

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

# A Bill

HOUSE BILL 1798

4  
5 By: Representative Blake

## For An Act To Be Entitled

8 AN ACT AMENDING THE BURDEN OF PROOF REQUIRED DURING  
9 THE SENTENCING PHASE OF A TRIAL WHEN THE STATE SEEKS  
10 THE DEATH PENALTY; AND FOR OTHER PURPOSES.

### Subtitle

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13 AMENDING THE BURDEN OF PROOF REQUIRED  
14 DURING THE SENTENCING PHASE OF A TRIAL  
15 WHEN THE STATE SEEKS THE DEATH PENALTY.  
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

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21 SECTION 1. Arkansas Code § 5-4-603 is amended to read as follows:

22 5-4-603. Findings required for death sentence – Harmless error review.

23 (a) The jury shall impose a sentence of death if the jury unanimously  
24 returns written findings that:

25 (1) An aggravating circumstance exists beyond ~~a reasonable~~ any  
26 doubt;

27 (2) Aggravating circumstances outweigh beyond ~~a reasonable~~ any  
28 doubt all mitigating circumstances found to exist; and

29 (3) Aggravating circumstances justify a sentence of death beyond  
30 ~~a reasonable~~ any doubt.

31 (b) The jury shall impose a sentence of life imprisonment without  
32 parole if the jury ~~finds that:~~

33 ~~(1) Aggravating circumstances do not exist beyond a reasonable~~  
34 ~~doubt;~~

35 ~~(2) Aggravating circumstances do not outweigh beyond a~~  
36 ~~reasonable doubt all mitigating circumstances found to exist; or~~



1           ~~(3) Aggravating circumstances do not justify a sentence of death~~  
 2 ~~beyond a reasonable doubt.~~ does not return the necessary unanimous written  
 3 findings required to impose a sentence of death under subsection (a) of this  
 4 section.

5           (c) If the jury does not make any finding required by subsection (a)  
 6 of this section, the court shall impose a sentence of life imprisonment  
 7 without parole.

8           (d)(1) On an appellate review of a death sentence, the Supreme Court  
 9 shall conduct a harmless error review of the defendant's death sentence if:

10                   (A) The Supreme Court finds that the jury erred in finding  
 11 the existence of any aggravating circumstance for any reason; and

12                   (B) The jury ~~found no~~ did not find a mitigating  
 13 circumstance.

14           (2) The Supreme Court shall conduct a harmless error review  
 15 under subdivision (d)(1) of this section by determining that a remaining  
 16 aggravating circumstance:

17                   (A) Exists beyond ~~a reasonable~~ any doubt; and

18                   (B) Justifies a sentence of death beyond ~~a reasonable~~ any  
 19 doubt.

20           (e) If the Supreme Court concludes that the erroneous finding of any  
 21 aggravating circumstance by the jury would not have changed the jury's  
 22 decision to impose the death penalty on the defendant, then a simple majority  
 23 of the court may vote to affirm the defendant's death sentence.

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