

1 State of Arkansas
2 94th General Assembly
3 Regular Session, 2023
4

A Bill

HOUSE BILL 1694

5 By: Representatives V. Flowers, Pilkington
6 By: Senator G. Leding
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
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Subtitle

15 CONCERNING THE IMPOSITION OF THE DEATH
16 PENALTY ON A DEFENDANT WITH A SERIOUS
17 MENTAL ILLNESS.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. DO NOT CODIFY. Legislative intent.

23 It is the intent of the General Assembly that this act applies to an
24 offense committed on or after the effective date of this act and does not
25 apply retroactively.
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27 SECTION 2. Arkansas Code § 5-4-101, concerning definitions used
28 regarding the disposition of criminal offenders, is amended to add additional
29 subdivisions to read as follows:

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

32 (A) A delusion;

33 (B) A hallucination;

34 (C) Extremely disorganized thinking;

35 (D) Mania; or

36 (E) Very significant disruptions of consciousness, memory,



1 and perception of the environment;

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

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

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

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

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

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

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

17 (12)(A) "Serious mental illness" means one (1) or more of the
 18 following disorders as classified in the American Psychiatric Association's
 19 Diagnostic and Statistical Manual of Mental Disorders as it existed on
 20 January 1, 2023:

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

23 (ii) Bipolar disorder;

24 (iii) Major depressive disorder;

25 (iv) Delusional disorder;

26 (v) Post-traumatic stress disorder; or

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

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

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

35 5-4-619. Serious mental illness.

36 (a) A person may file a petition with the trial court alleging that

1 the person has a serious mental illness if the person is charged with an
2 offense for which the state seeks a sentence of death.

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

6 (2) The trial court shall appoint two (2) examiners to conduct
7 the evaluation ordered under subdivision (b)(1) of this section, each of whom
8 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) After conducting the evaluation ordered under subdivision
13 (b)(1) of this section, the examiners shall provide a written report to the
14 trial court offering an opinion as to whether the person has a serious mental
15 illness.

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

19 (2) The person or the state may call an examiner as a witness in
20 the criminal proceeding.

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

24 (e)(1) Upon the receipt of the written report under subdivision (b)(3)
25 of this section, the trial court shall conduct a hearing on a petition filed
26 under this section.

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

30 (3)(A) Not later than thirty (30) days after the hearing, the
31 trial court shall determine whether the person has a serious mental illness
32 based on the evidence presented at the hearing, including the written report
33 under subdivision (b)(3) of this section.

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

36 (f) If the trial court determines that the person has a serious mental

1 illness, the state may not seek a sentence of death but may seek a sentence
2 of life imprisonment without parole.

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