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Senator John Eklund – Sponsor Testimony  
Senate Bill 40  
Senate Judiciary Committee  
February 21, 2017

Good Morning Chairman Bacon, Vice-Chair Dolan, Ranking Member Thomas, and members of the committee. Thank you for the opportunity for Senator Williams and I to give sponsor testimony on Senate Bill 40 and to encourage your support on this legislation. SB 40 provides that persons who are seriously mentally ill at the time of the commission of the crime are not eligible for the death sentence.

This is one of the recommendations passed by the May 2014 Joint task Force to Review the Administration of Ohio's Death Penalty on a vote of 15-2 and builds on two US Supreme Court cases that held neither juveniles nor persons with intellectual disabilities can be executed because they have diminished capacity and therefore the traditional reasons for capital punishment—deterrence and retribution—do not apply. See *Roper v. Simmons*, 543 U.S. 551 (2005) and *Atkins v. Virginia*, 536 U.S. 304 (2002). This bill has been drafted in close consultation with former Ohio Supreme Court Justice Evelyn Stratton and is supported by NAMI and many other groups.

The bill will not allow the defendant to escape punishment: defendant still may be found guilty and imprisoned. However, it would prohibit the execution of those who had a prior diagnosis of serious mental illness (defined as schizophrenia, schizoaffective disorder, bipolar disorder, major depression disorder, and delusional disorder) and who, at the time of the offense, were significantly impaired by reason of that serious mental illness in their ability to appreciate the nature, consequences or wrongfulness of his or her conduct, to exercise rational judgment in relation to his or her conduct, or to conform his or her conduct to legal requirements. The bill further provides that neither repeated criminal conduct nor the voluntary use of drugs or alcohol constitute "serious mental illness".

SB 40 allows the defendant to raise the issue through a process that follows current procedures now used by Ohio courts to determine if a defendant was either a juvenile or intellectually disabled at the time of the offense. If the defendant establishes a *prima facie* case at a pre-trial hearing, the prosecutor may rebut the presumption of serious mental illness by a preponderance of the evidence. If the trial judge agrees with the prosecutor, the defendant may submit the issue to the jury at trial and the prosecution again may rebut the presumption. Expert evaluation is required from a panel of 3 forensic psychiatrists and

psychologists (nominated by the defendant and prosecution, and then chosen one from each list by the trial judge, with the two so chosen to choose the third member).

Whether you support or oppose the death penalty, we hope we can all agree that it should be fairly administered and that executing the seriously mentally ill hardly instills confidence that the state is reserving the death penalty for intentional killers.

Thank you for the opportunity to provide testimony on Senate Bill 40, and we will be glad to answer any questions you may have.