

HOUSE BILL 2809

By Hardaway

AN ACT to amend Tennessee Code Annotated, Title 39
and Title 40, relative to serious mental illness.

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

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 13, Part 2, is amended by
adding the following as a new section:

(a) As used in this section:

(1) A defendant has a "serious mental illness" if:

(A) The defendant has been diagnosed with:

- (i) Schizophrenia;
- (ii) Schizoaffective disorder;
- (iii) Bipolar disorder;
- (iv) Delusional disorder; or
- (v) Post-Traumatic Stress Disorder; and

(B) At the time of the defendant's alleged offense, the condition or
conditions described in subdivision (a)(1)(A), while not meeting the
standard to be found not guilty by reason of insanity, as defined in § 39-
11-501, or the standard to be found incompetent to stand trial under § 33-
7-301, significantly impaired the defendant's capacity to exercise rational
judgment in relation to the defendant's conduct with respect to:

- (i) Conforming the defendant's conduct to the
requirements of law; or

(ii) Appreciating the nature, consequences, or wrongfulness of the defendant's conduct.

(2) A disorder manifested primarily by repeated criminal conduct or attributable primarily to the acute effects of use of alcohol or drug abuse does not, standing alone, constitute a "serious mental illness" for purposes of subdivision (a)(1).

(b) A defendant suffering from a serious mental illness at the time of committing an offense shall not be eligible for the death penalty.

(c) The diagnosis of a defendant with a condition or conditions described in subdivision (a)(1)(A) may be made at any time prior to, on, or after the day of the alleged offense, including after the defendant raises the matter of the defendant's serious mental illness. Diagnosis of the condition or conditions after the date of the alleged offense does not preclude the defendant from presenting evidence that the defendant had a serious mental illness at the time of the alleged commission of that offense.

(d) A defendant who has been charged with first degree murder and received notice, pursuant to § 39-13-208, that the state intends to seek the death penalty may, before trial, raise the matter of the defendant's serious mental illness. If the defendant raises the matter of the defendant's serious mental illness, the court shall order an evaluation of the defendant in accordance with subsection (g) and shall hold a pretrial hearing on the matter. The defendant may present evidence, subject to subdivision (e)(2), that the defendant had a serious mental illness at the time of the alleged commission of the offense. The defendant has the burden of raising that matter and of going forward with the evidence relating to the diagnosis described in subdivision (a)(1)(A) and the impairment described in subdivision (a)(1)(B).

(e)

(1) If the defendant submits evidence that the defendant had a serious mental illness, the prosecution shall have an opportunity to present evidence to contest the diagnosis. The defendant has the burden of proving, by a preponderance of the evidence, that the defendant has or had a serious mental illness.

(2) If, at the time the defendant raises the matter of the defendant's serious mental illness, the defendant has or had an evaluation performed other than pursuant to a court order issued under subsection (g), the defendant shall provide the results of the evaluation to the prosecution at least thirty (30) days prior to the hearing. If the defendant does not provide the results of the evaluation to the prosecution at least thirty (30) days prior to the pretrial hearing, absent good cause, the results of the evaluation are inadmissible at the hearing.

(f)

(1) If the court finds that the defendant has not proven, by a preponderance of the evidence, that the defendant had a serious mental illness, the court shall issue a finding that the defendant is eligible for a sentence of death.

(2) If the court finds that the defendant has proven, by a preponderance of the evidence, that the defendant had a serious mental illness, the court shall issue a finding that the defendant is ineligible for a sentence of death due to serious mental illness.

(g)

(1) If the defendant raises the matter of the defendant's serious mental illness, the court shall order an evaluation of the defendant. If the defendant

refuses to submit to an evaluation pursuant to this subdivision (g)(1), the court shall issue a finding that the defendant is eligible for a sentence of death.

(2) Any statement relating to the defendant's serious mental illness at the time of the alleged offense that the defendant makes during an evaluation ordered pursuant to subdivision (g)(1) or a pretrial hearing ordered pursuant to subsection (d) shall not be used as evidence of the defendant's guilt in any criminal proceeding, but, in a criminal proceeding, the prosecutor or defense counsel may call as a witness any examiner who evaluated the defendant or prepared a report pursuant to a referral under subdivision (g)(1). Neither the appointment nor the testimony of an examiner in an evaluation ordered under subdivision (g)(1) precludes the prosecutor or defense counsel from calling other witnesses or presenting other evidence on the issue of the defendant's serious mental illness or on competency or insanity issues.

(h) A defendant's pleading of not guilty by reason of insanity or incompetence to stand trial, or a finding after such a plea that the defendant is not insane or that the defendant is competent to stand trial, does not preclude the defendant from raising the matter of the defendant's serious mental illness pursuant to subsection (d) and, if raised, does not limit or affect any of the procedures described in this section or the authority of a court to make any finding described in this section.

(i) An offender who was sentenced to death prior to July 1, 2022, may file a petition with the court in which the offender was sentenced to assert that the offender had a serious mental illness at the time of the offense. Upon receiving the petition, the court shall order an evaluation of the offender and hold a hearing, in the manner provided by subsections (d)-(g). If the court determines that the offender had a serious mental illness and is ineligible for a sentence of death, the court shall declare the

offender's sentence void and resentence the offender to life imprisonment without the possibility of parole. The offender shall bear the burden of proof as described in subsection (e).

SECTION 2. This act takes effect July 1, 2022, the public welfare requiring it, and applies to offenses committed prior to, on, or after that date.