

#NAMIcon16

Working to End Executions of Individuals Living with Mental Illness

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There is no categorical protection from the death penalty for those with mental illness

Why is this an issue?

- The Supreme Court views the death penalty as **the ultimate punishment** reserved for the “worst of the worst”:

“With respect to retribution—the interest in seeing that the offender gets his “just deserts”—the severity of the appropriate punishment necessarily depends on the culpability of the offender.

Since *Gregg*, our jurisprudence has consistently confined the imposition of the death penalty to a **narrow category of the most serious crimes**”

Atkins v. Virginia, 536 U.S. 304 (2002)



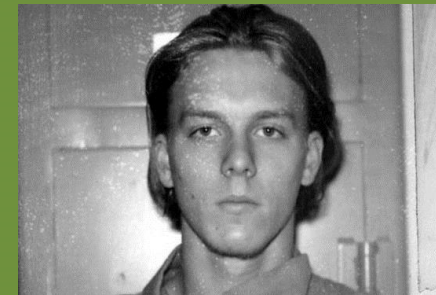
There is no categorical protection from the death penalty for those with mental illness

- The Supreme Court has recognized that the execution of **certain more vulnerable categories of the population** is unconstitutional:
 - **Atkins v. Virginia (2002)**: executions of **defendants with intellectual disability** are “cruel and unusual punishment” prohibited by the 8th Amendment.
 - **Roper v. Simmons (2005)**: executions of **juveniles** are “cruel and unusual punishment” prohibited by the 8th Amendment



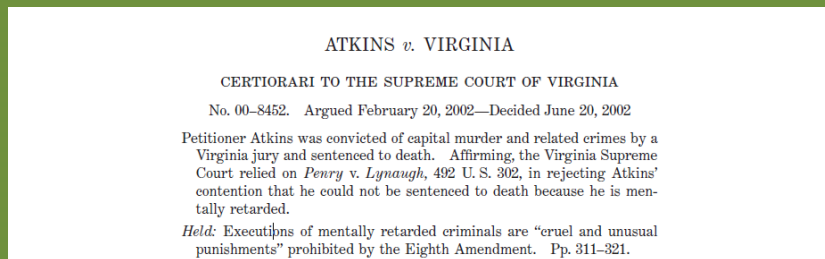
Daryl Atkins

“Atkins had a full scale IQ of 59”



Christopher Simmons

Received the death penalty for a crime committed at age 17

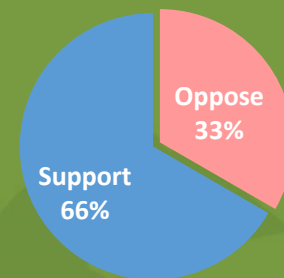


Individuals with severe mental illness should not be executed: a growing national consensus...

- **From the public**

- **2014: 58% of Americans in favor of a SMI exemption** (Public Policy Polling)
- **2015: 66% of Americans in favor of a SMI exemption** (David Binder Research)

2015 poll



- **From relevant professional organizations**

- **2006:** American Bar Association
National Alliance on Mental Illness,
American Psychiatric Association,
American Psychological Association
- **2011:** Mental Health America



...but currently no legislation

- **But no state legislative action**

- Connecticut (1973) only state to ever have a severe mental illness exemption in its statutes (abolished death penalty since then)

(f) The court shall not impose the sentence of death on the defendant if the jury or, if there is no jury, the court finds by a special verdict, as provided in subsection (d), that at the time of the offense (1) he was under the age of eighteen or (2) his mental capacity was significantly impaired or his ability to conform his conduct to the requirements of law was significantly impaired but not so impaired in either case as to constitute a defense to prosecution or (3) he was



So what happens currently for defendants with severe mental illness claims in capital cases?

- Their mental illness can be taken into account in capital proceedings,
- but they also continue to be sentenced to death and executed.
 - Most recently: **Adam Ward** in Texas, executed on March 22nd 2016
 - Fifth Circuit opinion: “Petitioner *has been afflicted with mental illness his entire life*. He was diagnosed with bipolar disorder and placed on lithium as early as age 4”.



The case of Scott Panetti

- Mr. Panetti showed signs of having a psychotic disorder over 14 years before the crime for which he is on death row.
- During his multiple hospitalizations, doctors diagnosed him with **chronic schizophrenia and schizoaffective disorder**.
- Despite his illness, **Mr. Panetti represented himself at his capital murder trial in 1995.**
- While doing so, he attempted to call over 200 witnesses, including John F. Kennedy and Jesus Christ.
- He was sentenced to death by the jury.



The case of Scott Panetti

- **Scott Panetti is still on death row.** He came close to execution in 2004 but a federal court stayed the execution.

Executing the Insane - The Case of Scott Panetti

Texas Defender Services

https://www.youtube.com/watch?v=zrX5wab_nul



Ohio Supreme Court Joint Task Force to Review the Administration of Ohio's Death Penalty

- **Recommendation 8:** Enact legislation to consider and exclude from eligibility for the death penalty defendants who suffer from “serious mental illness,” as defined by the legislature, at the time of the crime.

(Vote: 15-2)

- **Recommendation 9:** Enact legislation to exclude from eligibility from the death penalty defendants who suffer from “serious mental illness,” at the time of execution. *(Vote: 12-7)*



Ohio Death Penalty Statistics

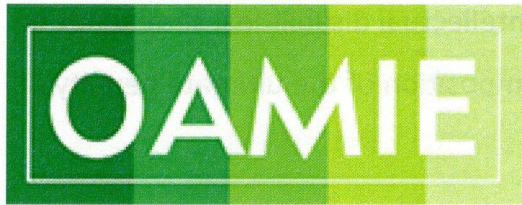
- 55 individuals executed since 1999
- 137 males and 1 female currently on death row
- An estimated that approximately 15% (21) would meet the definition outlined in S.B. 162



Advocacy Activities

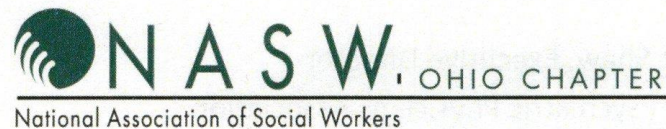
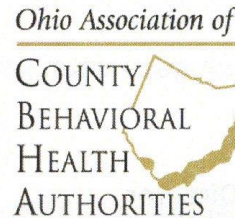
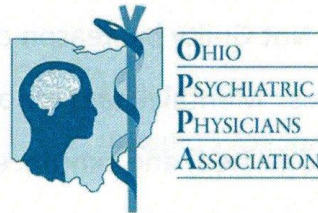
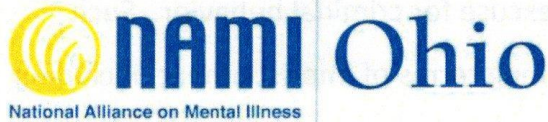
- Building on key partnerships
- Approaching the potential bill sponsor
- Developing the language of the bill
- Expanding the Coalition
- Involving grassroots advocates in key districts
- Developing a communication Infrastructure





Ohio Alliance for the Mental Illness Exemption
Prohibiting the Execution of Individuals with Severe Mental Illnesses

www.oamie.org



<http://oamie.org/>



S.B. 162 – Key Provisions

- Prohibits a person convicted of aggravated murder who shows that the person had a serious mental illness at the time of the offense from being sentenced to death for the offense and instead requires the person to be sentenced to life imprisonment.
- Requires the resentencing of a person previously sentenced to death who proves that the person had a serious mental illness at the time of the offense to life imprisonment, and provides mechanism for resentencing.
- Defines a "serious mental illness" for purposes of the bill's provisions.



Definition of SMI (1/2)

As used in the bill, a person has a "serious mental illness" if both of the following apply to the person:

- i. The person has been diagnosed with one or more of the following conditions:
 - i. **schizophrenia;**
 - ii. **schizoaffective disorder;**
 - iii. **bipolar disorder;**
 - iv. **major depressive disorder;**
 - v. **or delusional disorder (SMI condition);**



Definition of SMI (2/2)

(2) At the time of the alleged aggravated murder, the SMI condition or conditions with which the person has been diagnosed, while not meeting the standard to be found either "not guilty by reason of insanity" (NGRI) or "incompetent to stand trial" (IST), nevertheless **significantly impaired the person's capacity to**

- i. **exercise rational judgment** in relation to the person's conduct;
- ii. **conform the person's conduct to the requirements of law;**
- iii. **or appreciate the nature, consequences, or wrongfulness of the person's conduct (SMI impairment).**

A disorder manifested primarily by repeated criminal conduct or attributable solely to the acute effects of voluntary use of alcohol or any other drug of abuse does not, standing alone, constitute a SMI.



Legislative testimony in favor of Ohio SB 162



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.

Bill Seitz, Ohio State Senator, SB 162 Co-sponsor



Those with serious mental illness are significantly impaired in their reasoning, judgment, and impulse control. Therefore, they do not act with the level of moral culpability required for imposition of the death penalty.

Evelyn L. Stratton, Former Justice, Ohio Supreme Court



I would suggest that if those considering this Bill realize that the person in question is in fact in a dream-like state when they are in psychosis, such awareness may render a better appreciation of the degree of culpability that should rightly be assigned to the person who has engaged in such criminal activity.

Fred Frese, Ph. D., FAPPA, FAPA – referring to descriptions of experiences of psychosis lived by himself as well as by Dr. Elyn Saks and Dr. John Nash



Legislative testimony in favor of Ohio SB 162



The death penalty is not the answer to the problem of violence committed by persons with serious mental illness. The better policy is access to appropriate mental health care.

Bob Spada, Board Member, NAMI of Ohio



I saw time and again how people with serious mental illness wind up on death row. My 42 years of experience as a corrections professional lead me to be certain enacting SB 162 is an appropriate policy for Ohio to adopt.

Dr. Reginald Wilkinson – Former Director, Ohio Department of Rehabilitation and Corrections



In short, though it is legally a mitigating factor in sentencing, serious mental illness frequently functions as an aggravating factor in jurors' thinking.

David Niven, Ph.D. – University of Cincinnati



Legislative testimony in favor of Ohio SB 162



My family's experience with the murder of my cousin, the death penalty case against the man we all thought committed the crime, and his serious mental illness which compounded the tragedy, gives us a unique perspective. I strongly support SB 162.

Christy Sheppard



One reason I support this bill is it helps avert the risk of a false confession leading to a wrongful execution.

James Petro, Former Ohio Attorney General

As psychiatric physicians, the Ohio Psychiatric Physicians Association stands with the sponsors of S.B. 162.

Megan Testa, MD – Ohio Psychiatric Physicians Association



The Ohio campaign



Ohio bill would spare severely mentally ill from execution

Ohio legislation would spare offenders who suffered severe mental illness from execution



Former Ohio Supreme Court Justice Evelyn Lundberg Stratton testifies in favor of a bill that would prohibit the execution of killers judged severely mentally ill at the time of their crimes, Wednesday,

"I respect the work of the Task Force and I think all of their recommendations should receive full consideration by the legislature. That said, they don't even need to discuss the mental illness exemptions - they should just do it."

Terry Collins
Former Director of the Ohio Department of Rehabilitation and Correction

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Don't execute mentally ill, lawmakers told

The Columbus Dispatch

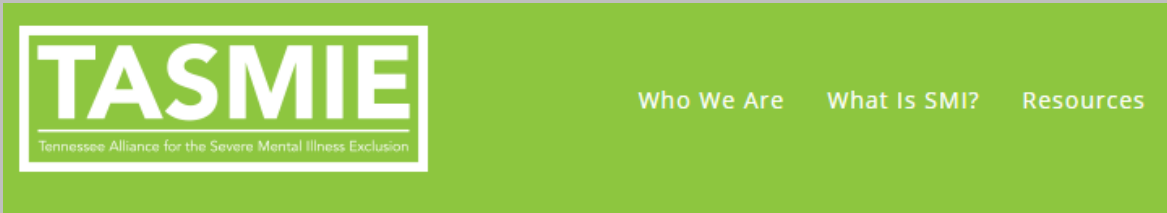
LOCAL

By [Alan Johnson](#)

» Race for the Cure crowds endure

The Columbus Dispatch • Wednesday October 14, 2015 1:35 PM

The Tennessee campaign



The Tennessee Alliance for the Severe Mental Illness Exclusion (TASMIE) is a coalition of mental health advocates and other organizations who are educating Tennesseans about their concerns with sentencing those with severe mental illness to death.

Individuals With a Severe Mental Illness (SMI): Reasons To Exclude Them From the Death Penalty

- Extends Tennessee's existing protection for those with intellectual disabilities
- Provides more swift and sure justice for victims' families
- Affects only a small percentage of cases
- Determines the exclusion on a case-by-case basis
- Affects only sentencing
- Saves taxpayer money

OPINION COLUMNISTS | HANNAH COX

Severe mental illness should rule out death penalty

Knoxville
NEWS SENTINEL
KnoxNews.com

Challenges to campaigns

- Education about stigmas so important
- Prosecuting attorneys (district attorneys) oppose, other law enforcement might
- OPAA arguments disproven, but politics trump



Challenges to campaign (cont.)



OAMIE Ohio Alliance for the Mental Illness Exemption
Prohibiting the Execution of Individuals Suffering from Severe Mental Illness

SB162

Timeline:

Ohio Supreme Court
Death Penalty Task
Force (2.5 yrs)

➔

Recommend exclusion
for individuals with
Serious Mental Illness
at the time of crime
(15-2 Task Force vote)

➔

Senators Seitz, Williams
bring S.B. 162 in April 2015;
6 hearings in Senate Criminal
Justice Committee

PROPOSERS



OPPOSER





"Individuals with serious mental illness have diminished criminal culpability, but Ohio law fails to protect them from imposition of the ultimate penalty of death."
- Evelyn Lundberg Stratton, retired Ohio Supreme Court Justice



"I am persuaded by clear evidence in the record that the appellant suffers from a severe mental illness. On the record before us, I cannot conclude beyond a reasonable doubt that Vrahe's mental illness did not contribute to his tragic criminal conduct, thereby reducing his moral culpability to a level inconsistent with the ultimate penalty of death."
- Thomas Moyer, former Chief Justice Ohio Supreme Court



"What is known is that our present laws on competency, insanity and mitigation do not do enough to assure against execution of the innocent or those underserving of death due to their severe mental illness. During my tenure as Attorney General, at least three persons with some level of mental illness were executed. All three waived their rights at some point and volunteered for execution."
- Jim Petro, former Ohio Attorney General



WHAT SB162 DOES:

- Narrowly defines five uncontested diagnoses as serious mental illness.
- Only applies if prior diagnosis exists, creates rebuttable presumption.
- Allows for conviction and legal responsibility.
- Follows same legal process as Atkins and Roper as established by SCOTUS.
- Gives judges discretion; fixes identified flaw with mitigation phase.
- No bearing on NGRI, competency.
- Leaves intact Ohio death penalty law but limits death eligibility.

Schizophrenia
Schizoaffective Disorder
Bipolar Disorder
Major Depressive Disorder
Delusional Disorder

SMI ET 051218



OAMIE Ohio Alliance for the Mental Illness Exemption
Prohibiting the Execution of Individuals Suffering from Severe Mental Illness

SB162

Ohio Prosecuting Attorneys Association

makes claims that are untrue and disproven about SB 162.

FALSE CLAIMS

VS. THE TRUTH

<p style="font-size: 0.7em; color: red;">Unnecessary; current law already protects defendants suffering mental disorder.</p>	<p style="color: green; font-weight: bold;">Ohio law provides no mechanism for capital crime defendants suffering serious mental illness.</p>
<p style="font-size: 0.7em; color: red;">Competency and NGRI.</p>	<p style="color: green; font-weight: bold;">Competency and Not Guilty by Reason of Insanity have no bearing on SB 162 and vice-versa. SB 162 allows State to get conviction.</p>
<p style="font-size: 0.7em; color: red;">Bill expands mental illness considerations where death should not be barred.</p>	<p style="color: green; font-weight: bold;">SB 162 only gives consideration to 5 diagnoses. It does not give consideration to 152 diagnoses.</p>
<p style="font-size: 0.7em; color: red;">Current law addresses in mitigation phase.</p>	<p style="color: green; font-weight: bold;">Studies clearly demonstrate that jurors weigh mental illness against defendants in mitigation, and not in their favor as mitigation intends.</p>
<p style="font-size: 0.7em; color: red;">Too broad of a spectrum. Subjective diagnoses.</p>	<p style="color: green; font-weight: bold;">Spectrum is 5 of 157 (3.2%) diagnoses in DSM. Diagnoses are made using objective methods.</p>
<p style="font-size: 0.7em; color: red;">Burden shifts to State to prove a negative; unprecedented shift on State.</p>	<p style="color: green; font-weight: bold;">R.C. 2901.05(B); 2905.02; 2905.03; 2905.05; 2909.07; 2909.10; 2911.21; 2911.23; 2913.02-04; 2923.162</p>
<p style="font-size: 0.7em; color: red;">Task Force did not intend to make this recommendation.</p>	<p style="color: green; font-weight: bold;">True... Task Force recommended an outright ban. SB162 goes halfway as a compromise to benefit prosecutors with rebuttable presumption.</p>
<p style="font-size: 0.7em; color: red;">SB 162 will end the death penalty in Ohio.</p>	<p style="color: green; font-weight: bold;">SB 162 has no bearing on Ohio's death penalty law. It only takes death off the table for five diagnoses, those least culpable.</p>

NAMI National Convention

Denver. July 6-9, 2016

Challenges to campaigns (cont.)

- Perception of controversy = moving target (hearings, votes, etc.)
- Impact of one case
- Example of Lincoln Rutledge (OH)



Timing of Ohio campaign

- April 2014: report issued with recommendation
- April 2015: legislation introduced
- October 2015-June 2016: legislative hearings
- November 2016: anticipated passage **Lame Duck**



#NAMIcon16

Thank you!

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