

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

HOUSE BILL 1914

By: Representatives V. Flowers, Hawks, Pilkington, Penzo

By: Senator G. Leding

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. DO NOT CODIFY. Legislative intent.

It is the intent of the General Assembly that this act not be applied retroactively.

SECTION 2. Arkansas Code § 5-4-101, concerning definitions used regarding the disposition of criminal offenders, is amended to add additional subsections 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 has 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 has a serious mental illness" includes a person diagnosed with a serious mental illness before and after commission of an offense; and

(11)(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, 2021:

(i) Schizophrenia spectrum and other psychotic disorders;

(ii) Bipolar disorder;

(iii) Major depressive disorder;

(iv) Delusional disorder;

(v) Post-traumatic stress disorder; or

(vi) A disorder resulting from 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 3. 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) A person may file a petition with the trial court alleging that the person has a serious mental illness if the person is charged with an

offense for which the state seeks a sentence of death.

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

(2) 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.

(3) 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 has 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)(3)(A) of this section.

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