



Ohio Prosecuting Attorneys Association

House Bill 136/Senate Bill 54 – Death Penalty – Serious Mental Illness

This legislation stands the criminal justice system on its head – taking away from juries a question of fact and requiring instead that a judge make that factual determination in a pre-trial hearing where, without having had the benefit of trial and without any factual context for the crime, the judge will be asked to determine a defendant’s mental state at the time of the commission of that crime.

Current Law Provides Sufficient Safeguards for the Mentally Ill

- The bills are not necessary to address any problem with our death penalty. We are not executing the severely mentally ill.
- Revised Code section 2901.01(A)(14) states that “A person is “not guilty by reason of insanity” relative to a charge” if “at the time of the commission of the offense, the person did not know, as a result of severe mental disease or defect, the wrongfulness of the person’s acts.”
- The Eighth Amendment to the United States Constitution prohibits the State from inflicting the death penalty on a prisoner who is not aware of his pending execution or the reasons for it. *Ford v. Wainwright*, 477 U.S. 399 (1986).
- Revised Code section 2929.04 specifically provides that during the sentencing phase of a death penalty trial a defendant may provide, and the jury shall consider, whether “at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender’s conduct or to conform the offender’s conduct to the requirements of the law.”

Severity of the listed “Severe Mental Illnesses”

- Listing a series of illnesses and merely calling them severe does not make it so.
- The illnesses listed in the bill can be severe. But they can vary in degree from mild to severe. They can enter periods of partial or full remission. A person who meets even minimal criteria for one of the listed illnesses could be excluded from the death penalty even though they appreciated the wrongfulness of their conduct and were able to control that conduct.
- The bill has no requirement that an offender have a severe form of the mental illness, that their illness not be in remission, or that they have experienced an acute episode at the time of the commission of the offense.
- Without better definitions for the illnesses, the legislation delegates authority to the American Psychiatric Association, the authors of the Diagnostic and Statistical Manual, to expand the scope of the listed illnesses, potentially excluding a larger class of individuals from the death penalty without the General Assembly having taken any action.

Post-Conviction Relief

- The bill provides the opportunity for everyone currently on death row to file a motion for post-conviction relief based on a claim that they had a serious mental illness at the time of their offense – which may have been 15, 20, 25 years ago.
- It is unclear how a person could prove such a thing and yet every person on death row will file one of these motions.
- The provision will lead to years of additional litigation, substantial additional cost to the taxpayer, and more heartache for victims just for a judge to ultimately confirm that a death sentence was appropriate.

Conclusion

- Ohio is not a diminished capacity state, yet this legislation would codify diminished capacity in Ohio and leave the determination about diminished capacity to a judge rather than a jury. It would require the judge to make that determination without any factual context. This is an ill-conceived and dangerous road for Ohio to take.
- Because of its breadth and proposed procedure, the legislation functionally repeals the death penalty in Ohio.