



Ohio Revised Code

Section 2929.025 Sentencing for aggravated murder when offender had serious mental illness at time of offense.

Effective: April 12, 2021

Legislation: House Bill 136 - 133rd General Assembly

(A) As used in this section:

(1) A person has a "serious mental illness" if both of the following apply with respect to the person, subject to division (A)(2) of this section:

(a) The person has been diagnosed as described in division (B) of this section with one or more of the following conditions:

(i) Schizophrenia;

(ii) Schizoaffective disorder;

(iii) Bipolar disorder;

(iv) Delusional disorder.

(b) At the time of the alleged aggravated murder with which the person is charged, the condition or conditions described in division (A)(1)(a) of this section with which the person has been diagnosed, while not meeting the standard to be found not guilty by reason of insanity as defined in section 2901.01 of the Revised Code or the standard to be found incompetent to stand trial as described in division (G) of section 2945.37 of the Revised Code, nevertheless significantly impaired the person's capacity to exercise rational judgment in relation to the person's conduct with respect to either of the following:

(i) Conforming the person's conduct to the requirements of law;

(ii) Appreciating the nature, consequences, or wrongfulness of the person's conduct.



(2) 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" for purposes of division (A)(1) of this section.

(3) "Examiner" means a person who makes an evaluation ordered under division (F)(1) of this section.

(4) "Prosecutor" means a prosecuting attorney who has authority to prosecute a charge of aggravated murder that is before the court.

(B) The diagnosis of a person with a condition or conditions described in division (A)(1)(a) of this section 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 pursuant to division (C) of this section 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 with which the person is charged 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.

(C) A person charged with aggravated murder and one or more specifications of an aggravating circumstance listed in division (A) of section 2929.04 of the Revised Code may, before trial, raise the matter of the person's serious mental illness at the time of the alleged commission of the offense. If a person raises the matter of the person's serious mental illness at the time of the alleged commission of the offense, the court shall order an evaluation of the person in accordance with division (F) of this section and shall hold a pretrial hearing on the matter. The person who raises the matter may present evidence, subject to division (D)(2) of this section, that the person had a serious mental illness at the time of the alleged commission of the offense, and the person has the burden of raising that matter and of going forward with the evidence relating to the diagnosis described in division (A)(1)(a) of this section and the impairment described in division (A)(1)(b) of this section.

(D)(1) If a person described in division (C) of this section raises the matter of the person's serious mental illness at the time of the alleged commission of the aggravated murder and submits evidence that the person has been diagnosed with one or more of the conditions set forth in division (A)(1)(a)



of this section and that the condition or conditions diagnosed significantly impaired the person's capacity at the time of the alleged offense in a manner described in division (A)(1)(b) of this section, the prosecution shall have an opportunity to 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 of the conditions set forth in division (A)(1)(a) of this section and that the condition or conditions diagnosed significantly impaired the person's capacity at the time of the alleged offense in a manner described in division (A)(1)(b) of this section.

(2) If a person described in division (C) of this section raises the matter of the person's serious mental illness at the time of the alleged commission of the aggravated murder and, prior to, on, or after the effective date of this section, the person has or has had an evaluation performed other than pursuant to a court order issued under division (F) of this section, the person shall provide the results of the evaluation to the prosecution at least thirty days prior to the pretrial hearing. If the person does not provide the results of the evaluation to the prosecution at least thirty days prior to the pretrial hearing, the results of the evaluation are inadmissible at the hearing.

(E)(1) 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 of the conditions set forth in division (A)(1)(a) of this section and that the condition or conditions diagnosed significantly impaired the person's capacity at the time of the alleged offense in a manner described in division (A)(1)(b) of this section, the court shall issue a finding that the person is not ineligible for a sentence of death due to serious mental illness.

(2) 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 of the conditions set forth in division (A)(1)(a) of this section and that the condition or conditions diagnosed significantly impaired the person's capacity at the time of the alleged offense in a manner described in division (A)(1)(b) of this section, the court shall issue a finding that the person is ineligible for a sentence of death due to serious mental illness.

(F)(1) If a person described in division (C) of this section raises the matter of the person's serious mental illness at the time of the alleged commission of the aggravated murder as described in that division, the court shall order an evaluation of the person. Section 2929.024 of the Revised Code



applies with respect to an evaluation ordered under this division. If the person refuses to submit to an evaluation ordered under this division, the court shall issue a finding that the person is not ineligible for a sentence of death due to serious mental illness.

(2) No statement that a person makes in an evaluation ordered under division (F)(1) of this section or in a pretrial hearing under divisions (C) to (E) of this section relating to the person's serious mental illness at the time of the alleged commission of the aggravated murder with which the person is charged shall 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 this section. Neither the appointment nor the testimony of an examiner in an evaluation ordered under division (F)(1) of this section precludes the prosecutor 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.

(G) A person's pleading of not guilty by reason of insanity or incompetence to stand trial, 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 division (C) of this section and, if a person so raises that matter, does not limit or affect any of the procedures described in this section or the authority of a court to make any finding described in this section.