

By: Ellis

S.B. No. 389

A BILL TO BE ENTITLED

AN ACT

relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation.

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

SECTION 1. Chapter 6, Penal Code, is amended by adding Section 6.05 to read as follows:

Sec. 6.05. MENTAL RETARDATION AFFECTING DEATH SENTENCE. (a) In this section, "mental retardation" has the meaning assigned by Section 591.003, Health and Safety Code.

(b) A person may not be punished by death for an offense committed while the person was a person with mental retardation.

(c) A person who is sentenced to death may submit to the convicting court a motion for a hearing on the issue of mental retardation, to be conducted as provided by Chapter 46C, Code of Criminal Procedure. On a finding by the court that documentary evidence supports an assertion that the person was a person with mental retardation at the time of the commission of the offense, the court may order a hearing that is conducted as provided by Chapter 46C, Code of Criminal Procedure.

SECTION 2. The Code of Criminal Procedure is amended by adding Chapter 46C to read as follows:

CHAPTER 46C. CAPITAL CASE: EFFECT OF MENTAL RETARDATION

Art. 46C.01. DEFINITION. In this chapter, "mental retardation" has the meaning assigned by Section 591.003, Health

1 and Safety Code.

2 Art. 46C.02. RESTRICTION ON DEATH PENALTY. Notwithstanding
3 Section 19.03(b), Penal Code, or Article 37.071, a person who at the
4 time of commission of a capital offense was a person with mental
5 retardation may not be punished by death.

6 Art. 46C.03. HEARING. (a) A person who is sentenced to death
7 in a capital case, at any time after the person is sentenced, may
8 request that the convicting court hold a hearing to determine
9 whether the person was a person with mental retardation at the time
10 of the commission of the offense.

11 (b) On receipt of a request under Subsection (a), the court
12 shall notify all interested parties of the request. If the court
13 determines that documentary evidence supports the assertion of
14 mental retardation, a jury shall be impaneled to determine whether
15 the person was a person with mental retardation at the time of the
16 commission of the offense. The person may waive the right to jury
17 determination under this subsection and request that the court make
18 the determination.

19 (c) Instructions to the jury submitting the issue of mental
20 retardation shall require the jury to state in its verdict whether
21 the person was a person with mental retardation at the time of the
22 commission of the offense.

23 (d) If the jury is unable to agree on a unanimous verdict
24 after a reasonable opportunity to deliberate, the court shall
25 declare a mistrial, discharge the jury, and impanel another jury to
26 determine whether the person was a person with mental retardation
27 at the time of the commission of the offense.

1 (e) At the conclusion of the hearing under this article, the
2 court shall dismiss the jury.

3 Art. 46C.04. BURDEN OF PROOF. (a) At a hearing under this
4 chapter, the burden is on the person asserting mental retardation
5 to prove by a preponderance of the evidence that the person was a
6 person with mental retardation at the time of the commission of the
7 offense.

8 (b) A person who has an intelligence quotient of 70 or less
9 is presumed to be a person who was a person with mental retardation
10 at the time of the commission of the offense.

11 (c) The state may offer evidence to rebut the presumption of
12 mental retardation or the person's claim.

13 Art. 46C.05. DETERMINATION REGARDING MENTAL RETARDATION.

14 (a) If the convicting court or jury, whichever is the finder of
15 fact, determines that the person asserting mental retardation was a
16 person with mental retardation at the time of the commission of the
17 offense, the court shall immediately forward a copy of the finding
18 to the court of criminal appeals.

19 (b) The court of criminal appeals shall adopt rules as
20 necessary regarding receipt of the information forwarded to that
21 court under this article.

22 Art. 46C.06. APPOINTMENT OF DISINTERESTED EXPERTS. On the
23 request of either party or on the convicting court's own motion, the
24 court shall appoint disinterested experts experienced and
25 qualified in the field of diagnosing mental retardation to examine
26 the person and determine whether the person is a person with mental
27 retardation. The court may order the person to submit to an

1 examination by experts appointed under this article.

2 Art. 46C.07. APPEAL. (a) The person asserting mental
3 retardation and the state are entitled to appeal a determination as
4 to whether the person was a person with mental retardation at the
5 time of the commission of the offense.

6 (b) The court of criminal appeals shall adopt rules as
7 necessary for the administration of the appeals process established
8 by this article.

9 (c) An appeal under this article is a direct appeal to the
10 court of criminal appeals, and the court of criminal appeals, as
11 provided by court rule, shall give priority to the review of an
12 appeal under this article over other cases before the court.

13 SECTION 3. This Act takes effect September 1, 2003.