



## Ohio Revised Code

### Section 2949.28 Convict sentenced to death appearing to be insane.

Effective: July 29, 1998

Legislation: Senate Bill 107 - 122nd General Assembly

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(A) As used in this section and section 2949.29 of the Revised Code, "insane" means that the convict in question does not have the mental capacity to understand the nature of the death penalty and why it was imposed upon the convict.

(B)(1) If a convict sentenced to death appears to be insane, the warden or the sheriff having custody of the convict, the convict's counsel, or a psychiatrist or psychologist who has examined the convict shall give notice of the apparent insanity to whichever of the following is applicable:

(a) If the convict was tried by a jury, to the judge who imposed the sentence upon the convict or, if that judge is unavailable, to another judge of the same court of common pleas;

(b) If the convict was tried by a three-judge panel, to any of the three judges who imposed the sentence upon the convict or, if each of those judges is unavailable, to another judge of the same court of common pleas.

(2) Upon receiving a notice pursuant to division (B)(1) of this section, a judge shall determine, based on the notice and any supporting information, any information submitted by the prosecuting attorney, and the record in the case, including previous hearings and orders, whether probable cause exists to believe that the convict is insane. If the judge finds that probable cause exists to believe that the convict is insane, the judge shall hold a hearing to determine whether the convict is insane. If the judge does not find that probable cause of that nature exists, the judge may dismiss the matter without a hearing.

(3) If the judge who is given notice under division (B)(1) of this section finds probable cause to believe that the convict is insane, the judge shall inquire into the convict's insanity at a time and place to be fixed by the judge and shall give immediate notice of the inquiry to the prosecuting attorney who prosecuted the case, or that prosecuting attorney's successor, and to the convict and the convict's counsel. The judge may hold the inquiry at the place at which the convict is confined. If the



convict does not have counsel, the court shall appoint an attorney to represent the convict in the inquiry. The court may appoint one or more psychiatrists or psychologists to examine the convict. The court shall not appoint a psychiatrist or psychologist who is an employee of the department of rehabilitation and correction to examine the convict. The court shall conduct any hearing under this section and section 2949.29 of the Revised Code and issue any ruling in the matter no later than sixty days from the date of the notice given under division (B)(1) of this section.

(4) Execution of the sentence shall be suspended pending completion of the inquiry only upon an order of the supreme court. If the supreme court issues an order granting a stay of execution, the supreme court in that order also may authorize the court of common pleas to continue the stay of execution or to set a new date for execution as provided in this section or section 2949.29 of the Revised Code.

(C) If the court appoints a psychiatrist or psychologist to examine the convict, the court shall inform the psychiatrist or psychologist of the location of the convict and of the purpose of the examination. The examiner shall have access to any available psychiatric or psychological report previously submitted to the court with respect to the mental condition of the convict, including, if applicable, a report regarding the convict's competency to stand trial or the convict's plea of not guilty by reason of insanity. The examiner also shall have access to any available current mental health and medical records of the convict.

The examiner shall conduct a thorough examination of the convict and shall submit a report to the court within thirty days of the examiner's appointment. The report shall contain the examiner's findings as to whether the convict has the mental capacity to understand the nature of the death penalty and why it was imposed upon the convict and the facts, in reasonable detail, upon which the findings are based.