

**Testimony on House Bill 136 –
Death Penalty – Mental Illness
Before the Senate Education Committee
By Karen Leith
September 23, 2019**

Chairman Eklund, Vice Chair Manning, and Ranking Member Thomas:

The League of Women Voters calls for support of HB136 which fills in the gap of mental illnesses exempt from consideration for the death penalty. League of Women Voters of Ohio adopted a position in 2005 calling for the abolition of the death penalty, and a moratorium on the use of the death penalty. In 2007, LWVUS adopted a national position calling for the abolition of the death penalty with LWVO as a co-sponsor of the proposed position. Legislators in Ohio have been seeking to enact death penalty reforms as the state grapples with problems in the application of capital punishment. In the face of the inability to abolish the death penalty, we have supported the recommendations of the Ohio Supreme Court Death Penalty Task Force. HB136 is the result of one of the 56 recommendations.

When the statewide task force recommended ways for Ohio to improve its death penalty, it included a proposal to bar from execution those defendants suffering from severe mental illness at the time of the crime. The panel gave strong support, the vote 15-2. Yet, as with too many of the 56 recommendations, this idea has languished, state lawmakers failing to act. We need lawmakers to act now.

HB136 builds on the exclusions already established for juveniles and the developmentally disabled, therefore, reserving the death penalty for the worst of the worst. The legislation is narrowly cast, identifying five precise mental illnesses, schizophrenia, schizoaffective disorder, bipolar disorder, major depressive disorder and delusional disorder. A judge would weigh the evidence and decide whether the defendant suffered from the affliction when committing the crime.

Prosecutors have argued that the courts have a process for assessing the role of mental illness in the sentencing phase of capital punishment trials, when jurors decide whether to apply the death penalty as the law directs. While a defendant can put forward evidence of mental illness as a mitigating factor, research shows jurors often see mental illness as an aggravating factor

and thus are more likely to see a death sentence as warranted. To them, mental illness confirms guilt.

In that way, the mitigation phase risks turning justice upside down, the findings of researchers making stronger the case for HB136. This legislation isn't about leniency or somehow cutting bad actors a break. Those excluded from the death penalty still would face a severe punishment, life in prison without the possibility of parole.

Again, defendants would have to prove to the court they suffered from one of the severe mental illnesses set in the law. That wouldn't be easy, but it would offer a needed measure of protection for the rest of us. There is good reason for exempting juveniles and the developmentally disabled. It also applies to those with severe mental illness at the time they commit the crime.

The League of Women Voters of Ohio, a nonpartisan political organization, encourages informed and active participation in government, works to increase understanding of major public policy issues, and influences public policy through education and advocacy.