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A Bill

HOUSE BILL 1494

By: Representatives V. Flowers, F. Allen, Blake, Burch, Clowney, A. Collins, D. Garner, Godfrey, M. Hodges, Love, McCullough, Murdock, Nicks, Richardson, Richey, Scott, Walker, D. Whitaker

For An Act To Be Entitled

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

Subtitle

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

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

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

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

(A) A delusion;

(B) A hallucination;

(C) Extremely disorganized thinking;

(D) Mania; or

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

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

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

(10)(A) "Person with a serious mental illness" means a person



who, at the time of an offense, had active symptoms of a serious mental illness that substantially impaired his or her capacity to:

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

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

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

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

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

(i) Schizophrenia spectrum and other psychotic disorders;

(ii) Bipolar disorder;

(iii) Major depressive disorder;

(iv) Delusional disorder;

(v) Post-traumatic stress disorder; or

(vi) Traumatic brain injury.

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

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

5-4-609. Serious mental illness.

(a) This section applies to a person:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(h) For a person who has been sentenced to death before the effective

date of this act:

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

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

(C) This subdivision (h)(1) does not preclude the court from granting the person any additional relief to which the person may be entitled based on the merits of the person's additional post-conviction claims; and

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

(B) A petition to request permission to file a second or successive petition under this subdivision (h)(2) must be filed no later than July 1, 2020.

(C) If the filing of the second or successive petition is authorized, the court shall proceed under the applicable rules governing post-conviction relief.

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

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