

1 INTERIM STUDY PROPOSAL 2017-074

2 State of Arkansas  
3 91st General Assembly  
4 Regular Session, 2017

As Engrossed: H3/14/17

**A Bill**

HOUSE BILL 2170

5  
6 By: Representative V. Flowers

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

9 **For An Act To Be Entitled**

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

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15 **Subtitle**

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

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

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

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

28 (A) A delusion;

29 (B) A hallucination;

30 (C) Extremely disorganized thinking;

31 (D) Mania; or

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

34 (8) "Delusion" means a fixed, clearly false belief;

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

1           (10)(A) "Person with a serious mental illness" means a person  
2 who, at the time of the offense, had active symptoms of a serious mental  
3 illness that substantially impaired his or her capacity to:

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

6                   (ii) Exercise rational judgment in relation to the  
7 person's conduct; or

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

10           (B) "Person with a serious mental illness" includes a  
11 person diagnosed with a serious mental illness before or after commission of  
12 the offense for which the person is subject to punishment;

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

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

19                   (ii) Bipolar disorder;

20                   (iii) Major depressive disorder;

21                   (iv) Delusional disorder;

22                   (v) Post-traumatic stress disorder; or

23                   (vi) Traumatic brain injury.

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

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

30           5-4-609. Serious mental illness.

31           (a) This section applies to a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1           (h) For a person who has been sentenced to death before the effective  
2 date of this act:

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

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

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

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

18                   (B) A request under this subdivision (2) must be filed not  
19 later than July 1, 2018.

20                   (C) If the successive petition is authorized, the court  
21 shall proceed under the applicable rules governing post-conviction relief.

22                   (D) If the court determines that the person has a serious  
23 mental illness, it shall vacate the person's death sentence and impose a  
24 sentence of life imprisonment without parole.

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

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29   /s/V. Flowers  
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32 Referred by the Arkansas House of Representatives

33 Prepared by: VJF  
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