

October 9, 2019

Good Morning,

On behalf of Cuyahoga County Prosecuting Attorney Michael C. O'Malley, I am Saleh Awadallah, Assistant Prosecuting Attorney in charge of Cuyahoga County Prosecutors Office Major Trial Homicide Unit. We thank you for this opportunity.

Proposed Senate Bill 54 offers solutions where none are needed.

As a State we already take steps to exclude from the death penalty those capital-eligible defendants that suffer from mental illness that impacts their understanding of right and wrong.

Under current Ohio law a capital defendant is ineligible to receive the death penalty under the following circumstances specifically dealing with mental health issues:

- **Insanity** – Under current Ohio law a capital-eligible defendant who did not know, as a result of severe mental disease or defect, the wrongfulness of his/her acts is excluded from even being convicted of capital murder, much less be sentenced for it. **Ohio Revised Code 2945.40**
- **Incompetency**- Current Ohio law protects a capital-eligible defendant who is incapable of understanding the nature and objective of the proceedings against the defendant or of assisting in the capital-eligible defendant's defense from even being tried for the capital murder. **ORC 2945.37**
- **Intellectual Disability** - Current Ohio law protects a capital-eligible defendant who has severe intellectual disability from being sentenced to death; *Atkins/Lott*
- **Mental Illness**- Current Ohio law affords a capital-eligible defendant the opportunity to present ANY evidence of ANY mental disease or defect to a jury to show that he/she lacked substantial capacity to appreciate the criminality of the capital-eligible defendant's conduct or to conform the capital-eligible defendant's conduct to the requirements of the law; **ORC 2929.04(B)(3)**
- **Mental Health Issues**- Current Ohio law allows a capital-eligible defendant the opportunity to present ANY evidence of ANY mental illness or defect to the jury no matter the severity or effect on the capital-eligible defendant's mental health. **ORC 2929.04(B)(7)**

Under current Ohio law a capital-eligible defendant needs to persuade only ONE juror that mental illness is a mitigating factor that is not outweighed by the aggravating circumstances of the crime.

If ONE juror is convinced that mental illness is a strong enough factor, then the remaining jurors are bound by that decision and the death penalty is eliminated as a sentencing option. And the jurors must move on to the life imprisonment sentencing options.

SB 54's unintended (or as some argue intended) consequence will be to effectively end the death penalty in Ohio by making obtaining a "serious mental illness" diagnoses the key to unplugging a death penalty case.

The term "serious mental illness" replaces "severe mental illness" and allows capital defendants to avoid placing the mental health issue before a jury and instead having a judge decide the matter as a pre-trial decision- taking the decision out of the jury's hands.

SB 54's definition of "serious mental illness" applies to capital defendants that are able to secure a qualifying diagnosis regardless of severity of the diagnoses.

It will act as an on/off deciding factor on capital eligibility. Jurors, as members of the community, will no longer have the opportunity to weigh in on the sentencing on cases that are unplugged by a SB 54 determination.

SB 54 is not supported by Ohio Supreme Court or the United States Supreme Court case law.

It also applies retroactively. In Cuyahoga County there are currently 20 death row inmates. Each who could attempt to seek relief under S.B. 54 by securing a diagnosis in the more expansive "serious mental illness" category as opposed to "severe mental illness"

And because 9 of those 20 defendants were convicted and sentenced prior to the change in sentencing law- they, if successful, would have guaranteed parole eligibility because they have served at least 20 years in prison.

They would go from death row to the front row of parole eligibility because they have been incarcerated so long.

Among those eligible to be released back into the community would be;

- A man who raped and killed a nurse during a burglary in her home;
- A man who raped and murdered a 14-year-old child;
- A man who burglarized, stabbed and set fire to an elderly victim;
- A man who burglarized and stabbed an elderly victim 17 times; and
- A man who shot and killed his estranged wife and her brother in a courthouse as they literally tried to get protection and safety from him.

Even men like the notorious Anthony Sowell- who lured into his home and murdered eleven women would be able to seek a qualifying diagnoses and seek resentencing and rip open once again the wounds of his respective victims' families- not to mention the community.

Ohio law currently gives an inmate sentenced to death extraordinary protections. Currently, inmates have an appeal of right to the Ohio Supreme Court, they have the opportunity to raise claims in petitions for postconviction relief, and they frequently pursue claims in state court outside of the normal course of litigation. Those inmates then file a petition seeking a writ of habeas corpus in federal court, where their claims continue to be litigated for years.

Despite all of this, and in total disregard for the victim's expectation of closure, the legislature seeks to add yet another layer of litigation to death penalty cases.

SB 54 will ensure that a lengthy and expensive appellate process will only be made more expensive and lengthier without any appreciable benefit to justice.

Thank you.