

Testimony of
Professor Daniel T. Kobil,
Capital University Law School,
On behalf of Ohio law professors,
To the Ohio Senate
Criminal Justice Committee
Regarding S.B. 162

February 10, 2016

Thank you, Chairman Eklund, Vice Chairman Obhof, Ranking Member Thomas, and members of the Committee, for the opportunity to submit this testimony in support of S.B. 162. My name is Professor Dan Kobil of Capital University Law School, where it has been my privilege since 1987 to teach Constitutional Law and Criminal Procedure to a number of members of the General Assembly, including current Committee Members Bacon and Hughes. I am speaking today on behalf of 52 law professors from across Ohio who have dedicated their professional careers to improving the criminal justice and health systems, and to training those who would become our state's future lawyers, legislators, and judges.

The Ohio law professors support S.B. 162 and Recommendation 8 of the Ohio Supreme Court's Joint Task Force to Review the Administration of Ohio's Death Penalty. We believe that it is necessary to pass this bill in order to prohibit the execution of Ohioans who suffered from severe mental illness at the time of their offense. The current system creates a substantial risk that capital punishment in Ohio has been, and will continue to be, imposed on those who are less culpable for their crimes owing to serious mental disorders.

Those who commit violent crimes while in the grip of a psychotic delusion, hallucination, or other disabling psychological condition lack the judgment, understanding, or self-control to be labeled the worst of the worst who are deserving of death. Their culpability is inherently so limited that while they may be convicted of capital murder, they should not be subject to the death penalty.

S.B. 162 exempts capital defendants from death if at the time of the crime they had a serious mental illness that significantly impaired their capacity to exercise rational judgments in relation to their conduct, to conform their conduct to the requirements of the law, or to appreciate the nature, consequences or wrongfulness of their conduct. This is akin to the Model Penal Code Section 4.01 test for insanity, but instead of acquitting a defendant of guilt as the model code would do, the proposed bill simply assures that the severely mentally ill defendant will not be executed. It would thus prevent troubling executions like that of Stephen Vrabel, who was put to death by the State of Ohio despite the belief of three distinguished Supreme Court justices that there was clear evidence in the record that Mr. Vrabel suffered from a severe mental illness that should have rendered him ineligible for capital punishment. *State v. Vrabel*, 790 N.E.2d 303, 319-21 (Oh. 2003)(Moyer, C.J., dissenting).

We agree with the diverse Task Force members, Ohio Supreme Court Justice Paul Pfeiffer, former Ohio Supreme Court Justices Wright, Lundberg-Stratton, and Chief Justice Moyer, former Attorney General Jim Petro, several Courts of Appeals judges, the American Bar Association, the National Association on Mental Illness, and countless others who have concluded the death penalty is not the appropriate penalty for these individuals, and certainly not the answer to the problem of violence committed by persons with severe mental disorders. Like juveniles and the mentally handicapped, persons with severe mental illness lack the culpability to

be sentenced to death. Moreover, those who suffer from severe mental illness will often be unable to effectively assist their counsel with their defense, creating a risk that capital punishment will be imposed on them arbitrarily.

Persons with severe mental illness have been and will continue to be sentenced to death and executed unless this exemption is granted. S.B. 162 devises fair procedures for reliably determining whether the severely mentally ill exemption applies in an individual case, procedures that are consistent with our existing ones for excluding those who are ineligible for capital punishment by reason of age and mental handicap. The defense has the burden of going forward and establishing a prima facie case of a diagnosis of one of five specific forms of severe mental illness, which if shown, creates a rebuttable presumption of exemption that can be overcome by the prosecution by a preponderance of evidence. There is ample opportunity for investigation and evaluation for both the prosecution and defense. The trial judge, and if necessary, the jury, will review the evidence and determine if the exemption applies and the defendant is ineligible for death.

We urge passage of S.B. 162 and companion legislation in the Ohio House. The fairness, reliability, and integrity of Ohio's criminal justice system demand that individuals with severe mental illness at the time of their crime be spared the ultimate sanction.