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To: **Senate Criminal Justice Committee**
From: **Senator Bill Seitz and Senator Sandra Williams**
Date: **October 7, 2015**
Re: **Joint Sponsor Testimony on Senate Bill 162**

Chairman Eklund, Vice-Chair Obhof, Ranking Minority Member Thomas and members of the Senate Criminal Justice Committee:

Thank you for providing Senator Williams and I the opportunity to provide you with sponsor testimony for Senate Bill 162.

In May 2014, the Joint Task Force to Review the Administration of Ohio's Death Penalty released its recommendations to improve the administration of capital punishment in Ohio. One of the recommendations, Recommendation 8, which passed with a vote of 15-2, is the basis of Senate Bill 162. This recommendation, as stated by the Task Force, was to "enact legislation to consider and exclude from eligibility for the death penalty defendants who suffered from "serious mental illness," as defined by the legislature, at the time of the crime." The Task Force noted that the legislature should also consider such questions as:

1. Whether "serious mental illness" is causally related to the crime;
2. Whether the determination of "serious mental illness" should be considered before trial or at some other time or as determined by the legislature; and
3. Whether this issue is already adequately addressed by current law.

This bill has been drafted at every step in consultation with former Ohio Supreme Court Justice Evelyn Lundberg Stratton. The premise of the bill builds on two US Supreme Court cases which found that neither juveniles nor persons with intellectual disabilities can be executed due to diminished capacity; hence deterrence and retribution, the traditional reasons for capital punishment, would not apply. [1] Persons suffering from SMI are likewise suffering from diminished mental capacity, so Justice Stratton and I believe it is now appropriate to extend the Supreme Court's logic to SMI cases as well. However, this does not mean that a defendant will escape punishment—they can still be found guilty and can still be imprisoned. SB 162 would prohibit *only the execution* for an individual who has been found to have a serious mental illness, defined in the bill as a clinical diagnosis of schizophrenia, schizoaffective disorder, bi-polar disorder, major depressive disorder, or delusional disorder. The defendant must be found to

[1] See *Roper v. Simmons*, 543 U.S. 551 (2005) and *Atkins v. Virginia*, 536 U.S. 304 (2002).

have been significantly impaired by the one of the listed disorders at the time the offense occurred and due to the serious mental illness is incapable of:

1. Being able to appreciate the nature, consequences, or wrongfulness of his or her conduct;
2. Exercising rational judgment in relation to his or her conduct; or
3. Conforming his or her conduct to legal requirements.

Senate Bill 162 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 presumptions of serious mental illness or that the illness diminished their capacity to commit a crime, 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 presumptions. Expert evaluation is required, and current law regarding payment of indigent defense expenses applies.

We have heard a few arguments about aspects of Senate Bill 162 and why the bill is not necessary, or, that it is too ambiguous in some of its proposals. These claims are erroneous and refutable by simple explanations:

First, that SB 162 lists mental conditions that are too broad and undefined. In actuality there are only the five disorders as previously listed that can be found in the bill, and *one of these specific disorders* must be made although there are certainly other causes of psychosis and impairment. In this bill we do not even allow for sub-presentations of a disorder or a disorder which has all the required elements to be considered a serious mental illness but does not meet the criteria to be classified as one of the five named disorders. So in this respect we have actually narrowed down the field significantly.

Secondly, there has been confusion by some in regards to conditions (e.g., mood swings; feelings of sadness, anxiety, or guilt; lack of ability to concentrate, etc.) being a reason for exemption from the death penalty when that is not the case at all. Conditions like those listed, along with many others, may be symptomatic of one or more of the five disorders, but none standing alone suffice as a diagnosis of an SMI. SB 162 requires proof of one of the disorders, not simply proof of symptoms. A singular criterion is not indicative of a disorder and as such could not be used as a defense for stating an individual has a serious mental illness and exempt from receiving the death penalty. A presence of several cognitive deficits which lead to a determination an individual is suffering from an SMI by a professional is the only factor that can be used.

Finally, we have heard Ohio law, as well as federal precedent, already has safeguards in place to protect the defendant who is suffering from a mental illness. Case law stating that an individual who is insane to the extent that he or she does not understand the nature of the punishment cannot be executed[2], language within Ohio's death penalty statute as found in Ohio Revised Code 2929.04(B)(3)[3], or that a defendant found not guilty by reason of insanity (NGRI) cannot now be subject to criminal punishment have all been cited as reasons SB 162 is not needed. However, Justice Stratton along with other Ohio Supreme Court justices have stated the laws are not adequate for speaking to the issue of serious mental illness. Because of this they do believe there is a feeling of being forced to affirm a death

[2] See *Ford v. Wainwright,* 477 U.S. 399 (1986).

[3] Whether, at the time of committing the offense, the offender, because of a mental disease or defect, lacked substantial capacity to appreciate the criminality of the offender's conduct or to conform the offender's conduct to the requirements of law.

sentence for the seriously mentally ill based on the lack of clarity of the language in the law, and why this bill is, in fact, extremely necessary.

The importance of this bill can also be evidenced by the fact that those of opposite minds in regards to support or opposition of the death penalty (such as Senator Williams and myself as joint sponsors) can both agree that legislation is needed to ensure that the death penalty is at least fairly administered. Ohioans may be split on the issue of legality concerning the death penalty, but most will concede executing an individual found to be suffering from a serious mental illness at the time of the crime is neither fair nor just, and this punishment should be reserved for those who have intentionally done mortal harm to another. As such, there has been overwhelming support for SB 162 from a number of mental health advocacy groups including:

- National Alliance on Mental Illness of Ohio
- Ohio Psychiatric Physician's Association
- Ohio Psychological Association
- Ohio Council of Behavioral Healthcare and Family Services Providers
- Ohio Association of County Behavioral Health Authorities
- Ohio Empowerment Coalition
- Buckeye Art Therapists Association
- Mental Health and Addiction Advocacy Coalition

Senator Williams and I thank you for allowing us the opportunity to provide sponsor testimony for Senate Bill 162 and we strongly urge your favorable consideration and passage of this bill. We are happy to answer any questions the committee may have at this time.