

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

As Engrossed: H3/14/17

A Bill

HOUSE BILL 2170

5 By: Representative V. Flowers
6

For An Act To Be Entitled

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

Subtitle

12 CONCERNING THE IMPOSITION OF THE DEATH
13 PENALTY ON A DEFENDANT WITH A SERIOUS
14 MENTAL ILLNESS.
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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 § 5-4-101, concerning definitions used*
22 *regarding the disposition of criminal offenders, is amended to add new*
23 *definitions to read as follows:*

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

26 *(A) A delusion;*

27 *(B) A hallucination;*

28 *(C) Extremely disorganized thinking;*

29 *(D) Mania; or*

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

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

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

35 *(10)(A) "Person with a serious mental illness" means a person*
36 *who, at the time of the offense, had active symptoms of a serious mental*



1 illness that substantially impaired his or her capacity to:

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

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

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

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

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

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

17 (ii) Bipolar disorder;

18 (iii) Major depressive disorder;

19 (iv) Delusional disorder;

20 (v) Post-traumatic stress disorder; or

21 (vi) Traumatic brain injury.

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

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

28 5-4-609. Serious mental illness.

29 (a) This section applies to a person:

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

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

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

36 (2) If a person files a petition under this subsection, the

1 court shall order an evaluation of the person to provide evidence of whether
2 the person has a serious mental illness.

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

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

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

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

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

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

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

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

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

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

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

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

35 (1)(A) If the person has not completed state post-conviction
36 proceedings, the person may include in the petition for post-conviction

1 relief an allegation that the person has a serious mental illness.

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

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

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

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

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

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

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

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25 /s/V. Flowers
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