

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

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

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

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

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

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

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

50 (1) DEFINITION.-As used in this section, the term "serious
51 mental illness" means any mental diagnosis, disability, or
52 defect that significantly impairs a person's capacity to
53 appreciate the nature, consequences, or wrongfulness of his or
54 her conduct in a criminal offense; exercise rational judgment in
55 relation to a criminal offense; or conform his or her conduct to
56 the requirements of the law in connection with a criminal
57 offense. A disorder manifested primarily by repeated criminal
58 conduct or attributable solely to the acute effects of alcohol

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59 or other drugs does not, by itself, constitute a serious mental
60 illness for purposes of this section. The condition or
61 conditions defined in this section are a bar to the imposition
62 of the death penalty notwithstanding the standard established in
63 s. 775.027 for insanity and the criteria specified in s. 916.12
64 for establishing competence to proceed.

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

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

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

79 (a) A defendant who intends to raise serious mental illness
80 as a bar to sentence of death shall file a written motion to
81 establish serious mental illness as a bar to sentence of death
82 with the court.

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

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88 the motion. The court shall appoint an expert chosen by the
89 state attorney if the state attorney so requests, and such
90 expert shall promptly test, evaluate, or examine the defendant
91 and submit a written report of any findings to the parties and
92 the court.

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

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

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

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

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

110 3. Order such relief as the court determines to be
111 appropriate.

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

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(6) HEARING ON MOTION TO DETERMINE SERIOUS MENTAL ILLNESS.-

The circuit court shall conduct an evidentiary hearing on the motion for a determination of serious mental illness. At the hearing, the court shall consider the findings of the experts and all other evidence on the issue of whether the defendant is seriously mentally ill. If the court finds that the defendant is seriously mentally ill, it must enter a written order prohibiting the imposition of the death penalty and setting forth the court's specific findings in support of the determination. The court shall stay the proceedings for 30 days after the date of rendition of the order prohibiting the death penalty or, if a motion for rehearing is filed, for 30 days following the rendition of the order denying rehearing, to allow the state the opportunity to appeal the order. If the court determines that the defendant has not established that he or she is seriously mentally ill, the court must enter a written order setting forth the court's specific findings in support of that determination.

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

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

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146 (9) APPEAL.—The state may appeal a court order finding that
147 the defendant is seriously mentally ill, which stays further
148 proceedings in the trial court until a decision on appeal is
149 rendered. Appeals must proceed according to Rule 9.140(c),
150 Florida Rules of Appellate Procedure.

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

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

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

165 (13) EFFECT ON POSTCONVICTION PROCEEDINGS.—If a person to
166 whom this section applies has completed state postconviction
167 proceedings, the person may request permission to file a
168 successive petition for postconviction relief in accordance with
169 the Florida Rules of Criminal Procedure alleging that the
170 petitioner is an individual who had a serious mental illness at
171 the time he or she committed the offense. A request under this
172 subsection must be filed not later than July 1, 2023. If the
173 successive petition is authorized, the postconviction court must
174 proceed under the Florida rules of postconviction relief. If the

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175 postconviction court determines that the petitioner is an
176 individual with a serious mental illness, it must vacate the
177 petitioner's sentence of death and impose a sentence of life
178 imprisonment without parole. This subsection does not preclude
179 the postconviction court from granting the person any additional
180 relief to which the person may be entitled based on the merits
181 of the person's additional postconviction claims.

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

187 Section 2. This act shall take effect July 1, 2022.