

Megan Testa, MD  
On behalf of the  
Ohio Alliance for the Mental Illness Exemption  
Before Members of the  
House Criminal Justice Committee  
Proponent Testimony on Substitute House Bill 81

November 27, 2018

Chairman Manning and members of the committee, thank you for the opportunity to speak today in support of Substitute House Bill 81. I wish to briefly provide a summation of what this committee heard in testimony on this important bill.

My name is Megan Testa, M.D. and I am a physician practicing forensic psychiatry in Cleveland, Ohio. I currently work in community re-entry, treating individuals with severe mental illness who are under the jurisdiction of the criminal justice system, and I provide consultation at Northcoast Behavioral Healthcare on issues such as Competence to Stand Trial, Criminal Insanity, and Conditional Release.

I am here today as a member of the Ohio Psychiatric Physicians Association (OPPA), a statewide medical specialty organization whose more than 1,000 physician members specialize in the diagnosis, treatment and prevention of mental illness and substance use disorders, speaking on behalf of the Ohio Alliance for the Mental Illness Exemption (OAMIE). The OPPA is one of ten mental health advocacy organizations in support of House Bill 81 that represent thousands of Ohioans living with mental illness, family members, provider organizations and mental health boards. Several other organizations that make up OAMIE include the National Alliance on Mental Illness of Ohio; Mental Health and Addiction Advocacy Coalition; Ohio Psychological Association; Ohio Council of Behavioral Health & Family Services Providers; Ohio Association of County Behavioral Health Authorities and the Treatment Advocacy Center.

During sponsor testimony, this committee heard from Rep. Seitz and Rep. Antonio about the importance of this legislation demonstrating that those of opposite minds in regards to support or opposition of the death penalty can both agree that legislation is needed to ensure that it is at least fairly administered.

The committee heard from Dr. David Niven that research on mental illness and the death penalty makes the imperative for this legislation absolutely clear. Dr. Niven testified that severe mental illness functions as an aggravating factor in jurors' thinking rather than a mitigating factor as it is intended. Put another way, when the death penalty and severe mental illness intersect, the outcomes we see are the opposite of what lawmakers intended. Dr. Niven's well-documented concerns are best understood when he told the committee he has yet to see an argument that the death penalty is intended for those afflicted with severe mental illness.

The committee heard from the Ohio Justice & Policy Center's Stephen JohnsonGrove, who clearly laid out the differences between competency and the insanity plea. You'll

recall testimony that there is a common misperception that defendants with severe mental illness are *already* protected from execution by current law. As Mr. JohnsonGrove testified, none of these concepts adequately protect defendants with severe mental illness from receiving the death penalty and being executed.

When Justice Evelyn Lundberg Stratton testified before the committee, she spoke about the need for current law to reflect “evolving standards of decency.” Justice Stratton also noted that Substitute House Bill 81 only addresses the penalty phase and it in no way absolves defendants of legal responsibility for their crimes. Defendants can still be tried, convicted, and sentenced to long terms of imprisonment, including life in prison.

Justice Stratton summed up the heart of the matter with her concluding testimony, which reads:

“... for nearly 20 years, individual justices of the state supreme court, myself included, have questioned the appropriateness of executing capital defendants with demonstrated serious mental illness. In 2003, then Chief Justice Thomas Moyer, joined by Justices Pfeifer and myself, dissented from the court’s affirmation of the death penalty for Stephen Vrabel stating, ‘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.’”

Chairman Manning and members of the committee, I urge you to vote favorably on Substitute House Bill 81. Thank you very much.