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H.B. No. 869

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the applicability of the death penalty to a capital
3 offense committed by a person with an intellectual disability.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 44.01, Code of Criminal Procedure, is
6 amended by amending Subsection (a) and adding Subsection (a-1) to
7 read as follows:

8 (a) The state is entitled to appeal an order of a court in a
9 criminal case if the order:

10 (1) dismisses an indictment, information, or
11 complaint or any portion of an indictment, information, or
12 complaint;

13 (2) arrests or modifies a judgment;

14 (3) grants a new trial;

15 (4) sustains a claim of former jeopardy;

16 (5) grants a motion to suppress evidence, a
17 confession, or an admission, if jeopardy has not attached in the
18 case and if the prosecuting attorney certifies to the trial court
19 that the appeal is not taken for the purpose of delay and that the
20 evidence, confession, or admission is of substantial importance in
21 the case; or

22 (6) is issued under Chapter 46E or 64.

23 (a-1) The state's appeal of an order issued under Chapter
24 46E is a direct appeal to the court of criminal appeals. The court

1 of criminal appeals shall expeditiously review the appeal.

2 SECTION 2. Title 1, Code of Criminal Procedure, is amended
3 by adding Chapter 46E to read as follows:

4 CHAPTER 46E. CAPITAL CASE: EFFECT OF INTELLECTUAL DISABILITY

5 Art. 46E.001. DEFINITIONS. In this chapter:

6 (1) "Deficits in adaptive behavior" means sufficient
7 deficits in adaptive functioning under prevailing medical
8 standards for determining intellectual disability.

9 (2) "Developmental period" means the developmental
10 period of a person's life, as determined by prevailing medical
11 standards.

12 (3) "Intellectual disability" means significantly
13 subaverage general intellectual functioning that is concurrent
14 with deficits in adaptive behavior and originates during the
15 developmental period.

16 (4) "Significantly subaverage general intellectual
17 functioning" refers to a measured intelligence quotient on a
18 standardized psychometric instrument of approximately two or more
19 standard deviations below the age-group mean for the test used,
20 considering the standard error of measurement applicable to the
21 instrument.

22 Art. 46E.002. RESTRICTION ON DEATH PENALTY. A defendant
23 who is a person with an intellectual disability may not be sentenced
24 to death.

25 Art. 46E.003. HEARING; DETERMINATION. (a) A defendant in a
26 capital case, not later than the first anniversary of the date of
27 the defendant's indictment, may request in writing that the judge

1 hearing the case hold a hearing to determine whether the defendant
2 is a person with an intellectual disability.

3 (b) On receipt of a request under this article, if the judge
4 determines that the request was timely filed, the judge shall hold a
5 hearing to determine the issue. The hearing must be held:

6 (1) not earlier than 180th day after the date that the
7 written request was submitted under Subsection (a); and

8 (2) not later than the 120th day before the date the
9 trial is scheduled to begin.

10 (c) If a defendant files an untimely request under
11 Subsection (a), or after the time for filing a request under
12 Subsection (a) otherwise presents evidence that the defendant is a
13 person with an intellectual disability, the judge may hold a
14 hearing under this chapter outside the presence of the jury if the
15 defendant can show good cause for not filing a request within the
16 time limit prescribed by Subsection (a).

17 Art. 46E.004. APPOINTMENT OF DISINTERESTED EXPERT. (a) On
18 the request of either party or on the judge's own motion, the judge
19 shall appoint a disinterested expert experienced and qualified in
20 the field of diagnosing intellectual disabilities to examine the
21 defendant and determine whether the defendant is a person with an
22 intellectual disability.

23 (b) The judge may order the defendant to submit to an
24 examination by an expert appointed under this article.

25 (c) An examination described by this article must be limited
26 to the question of whether the defendant has an intellectual
27 disability.

1 Art. 46E.005. BURDEN OF PROOF. (a) At a hearing under this
2 chapter, the burden is on the defendant to prove by a preponderance
3 of the evidence that the defendant is a person with an intellectual
4 disability.

5 (b) The state may offer evidence to rebut evidence offered
6 by the defendant.

7 Art. 46E.006. PREVAILING MEDICAL STANDARDS. Evidence
8 offered by either party for purposes of a hearing under this chapter
9 must be consistent with prevailing medical standards for the
10 diagnosis of intellectual disabilities.

11 Art. 46E.007. DETERMINATION AND ORDER RELATED TO
12 INTELLECTUAL DISABILITY. (a) As soon as practicable but not later
13 than the 30th day after the conclusion of a hearing under this
14 chapter, the judge shall determine whether the defendant is a
15 person with an intellectual disability and issue an appropriate
16 order. The order must contain findings of fact explaining the
17 judge's reasoning for the determination and citing evidence in the
18 record.

19 (b) If the judge does not determine that the defendant is a
20 person with an intellectual disability, the judge shall conduct the
21 trial of the offense in the same manner as if a hearing under this
22 chapter had not been held. At the trial:

23 (1) the jury may not be informed of the fact that the
24 judge held a hearing under this chapter; and

25 (2) the defendant may present evidence of intellectual
26 disability as otherwise permitted by law.

27 SECTION 3. The changes in law made by this Act apply only to

1 a trial that commences on or after the effective date of this Act,
2 regardless of whether the alleged offense was committed before, on,
3 or after that date.

4 SECTION 4. This Act takes effect September 1, 2021.