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INTERIM STUDY PROPOSAL 2021-111

State of Arkansas  
93rd General Assembly  
Third Extraordinary Session, 2021

**A Bill**

**BPG/BPG**  
**HOUSE BILL**

By: Representative V. Flowers

Filed with: House Committee on Judiciary  
pursuant to A.C.A. §10-3-217.

**For An Act To Be Entitled**

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

**Subtitle**

CONCERNING THE IMPOSITION OF THE DEATH  
PENALTY ON A DEFENDANT WITH A SERIOUS  
MENTAL ILLNESS.

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

SECTION 1. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly that this act not be applied  
retroactively.

SECTION 2. Arkansas Code § 5-4-101, concerning definitions used  
regarding the disposition of criminal offenders, is amended to add additional  
subsections to read as follows:

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

- (A) A delusion;
- (B) A hallucination;
- (C) Extremely disorganized thinking;
- (D) Mania; or

1                   (E) Very significant disruptions of consciousness, memory,  
2 and perception of the environment;

3                   (9) "Delusion" means a fixed and clearly false belief;

4                   (10) "Hallucination" means a clearly erroneous perception of  
5 reality;

6                   (11)(A) "Person has a serious mental illness" means a person  
7 who, at the time of an offense, had active symptoms of a serious mental  
8 illness that substantially impaired his or her capacity to:

9                           (i) Appreciate the nature, consequences, or  
10 wrongfulness of his or her conduct;

11                           (ii) Exercise rational judgment in relation to his  
12 or her conduct; or

13                           (iii) Conform his or her conduct to the requirements  
14 of the law.

15                   (B) "Person has a serious mental illness" includes a  
16 person diagnosed with a serious mental illness before and after commission of  
17 an offense; and

18                   (12)(A) "Serious mental illness" means one (1) or more of the  
19 following disorders as classified in the American Psychiatric Association's  
20 Diagnostic and Statistical Manual of Mental Disorders as it existed on  
21 January 1, 2022:

22                           (i) Schizophrenia spectrum and other psychotic  
23 disorders;

24                           (ii) Bipolar disorder;

25                           (iii) Major depressive disorder;

26                           (iv) Delusional disorder;

27                           (v) Post-traumatic stress disorder; or

28                           (vi) A disorder resulting from traumatic brain  
29 injury.

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

33  
34                   SECTION 3. Arkansas Code Title 5, Chapter 4, Subchapter 6, is amended  
35 to add an additional section to read as follows:

36                   5-4-609. Serious mental illness.

1       (a) A person may file a petition with the trial court alleging that  
2 the person has a serious mental illness if the person is charged with an  
3 offense for which the state seeks a sentence of death.

4       (b)(1) If a person files a petition under this section, the trial  
5 court shall order an evaluation of the person to provide evidence of whether  
6 the person has a serious mental illness.

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

12           (3) The examiners shall provide a written report to the trial  
13 court offering an opinion as to whether the person has a serious mental  
14 illness.

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

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

20       (d) This section does not preclude the person or the state from  
21 presenting other evidence on the issue of whether the person has a serious  
22 mental illness.

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

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

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

31           (B) The trial court shall issue written findings  
32 supporting its determination under subdivision (e)(3)(A) of this section.

33       (f) If the trial court determines that the person has a serious mental  
34 illness, the state may not seek a sentence of death but may seek a sentence  
35 of life imprisonment without parole.

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2 Referred by Representative V. Flowers  
3 Prepared by: BPG/BPG  
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