

By Senator Brandes

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1 A bill to be entitled
2 An act relating to serious mental illness as bar to
3 execution; creating s. 921.135, F.S.; defining the
4 term "serious mental illness"; prohibiting the
5 imposing of a sentence of death upon a defendant
6 convicted of a capital felony if the defendant had a
7 serious mental illness at the time of committing the
8 offense; requiring a defendant to provide a certain
9 notice if he or she intends to raise serious mental
10 illness as a bar to a death sentence; requiring the
11 defendant to file a written motion if he or she
12 intends to raise serious mental illness as a bar to a
13 death sentence; providing motion requirements;
14 providing for the testing, evaluation, or examination
15 of the defendant by experts; providing time
16 limitations for the filing of the motion; requiring
17 the circuit court to conduct an evidentiary hearing on
18 the motion; providing court requirements; providing
19 for waiver of the claim; requiring certain court
20 orders if the court finds by clear and convincing
21 evidence that the defendant had a serious mental
22 illness at the time of the commission of the crime;
23 authorizing the state to appeal such an order;
24 providing requirements; providing that the time of
25 diagnosis does not preclude the defendant from
26 presenting evidence of a serious mental illness;
27 prohibiting certain statements of the defendant from
28 being used against him or her; providing construction;
29 providing for postconviction proceedings; providing

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30 requirements; providing for stays of certain
31 proceedings; providing an effective date.

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33 WHEREAS, leading state and national mental health
34 organizations, including the American Psychological Association,
35 the American Psychiatric Association, and the National Alliance
36 on Mental Illness, have called for a prohibition on imposition
37 of the death penalty for persons with a serious mental illness
38 at the time of the commission of the crime, and

39 WHEREAS, the American Bar Association recently endorsed the
40 call for the end of the death penalty for persons with a serious
41 mental illness, NOW, THEREFORE,

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43 Be It Enacted by the Legislature of the State of Florida:

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45 Section 1. Section 921.135, Florida Statutes, is created to
46 read:

47 921.135 Imposition of death sentence upon defendant with
48 serious mental illness prohibited.-

49 (1) DEFINITION.-As used in this section, the term "serious
50 mental illness" means any mental diagnosis, disability, or
51 defect that significantly impairs a person's capacity to do any
52 of the following: appreciate the nature, consequences, or
53 wrongfulness of his or her conduct in the criminal offense;
54 exercise rational judgment in relation to the criminal offense;
55 or conform his or her conduct to the requirements of the law in
56 connection with the criminal offense. A disorder manifested
57 primarily by repeated criminal conduct or attributable solely to
58 the acute effects of alcohol or other drugs does not, by itself,

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59 constitute a serious mental illness for purposes of this
60 section. The condition or conditions defined in this section are
61 a bar to the imposition of the death penalty notwithstanding the
62 standard established in s. 775.027 for insanity and the criteria
63 specified in s. 916.12 for establishing competence to proceed.

64 (2) DEATH PENALTY PROHIBITED FOR DEFENDANT WITH SERIOUS
65 MENTAL ILLNESS AT TIME OF COMMISSION OF CRIMINAL OFFENSE.—A
66 sentence of death may not be imposed upon a defendant convicted
67 of a capital felony if it is determined in accordance with this
68 section that the defendant had a serious mental illness at the
69 time the criminal offense was committed.

70 (3) NOTICE REQUIRED.—A defendant charged with a capital
71 felony who intends to raise serious mental illness as a bar to a
72 death sentence must give notice of such intention in accordance
73 with the rules of court governing notices of intent to offer
74 expert testimony regarding mental health mitigation during the
75 penalty phase of a capital trial.

76 (4) MOTION FOR DETERMINATION OF SERIOUS MENTAL ILLNESS AS A
77 BAR TO EXECUTION; CONTENTS; PROCEDURES.—

78 (a) A defendant who intends to raise serious mental illness
79 as a bar to execution shall file a written motion to establish
80 serious mental illness as a bar to execution with the court.

81 (b) The motion must state that the defendant is seriously
82 mentally ill and, if the defendant has been tested, evaluated,
83 or examined by one or more experts, must include the names and
84 addresses of the experts. Copies of reports containing the
85 opinions of any experts named in the motion must be attached to
86 the motion. The court shall appoint an expert chosen by the
87 state attorney if the state attorney so requests and that expert

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88 shall promptly test, evaluate, or examine the defendant and
89 submit a written report of any findings to the parties and the
90 court.

91 (c) If the defendant has not been tested, evaluated, or
92 examined by one or more experts, the motion must state that fact
93 and the court must appoint two experts who shall promptly test,
94 evaluate, or examine the defendant and submit a written report
95 of any findings to the parties and the court.

96 (d) Attorneys for the state and the defendant may be
97 present at the examinations conducted by court-appointed
98 experts.

99 (e) If the defendant refuses to be examined or to fully
100 cooperate with the court-appointed experts or the state's
101 expert, the court may:

102 1. Order the defense to allow the court-appointed experts
103 to review all mental health reports, tests, and evaluations by
104 the defendant's expert;

105 2. Prohibit the defense experts from testifying concerning
106 any tests, evaluations, or examinations of the defendant
107 regarding the defendant's serious mental illness; or

108 3. Order such relief as the court determines to be
109 appropriate.

110 (5) TIME FOR FILING MOTION FOR DETERMINATION OF SERIOUS
111 MENTAL ILLNESS AS A BAR TO EXECUTION.—The motion for a
112 determination of serious mental illness as a bar to execution
113 must be filed no later than 90 days before trial or at such time
114 as is ordered by the court.

115 (6) HEARING ON MOTION TO DETERMINE SERIOUS MENTAL ILLNESS.—
116 The circuit court shall conduct an evidentiary hearing on the

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117 motion for a determination of serious mental illness. At the
118 hearing, the court shall consider the findings of the experts
119 and all other evidence on the issue of whether the defendant is
120 seriously mentally ill. If the court finds that the defendant is
121 seriously mentally ill, it shall enter a written order
122 prohibiting the imposition of the death penalty and setting
123 forth the court's specific findings in support of the
124 determination. The court shall stay the proceedings for 30 days
125 from the date of rendition of the order prohibiting the death
126 penalty or, if a motion for rehearing is filed, for 30 days
127 following the rendition of the order denying rehearing, to allow
128 the state the opportunity to appeal the order. If the court
129 determines that the defendant has not established that he or she
130 is seriously mentally ill, the court must enter a written order
131 setting forth the court's specific findings in support of that
132 determination.

133 (7) WAIVER.—A claim authorized under this section is waived
134 if it is not timely filed as specified in subsection (5), unless
135 good cause is shown for the failure to comply with that
136 subsection.

137 (8) FINDING OF SERIOUS MENTAL ILLNESS; ORDER TO PROCEED.—If
138 the court finds by clear and convincing evidence that the
139 defendant had a serious mental illness at the time he or she
140 committed the crime, the court must order the case to proceed
141 without the death penalty as an issue and must enter a written
142 order that sets forth with specificity the findings of support
143 for the determination.

144 (9) APPEAL.—The state may appeal a court order finding that
145 the defendant is seriously mentally ill, which stays further

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146 proceedings in the trial court until a decision on appeal is
147 rendered. Appeals must proceed according to Rule 9.140(c),
148 Florida Rules of Appellate Procedure.

149 (10) TIME OF DIAGNOSIS.—A diagnosis of the condition or
150 conditions after the date of commission of the crime with which
151 the person is charged does not preclude him or her from
152 presenting evidence that he or she had a serious mental illness
153 at the time he or she is alleged to have committed the offense.

154 (11) STATEMENTS OF DEFENDANT.—Any statement that a person
155 makes in an evaluation or pretrial hearing ordered pursuant to
156 this section may not be used against the defendant on the issue
157 of guilt in any criminal action or proceeding.

158 (12) MITIGATION EXCLUSION.—This section may not be
159 construed to preclude the defendant from presenting mitigating
160 evidence of serious mental illness at the sentencing phase of
161 the trial.

162 (13) EFFECT ON POSTCONVICTION PROCEEDINGS.—If a person to
163 whom this section applies has completed state postconviction
164 proceedings, the person may request permission to file a
165 successive petition for postconviction relief in accordance with
166 the Florida Rules of Criminal Procedure alleging that the
167 petitioner is an individual who had a serious mental illness at
168 the time he or she committed the offense. A request under this
169 subsection must be filed not later than July 1, 2022. If the
170 successive petition is authorized, the postconviction court must
171 proceed under the Florida rules of postconviction relief. If the
172 postconviction court determines that the petitioner is an
173 individual with a serious mental illness, it must vacate the
174 petitioner's death sentence and impose a sentence of life

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175 imprisonment without parole. This subsection does not preclude
176 the postconviction court from granting the person any additional
177 relief to which the person may be entitled based on the merits
178 of the person's additional postconviction claims.

179 (14) MOTION TO ESTABLISH SERIOUS MENTAL ILLNESS AS A BAR TO
180 EXECUTION; STAY OF EXECUTION.—The filing of a motion to
181 establish serious mental illness as a bar to execution does not
182 stay further proceedings in the absence of a separate order
183 staying execution.

184 Section 2. This act shall take effect July 1, 2021.