



Megan Testa, MD

*On behalf of the*  
Ohio Psychiatric Physicians Association

*Before Members of*

Senate Criminal Justice Committee

Proponent Testimony on S.B. 162  
SMI and the Death Penalty

October 21, 2015

Chairman Eklund, Vice-Chairman Obhog, Ranking Member Thomas and members of the committee, thank you for the opportunity today to speak in support of S.B. 162, a bill which, if enacted, would exempt from the death penalty defendants who, at the time of the offense, had a serious mental illness (SMI) that significantly impaired their capacity to exercise rational judgment in relation to conduct, to conform their conduct to the requirements of law, or to appreciate the nature, consequences or wrongfulness of their conduct.

My name is Megan Testa and I am physician practicing forensic psychiatry in Cleveland, Ohio. I am a lifelong Ohioan. I earned a bachelor's degree in psychology from Youngstown State University, and a medical degree from Case Western Reserve University School of Medicine. I completed psychiatric residency training at University Hospitals of Cleveland. I then went on to complete a fellowship program in Forensic Psychiatry, during which time I learned to perform a wide range of court-ordered psychiatric evaluations of criminal defendants, including evaluations of Competence to Stand Trial, Competence to Waive Miranda Rights, Sanity at the Time of the Act, Competence to be Executed, and Mitigation of Penalty evaluations. After I completed forensic fellowship I worked on the inpatient competency restoration unit at Northcoast Behavioral Healthcare, the state psychiatric hospital in Northeast Ohio. I subsequently completed a Fellowship in Public and Community Psychiatry, and now work in community reentry, treating individuals with severe and persistent mental illness who are under the jurisdiction of the criminal justice system. I share this detail about my background with you so that you will have an understanding of the experiences that inform my testimony before you.

I am here today speaking on behalf of the Ohio Psychiatric Physicians Association, a statewide medical specialty organization whose more than 1,000 physician members specialize in the diagnosis, treatment and prevention of mental illness and substance use disorders.

As you have already heard from the sponsor and others who have testified before me, S.B. 162 has been written to exclude a subset of individuals with mental illness – those with both serious mental illness *and* diminished culpability - from being subject to the ultimate penalty that the state of Ohio can impose, death.

### **Definitions of SMI**

S.B. 162 includes a very specific definition of SMI. Under S.B. 162, “a defendant has a serious mental illness if he or she has been diagnosed with Schizophrenia, Schizoaffective Disorder, Bipolar Disorder, Major Depressive Disorder, or Delusional Disorder and, at the time of the offense, the condition(s), while not meeting the standard to be found not guilty by reason of insanity, nevertheless significantly impaired the person’s capacity to appreciate the nature, consequences, or wrongfulness of his/her conduct; exercise rational judgment in relation to his/her conduct; or conform his/her conduct to the requirements of the law.”

As a psychiatrist, looking at this definition of SMI, two things are apparent. First, given the very narrow list of qualifying diagnoses, only a fraction of individuals with mental illnesses in Ohio would qualify diagnostically. Second, because S.B. 192 does not create a categorical exemption, among those individuals who qualified diagnostically, only a fraction would qualify functionally for exclusion based on diminished culpability.

The five psychiatric diagnoses included in the S.B. 162 definition of SMI are a narrow set of severe disorders that typically emerge in early adulthood and continue throughout life, either continuously or episodically. The disorders manifest with psychosis (loss of touch with reality), cognitive impairment, compromised judgment, and/or executive dysfunction (a loss of ability to organize thinking and behavior). Individuals living with the disorders also suffer with lack of insight into their illnesses, because the disorders themselves interfere with the individual’s ability to recognize that what they think and feel is not rational. These individuals have difficulty with education, employment, housing and relationships. They experience social stigma and isolation, and many times lack even minimal social support systems.

- Schizophrenia is a brain disorder that affects thinking and perception. It manifests with “positive” and “negative” symptoms of psychosis, as well as cognitive dysfunction, which can resemble dementia. The positive symptoms of Schizophrenia include delusions, or fixed false beliefs, and hallucinations, which are unreal sensory experiences. The negative symptoms of Schizophrenia include blunted emotions, low motivation, low interests and inability to engage with others.
- Schizoaffective Disorder is a brain disorder that manifests as a hybrid of Schizophrenia and Bipolar Disorder or Major Depressive Disorder.
- Bipolar Disorder is a brain disorder that affects mood, impulse control, judgment, thinking and perception. Individuals with Bipolar Disorder go through periods of mania, during which they experience elated mood, racing thoughts, inflated self-esteem, high energy and lack of need for sleep. When individuals are manic their heads are filled with ideas and the ideas all seem like great ideas. Thoughts

move at lightning speed and individuals will engage in reckless behavior in pursuit of irrational goals. When mania ends, they crash into deep depression. They can also experience "Mixed States" during which they have co-occurring symptoms of mania and depression, and are at high risk of suicide.

- Major Depressive Disorder is a brain disorder that leads to profound and persistent depressed mood with lack of interests, energy, motivation, and will to live. Major Depressive Disorder can be so severe that it leads to catatonia – a state of grave disability in which individuals cannot move, talk or eat – pervasive feelings of worthlessness, delusional beliefs, and suicidality.
- Delusional Disorder is a brain disorder in which a false belief becomes fixed in a person's mind and takes over his/her entire life. Individuals with Delusional Disorder often develop persecutory delusions, and fear their safety or lives as a result. Individuals with Delusional Disorder are unable to accept that their beliefs are not true, and go to great lengths to convince others that their delusions are true. They behave in accordance with their delusion rather than in accordance with reality.

There are many success stories of individuals with these serious mental illnesses who receive timely treatment that works for them, stick with that treatment throughout their lives, and live productive lives. In the mental health community we call this recovery. We strive for it and we celebrate it when we achieve it.

The fact is, however, that not everyone with mental illness achieves recovery. Many individuals with serious mental illnesses do not receive treatment because the very nature of their disorders cause them to be unable to recognize that they need help. Others avoid seeking help due to fear of societal stigma or fear of psychiatric treatment due to portrayals in the popular media (such as "One Flew Over the Cuckoo's Nest"). Others seek treatment but cannot access it due to inadequate resources or other systemic failures. And finally, there are others who seek and receive treatment, but for whom treatment does not work.

S.B. 162 is not a bill that makes all individuals who have mental illness, or even all individuals who have serious mental illness, exempt from capital punishment in the state of Ohio. S.B. 162 is a bill that would prevent those individuals with SMI, who have been unable to achieve recovery and have suffered from cognitive impairments, compromised judgment, or executive dysfunction, from being sentenced to death in very specific instances when it is determined that SMI led to diminished culpability.

As psychiatric physicians, the OPPA stands with the sponsors of S.B. 162. We believe that individuals who, because of SMI, lacked the capacity to exercise rational judgment in relation to conduct, to conform his/her conduct to the requirements of law, or to appreciate the nature, consequences or wrongfulness of his/her conduct, at the time of commission of a crime, should not be put to death by the state of Ohio.

Thank you for your time and attention. I welcome the opportunity to respond to any questions you may have.