

By: Ellis

S.B. No. 85

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. 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 and Safety Code.

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

Art. 46C.03. HEARING. (a) Counsel for a defendant in a capital case, at any time before the trial commences, may request that the judge hearing the case hold a hearing to determine whether the defendant was a person with mental retardation at the time of the commission of the alleged offense.

(b) On receipt of a request under Subsection (a), the judge shall notify all interested parties of the request. If the judge determines that there is evidence to support a finding of mental retardation, a jury shall be impaneled to determine whether the defendant was a person with mental retardation at the time of the

1 commission of the offense. A defendant may waive the right to jury  
2 determination under this subsection and request that the judge make  
3 the determination.

4 (c) Instructions to the jury submitting the issue of mental  
5 retardation shall require the jury to state in its verdict whether  
6 the defendant was a person with mental retardation at the time of  
7 the commission of the alleged offense.

8 (d) If the jury is unable to agree on a unanimous verdict  
9 after a reasonable opportunity to deliberate, the judge shall  
10 declare a mistrial, discharge the jury, and impanel another jury to  
11 determine whether the defendant was a person with mental  
12 retardation at the time of the commission of the alleged offense.

13 (e) At the conclusion of the hearing under this article, the  
14 judge shall dismiss the jury, and the members of that jury may not  
15 serve on a jury in the subsequent trial of the case.

16 Art. 46C.04. BURDEN OF PROOF. (a) At a hearing under this  
17 chapter, the burden is on the defendant to prove by a preponderance  
18 of the evidence that the defendant was a person with mental  
19 retardation at the time of the commission of the alleged offense.

20 (b) A defendant who has an intelligence quotient of 70 or  
21 less is presumed to be a person who was a person with mental  
22 retardation at the time of the commission of the alleged offense.

23 (c) The state may offer evidence to rebut the presumption of  
24 mental retardation or the defendant's claim.

25 Art. 46C.05. SENTENCING ALTERNATIVES. (a) If the judge or  
26 jury, whichever is the finder of fact, determines that the  
27 defendant was a person with mental retardation at the time of the

1 commission of the alleged offense and the defendant is subsequently  
2 convicted of the offense, Article 37.071 does not apply to the  
3 defendant, and the judge shall sentence the defendant to life  
4 imprisonment in the institutional division of the Texas Department  
5 of Criminal Justice.

6 (b) If the judge or jury, whichever is the finder of fact,  
7 determines that the defendant was not a person with mental  
8 retardation at the time of the commission of the alleged offense,  
9 the judge shall conduct the trial in the same manner as if a hearing  
10 under this chapter had not been held. At the trial of the offense:

11 (1) the jury may not be informed of the fact that the  
12 judge or a jury has determined under this article that the defendant  
13 was not a person with mental retardation; and

14 (2) the defendant may present at trial evidence of  
15 mental disability as permitted by Article 37.071.

16 (c) The judge or jury, whichever is the finder of fact,  
17 must, before the trial of the offense under Section 19.03, Penal  
18 Code, commences, make the determination described by Subsection  
19 (b).

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

27 Art. 46C.07. INTERLOCUTORY APPEAL. (a) The defendant and

1 the state are entitled to appeal a determination described by  
2 Article 46C.05(b).

3 (b) The court of criminal appeals shall adopt rules as  
4 necessary for the administration of the appeals process established  
5 by this article.

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

10 SECTION 2. Chapter 6, Penal Code, is amended by adding  
11 Section 6.05 to read as follows:

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

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

17 (c) A person who is sentenced to death at a trial that  
18 commences before September 1, 2005, may submit to the convicting  
19 court a motion for a hearing on the issue of mental retardation, to  
20 be conducted in the same manner as a hearing under Chapter 46C, Code  
21 of Criminal Procedure. On a finding by the court that documentary  
22 evidence supports an assertion that the person is a person with  
23 mental retardation, the court may order a hearing that, except for  
24 occurring after sentencing, is conducted in the same manner as a  
25 hearing under Chapter 46C, Code of Criminal Procedure. After making  
26 a finding as to whether the person is a person with mental  
27 retardation, the court shall immediately forward a copy of the

1 finding to the court of criminal appeals.

2           SECTION 3. Chapter 46C, Code of Criminal Procedure, as  
3 added by this Act, applies only to a trial that commences on or  
4 after the effective date of this Act regardless of whether the  
5 alleged offense was committed before, on, or after that date.

6           SECTION 4. This Act takes effect September 1, 2005.