petition filed
21 under this section.

22 (2) The trial court may determine that the person has a serious
23 mental illness only if the person proves by a preponderance of the evidence
24 at the hearing that the person has a serious mental illness.

25 (3)(A) Not later than thirty (30) days after the hearing, the
26 trial court shall determine whether the person has a serious mental illness
27 based on the evidence presented at the hearing.

28 (B) The trial court shall issue written findings
29 supporting its determination under subdivision (e)(1) of this section.

30 (f) If the trial court determines that the person has a serious mental
31 illness, the state may not seek the death penalty but may still seek a
32 sentence of life imprisonment without parole.

33 (g) This section applies to a person who is alleged to have committed
34 before the effective date of this act an offense for which the state seeks a
35 death sentence but who has not been sentenced.

36 (h) For a person who has been sentenced to death before the effective

1 date of this act:

2 (1)(A) If the person has not completed state post-conviction
3 proceedings, the person may include in the petition for post-conviction
4 relief an allegation that the person has a serious mental illness.

5 (B) If the court hearing the post-conviction petition
6 determines that the person has a serious mental illness, the court shall
7 vacate the person's death sentence and impose a sentence of life imprisonment
8 without parole.

9 (C) This subdivision (h)(1) does not preclude the court
10 from granting the person any additional relief to which the person may be
11 entitled based on the merits of the person's additional post-conviction
12 claims; and

13 (2)(A) If a person has completed state post-conviction
14 proceedings, the person may file in the trial court a petition to request
15 permission to file a second or successive petition for post-conviction relief
16 in accordance with applicable post-conviction procedure as established by
17 court rule, alleging that the person has a serious mental illness.

18 (B) A petition to request permission to file a second or
19 successive petition under this subdivision (h)(2) must be filed no later than
20 July 1, 2020.

21 (C) If the filing of the second or successive petition is
22 authorized, the court shall proceed under the applicable rules governing
23 post-conviction relief.

24 (D) If the court determines under this section that the
25 person has a serious mental illness, the court shall vacate the person's
26 death sentence and impose a sentence of life imprisonment without parole.

27 (E) This subdivision (h)(2) does not preclude the court
28 from granting the person any additional relief to which the person may be
29 entitled based on the merits of the person's additional post-conviction
30 claims.

31
32
33
34
35
36