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H.B. 136*
133rd General Assembly

Bill Analysis

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Version: As Reported by S. Judiciary

Primary Sponsor: Rep. Hillyer

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SUMMARY

- Specifies that a person convicted of aggravated murder who shows that the person had a serious mental illness at the time of the offense may not be sentenced to death for the offense and instead requires that the person be sentenced to life imprisonment without parole.
- Requires that a person previously sentenced to death who proves that the person had a serious mental illness at the time of the offense be resentenced to life imprisonment without parole, and provides a mechanism for resentencing.
- Defines a “serious mental illness” for purposes of the bill’s provisions.

DETAILED ANALYSIS

Introduction

Current Ohio law allows the death penalty only for the offense of aggravated murder when the offender also is convicted of one or more specifications of an “aggravating circumstance” (e.g., committed for hire, repeat offense, felony murder, law enforcement officer victim, under age 13 victim, etc.), or for the offense of terrorism when the most serious offense comprising terrorism is aggravated murder. The court must determine after applying a specified balancing test that the death penalty is appropriate. A defendant must have been at least 18 at the time the crime was committed to be sentenced to death.¹

* This analysis was prepared before the report of the Senate Judiciary Committee appeared in the Senate Journal. Note that the legislative history may be incomplete.

¹ R.C. 2903.01 and 2909.24, not in the bill; R.C. 2929.02 to 2929.06.

Sentencing a person with serious mental illness

The bill provides that a person convicted of aggravated murder who shows that the person had a “serious mental illness” at the time of committing the offense cannot be sentenced to death.

Definition of “serious mental illness”

As used in the bill, a person has a “serious mental illness” if both of the following apply to the person:²

1. The person has been diagnosed with one or more of the following conditions: schizophrenia; schizoaffective disorder; bipolar disorder; or delusional disorder (hereafter, collectively referred to as “SMI condition”);
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),³ nevertheless significantly impaired the person’s capacity to exercise rational judgment with respect to either of the following (hereafter, collectively referred to as “SMI impairment”):
 - a. Conforming the person’s conduct to the requirements of law; or
 - b. Appreciating the nature, consequences, or wrongfulness of the person’s conduct.

A disorder manifested primarily by repeated criminal conduct or attributable primarily to the acute effects of any use of alcohol or any other drug of abuse does not, standing alone, constitute a serious mental illness.⁴

When diagnosis may be made

The diagnosis of a person with one or more SMI conditions may be made at any time prior to, on, or after the day of the alleged aggravated murder with which the person is charged or the day on which the person raises the matter of the person’s serious mental illness at the time of the alleged commission of that aggravated murder. Diagnosis of the condition or conditions after the date of the alleged aggravated murder does not preclude the person from presenting evidence that the person had a serious mental illness at the time of the alleged commission of that offense.⁵

² R.C. 2929.025(A)(1).

³ R.C. 2901.01 and 2945.37(G), respectively, not in the bill.

⁴ R.C. 2929.025(A)(2).

⁵ R.C. 2929.025(B).

Raising matter of serious mental illness and initial proceedings

Under the bill, a person charged with aggravated murder and one or more specifications of an aggravating circumstance may, before trial, raise the matter of the person's serious mental illness at the time of the alleged commission of the offense (hereafter, such a person is referred to as a "capital defendant who alleges serious mental illness"). If a person raises that matter, the court must order an evaluation of the person (see "**Evaluation**," below) and hold a pretrial hearing on the matter. The person who raises the matter may present evidence that the person had a serious mental illness at the time of the alleged commission of the offense. The person has the burden of raising that matter and of going forward with the evidence relating to the diagnosis of the SMI condition and the SMI impairment.⁶

Prosecution's contesting of diagnosis or rebuttal presumption

Under the bill, if a capital defendant who alleges serious mental illness submits evidence that the person has been diagnosed with one or more SMI conditions and that the diagnosed condition or conditions was an SMI impairment that existed at the time of the alleged commission of the offense, the prosecution may present evidence to contest the diagnosis. The defendant has the burden of proving, by a preponderance of the evidence, that the person has been diagnosed with one or more SMI conditions and that the condition or conditions constituted an SMI impairment at the time of the alleged offense.⁷

Outcome of pretrial hearing

No finding in favor of defendant

Unless the court at the pretrial hearing finds that the defendant has proved, by a preponderance of the evidence, that the person has been diagnosed with one or more SMI conditions and that the condition or conditions constituted an SMI impairment at the time of the alleged offense, the court must issue a finding that the person is not ineligible for a sentence of death due to serious mental illness.⁸

Finding in favor of defendant

If the court at the pretrial hearing finds that the defendant has proved, by a preponderance of the evidence, that the person has been diagnosed with one or more SMI conditions and that the condition or conditions constituted an SMI impairment at the time of the alleged offense, the court must issue a finding that the defendant is ineligible for a death sentence due to serious mental illness.⁹

⁶ R.C. 2929.025(C).

⁷ R.C. 2929.025(D).

⁸ R.C. 2929.025(E)(1).

⁹ R.C. 2929.025(E)(2).

Effect of finding that the person is ineligible for death sentence

If a court issues a finding that a capital defendant who has alleged serious mental illness is ineligible for a sentence of death due to serious mental illness, the person cannot be sentenced to death.¹⁰ Instead, the court or panel of three judges imposing sentence in the case must sentence the person to life imprisonment without parole.¹¹

The bill corrects several erroneous cross-references in the existing provisions regarding the sentencing of an offender who was convicted of aggravated murder and one or more specifications of an aggravating circumstance, raised the matter of age at trial, and was not found to have been age 18 or older.¹²

Evaluation

Under the bill, if a capital defendant alleges serious mental illness, the court must order an evaluation of the person.¹³ With respect to an evaluation, if the court determines that investigation services, experts, or other services are reasonably necessary for the proper representation of the capital defendant at trial or at the sentencing hearing, the court must authorize the defendant's counsel to obtain the necessary services for the defendant, and must order that payment of the fees and expenses for the necessary services be made in the same manner that payment for appointed counsel is made under current law. If the court determines that the necessary services had to be obtained prior to court authorization for payment of the fees and expenses for the necessary services, the court may, after the services have been obtained, authorize the defendant's counsel to obtain the necessary services and order that payment of the fees and expenses for the necessary services be made. The bill retains the current application of these provisions in a case in which the court determines that investigation services, experts, or other services are reasonably necessary for the proper representation of an indigent defendant charged with aggravated murder at trial or at the sentencing hearing.¹⁴

Use of statements made in evaluation, hearing, or proceeding

The bill specifies that no statement that a person makes in an evaluation ordered as described above or in a pretrial hearing under its provisions relating to the person's serious mental illness at the time of the alleged commission of the aggravated murder may be used against the person on the issue of guilt in any criminal action or proceeding. But, in a criminal action or proceeding, the prosecutor or defense counsel may call as a witness any examiner who evaluated the person or prepared a report pursuant to a referral under the bill. Neither the appointment nor the testimony of an examiner in such an evaluation precludes the prosecutor

¹⁰ R.C. 2929.02(A), 2929.022(A)(2)(b), 2929.03(C) and (D), and 2929.04(B).

¹¹ R.C. 2929.03(E)(2).

¹² R.C. 2929.03(E)(1); also R.C. 2929.14(E)(5), 2941.148, 2971.03, 2971.07, and 5120.61(A)(1)(e).

¹³ R.C. 2929.025(F)(1).

¹⁴ R.C. 2929.024 and 2929.025(F)(1).

or defense counsel from calling other witnesses or presenting other evidence on the issue of the person's serious mental illness at the time of the alleged commission of the aggravated murder or on competency or insanity issues.¹⁵ As used in this provision, "examiner" means a person who makes an evaluation ordered by the court under the bill and "prosecutor" means a prosecuting attorney who has authority to prosecute a charge of aggravated murder that is before the court.¹⁶

Effect of other pleas

The bill specifies that a person's pleading of NGRI or IST, or a finding after such a plea that the person is not insane or that the person is competent to stand trial, does not preclude the person from raising the matter of the person's serious mental illness at the time of the alleged commission of the offense pursuant to the bill's provisions. If a person so raises that matter, such a plea or finding does not limit or affect any of the procedures described above or the authority of a court to make any finding described in them.¹⁷

Resentencing of person previously sentenced to death

The bill also provides a mechanism for resentencing a person who has been sentenced to death for aggravated murder, and who had a serious mental illness at the time the offense was committed, to a sentence of life imprisonment without parole.

Postconviction relief proceeding to void sentence of death

The bill expands the existing Postconviction Relief Law¹⁸ so that it also will apply to a person who has been convicted of aggravated murder and sentenced to death, and who claims that the person had a serious mental illness at the time of the commission of the offense and that as a result the court should void the sentence of death, with the filing of the petition constituting a waiver of any right to be sentenced to any sentence other than life imprisonment without parole if the sentence of death is voided in the requested postconviction proceeding. Such a person may file a petition under that law in the court that imposed the sentence, stating that ground for relief and asking the court to render the sentence void and to order the resentencing of the offender – the act of filing the petition constitutes a waiver of any right to be sentenced under the law that existed at the time the offense was committed and constitutes consent to be sentenced to life imprisonment without parole, as described below in "**Resentencing after voiding of sentence of death.**" The petition must be filed not later than 365 days after the bill's effective date, subject to limited exceptions involving unavoidable prevention of discovery of relevant facts or a specified Constitutional claim. As with other postconviction relief claims: there is no limit on the number of pages in or the length of the petition; if a court rule purports to impose such a limit and the petitioner exceeds the

¹⁵ R.C. 2929.025(F)(2).

¹⁶ R.C. 2929.025(A).

¹⁷ R.C. 2929.025(G).

¹⁸ R.C. 2953.21 to 2953.23; R.C. 2953.22 is not in the bill.

limit, the prosecuting attorney also may exceed the limit in the prosecuting attorney's response; the petitioner or prosecuting attorney may request depositions and postconviction discovery; and the clerk of the court in which the petition is filed must docket it and any request for postconviction discovery, bring it (or them) to the attention of the court, and forward a copy to the prosecuting attorney of the county or the petitioner or petitioner's counsel, as applicable. The prosecuting attorney must respond to the petition and the court, after considering specified information, must determine whether there are substantive grounds for relief. Unless the petition and the files and records of the case show the petitioner is not entitled to relief, the court must proceed to a prompt hearing on the issues.¹⁹

The procedures and rules regarding introduction of evidence and burden of proof at the pretrial hearing that are described above apply in considering the petition for postconviction relief. The petitioner may amend the petition under the same authority as applies to other postconviction relief claims by a person sentenced to death. With respect to such a petition, the grounds for granting relief are that the person has been diagnosed with one or more SMI conditions and that, at the time of the aggravated murder that was the basis of the sentence of death, the condition or conditions constituted an SMI impairment.

If the court does not find grounds for granting relief, it must make and file findings of fact and conclusions of law and enter judgment denying relief on the petition. If the court finds grounds for relief, it must render void the sentence of death and order the resentencing of the offender, as described below.

If a person sentenced to death intends to file a postconviction relief petition, the court must appoint counsel to represent the person if it finds that the person is indigent and that the person either accepts the appointment or is unable to make a competent decision whether to accept or reject the appointment. The court may decline to appoint counsel for the person only upon a finding that the person rejects the appointment and understands the legal consequences of that decision or upon a finding that the person is not indigent.²⁰

Resentencing after voiding of sentence of death

The bill enacts a provision for the resentencing of an offender whose sentence of death is voided by a court in a postconviction relief proceeding under the bill's provisions after a finding that the offender had a serious mental illness at the time of the commission of the offense. Under the bill, if a sentence of death that has been imposed upon an offender is voided by a court in a postconviction relief proceeding under those circumstances, the offender has waived any right to be sentenced to any sentence other than life imprisonment without parole (see "**Postconviction relief proceeding to void sentence of death,**" above) and the trial court that sentenced the offender must conduct a hearing to resentence the

¹⁹ R.C. 2953.21(A) to (E) and 2953.23.

²⁰ R.C. 2953.21(F) to (J).

offender. At the resentencing hearing, the court must impose upon the offender a sentence of life imprisonment without parole.²¹

Nonseverability clause

Generally, if a court holds that a provision of the Revised Code is invalid, its invalidity does not affect any other Revised Code provisions that can still be given effect. However, the bill declares that if any part of the bill is determined to be unconstitutional or otherwise invalid in a final judgment by a court of last resort, the remainder of its provisions would be void.²²

HISTORY

Action	Date
Introduced	03-19-19
Reported, H. Criminal Justice	05-30-19
Passed House (76-18)	06-05-19
Reported, S. Judiciary	---

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²¹ R.C. 2929.06.

²² Section 3; R.C. 1.50, not in the bill.