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Chairman Manning, Vice-Chair Rezabek, Ranking Member Johnson and members of the House Criminal Justice Committee:

Thank you for allowing us to testify today on behalf of HB 81. As you've heard from my colleague Rep. Seitz, our bill makes an exemption for those diagnosed with serious mental illness from the death penalty. This bill has no bearing on Ohio's death penalty law – rather, we seek to remove the sentence of execution as an option for those who have been diagnosed with one of the five serious and debilitating mental illnesses.

I'd like to take this time to talk more extensively about the need for this bill. As you recall, the Ohio Supreme Court Task Force recommended exclusion for individuals with serious mental illness at the time of the crime. Former Supreme Court Justices, Attorney General Petro, and Governor Taft have all said publicly that our state should take a serious look at ending the death penalty for those with serious mental illness. Why? Because existing law does not provide a way for those suffering from serious mental illness to be spared the death penalty.

People with serious mental illness are not intellectually impaired. But, like people with intellectual disabilities, people with serious mental illness experience both cognitive and behavioral impairments as a result of their mental illness.

In no way do we suggest that these men and women who have committed a serious crime be spared punishment. They may still be sentenced to die in

prison, or spend decades there. But, our bill would allow those with the five narrowly tailored illnesses at the time of the crime accurate culpability. In the same way we do not sentence minors to death, or those with developmental disabilities, we should allow those with serious mental illness a similar exemption from the death penalty.

Competency should not be conflated with this bill's consideration of serious mental illness. One could be found competent to stand trial yet still be diagnosed with schizophrenia, or bipolar disorder. Competency at the time of trial has very little to do with the defendant's mental state at the time the crime occurred. The competency standard is also very low. One of the most infamous cases of a seriously mentally ill defendant being found competent is that of Scott Panetti. Mr. Panetti suffers from paranoid schizophrenia, but despite his mental illness he was allowed to represent himself at trial. Mr. Panetti wore a cowboy costume, made bizarre statements throughout the trial, and tried to call more than 200 witnesses, including Jesus Christ and John F. Kennedy. Despite the overwhelming evidence of his serious mental illness, Mr. Panetti remains on death row in Texas.

A plea of insanity does not protect those with serious mental illness from the death sentence. The insanity defense is not available to a person whose mental illness significantly impaired his or her capacity to exercise rational judgment in relation to the person's conduct; conform the person's conduct to the requirements of law; and/or appreciate the nature, consequences, or wrongfulness of the person's conduct.

The possibility of the death penalty should not be on the table for those with serious mental illness. Certainly serious mental illness can have a profound effect upon a capital defendant's ability to receive a fair trial. Seriously mentally ill defendants may not allow defense attorneys to present evidence relating to the existence of an illness, not cooperate with defense counsel, not be willing to participate in appeals, and volunteer to be executed. In addition, psychotropic medications can interfere with a capital defendant's participation in the trial and can cause changes in personality that lead the jury to perceive the defendant as remorseless.

As stated previously, to "Enact legislation to exclude from eligibility for the death penalty defendants who suffer from "serious mental illness" at the time of the crime". The recommendation read more like an outright ban on the death penalty for serious mental illness.

However, our bill represents a middle path – a compromise – between the Task Force’s recommendations and where we are today. There are more than 150 serious mental illnesses, but we include five of the most severe and debilitating. This is a narrowly tailored bill meant to protect the most mentally ill from an unfair sentence of execution by the state.

We are in good company calling for the passage of HB 81 and exclusion of those with severe mental illness from the death penalty. We are joined by former Chief Justice Thomas Moyer, former Justices Pfeifer and Stratton, who in 2003, dissented from the court’s affirmation of the death penalty for Stephen Vrabel. Justice Moyer stated at the time,

“I am persuaded by clear evidence in the record that the appellant suffers from a severe mental illness. On the record before us, I cannot conclude beyond a reasonable doubt that Vrabel’s mental illness did not contribute to his tragic criminal conduct, thereby reducing his moral culpability to a level inconsistent with the ultimate penalty of death.”

Thank you and we are happy to entertain your questions.