

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
91st General Assembly
Regular Session, 2017

As Engrossed: H3/9/17 H3/15/17
A Bill

HOUSE BILL 1798

By: Representative Blake

For An Act To Be Entitled

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

Subtitle

AMENDING THE BURDEN OF PROOF REQUIRED
DURING THE SENTENCING PHASE OF A TRIAL
WHEN THE STATE SEEKS THE DEATH PENALTY.

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

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

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

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

(1) An aggravating circumstance exists beyond a reasonable doubt;

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

(3) Aggravating circumstances justify a sentence of death beyond a reasonable doubt; and

(4) The defendant is guilty of each element of the underlying offense beyond any doubt.

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

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



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

(3) *Aggravating circumstances do not justify a sentence of death beyond a reasonable doubt; or*

(4) The defendant is not guilty of an element of the underlying offense beyond any doubt.

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

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

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

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

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

(A) *Exists beyond a reasonable doubt; and*

(B) *Justifies a sentence of death beyond a reasonable doubt.*

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

/s/Blake