



# *ENACTMENT NEWS*

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## **House Bill 136**

### **Prohibiting death penalty – serious mental illness**

Effective April 12, 2021

On January 9, 2021, Governor DeWine signed House Bill 136 (Rep. Hillyer) into law. The bill becomes effective on April 12, 2021.

The law prohibits the imposition of the death penalty upon a person who had a “serious mental illness” at the time of the offense, and the serious mental illness significantly impaired the person’s ability to exercise rational judgment in relation to the person’s conduct with respect to either conforming his or her conduct to the requirements of the law, or appreciating the nature, consequences, or wrongfulness of that conduct. The definition of “serious mental illness” is limited to the following conditions:

- Schizophrenia
- Schizoaffective disorder
- Bipolar disorder
- Delusional disorder

The person may be diagnosed with one of the above-listed conditions either before or after the commission of the offense. If the person would have been sentenced to death but for one of these serious mental illnesses, the person is required under the law to get a sentence of life without the possibility of parole.

The defendant may raise the matter of serious mental illness at any time prior to trial. Upon the defendant raising the matter, the court must schedule a hearing and order an evaluation of the defendant, and if the defendant refuses to submit to an evaluation, the court must issue a finding that the defendant is not ineligible for the death penalty. The defendant may present evidence and the prosecution may present evidence to contest the diagnosis. The defendant has the burden, by a preponderance of the evidence, to show that he or she had a serious mental illness at the time of the offense, and that the illness significantly impaired his or her ability to exercise rational judgment in relation to the person’s conduct with respect to either conforming his or her conduct to the requirements of the law, or appreciating the nature, consequences, or wrongfulness of that conduct. At the pretrial hearing, the court must issue a finding as to whether the defendant has met his or her burden and thus whether the defendant is eligible or ineligible for the death penalty.

A plea of not guilty by reason of insanity or incompetence to stand trial, or a finding that the person is not insane or is competent to stand trial, does not preclude the person from later raising the matter of having had a serious mental illness at the time of the offense.

The bill also expands postconviction relief to allow those already sentenced to death to claim that they had a serious mental illness at the time of the offense by filing a petition with the sentencing court. The petition must be filed within 365 days of the effective date of this bill. Such a petition serves as a waiver of any right to be sentenced under the law as it existed at the time of the offense, and constitutes consent to be sentenced to life imprisonment without the possibility of parole. The procedures for considering a petition for postconviction relief on the grounds that the person suffered a serious mental illness are the same as described above. If the court determines that the defendant has met his or her burden, the court shall vacate the original sentence and impose a sentence of life in prison without parole.

The Ohio House of Representatives passed the bill by a vote of 76-18 on June 5, 2019, and the Senate passed the bill by a vote of 27-3 on December 9, 2020, with the House concurring in Senate amendments by a vote of 72-14 on December 17, 2020.