

BILL ANALYSIS

C.S.H.B. 1152
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Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 1994, Congress adopted the Death Penalty Act, banning the execution of individuals with mental retardation. In *Atkins v. Virginia*, the Supreme Court held that the execution of a mentally retarded criminal was cruel and unusual punishment prohibited by the Eighth Amendment of the United States Constitution. Therefore, states are currently prohibited from executing mentally retarded individuals.

Currently, Texas law does not contain provisions for determining the guidelines necessary to apply that federal law banning such executions. A defendant's competency to stand trial is currently taken into account and a jury may currently consider mental retardation as a mitigating circumstance during the sentencing phase of a criminal trial, but there are no other procedures in place for determining mental retardation.

C.S.H.B. 1152 authorizes a defendant in a capital case, not later than the 60th day before the date the trial commences, to request a hearing to determine whether the defendant is a person with mental retardation. The bill prohibits a court from sentencing a person with mental retardation to death.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1152 amends the Code of Criminal Procedure to prohibit the sentencing to death of a defendant convicted of a capital offense who is determined under the bill's provisions to be a person with mental retardation. The bill authorizes a defendant in a capital case to request that the judge hearing the case hold a pretrial hearing to determine whether the defendant is a person with mental retardation, and to request the submission of a special issue relating to circumstances that mitigate against imposition of the death penalty to the jury. The bill requires the defendant to file notice of intent to request a pretrial hearing with the court and the attorney representing the state not later than the 60th day before the date the trial commences.

C.S.H.B. 1152 requires a judge to hold a pretrial hearing, and to make a determination after presentation of the evidence as to whether the defendant is a person with mental retardation. The bill places the burden at a hearing relating to a mental retardation determination on the defendant to prove by a preponderance of the evidence that the defendant is a person with mental retardation.

C.S.H.B. 1152 authorizes the judge to sentence a defendant determined by the judge to be a person with mental retardation and subsequently convicted of the offense to imprisonment in the Texas Department of Criminal Justice for life without parole. The bill requires the judge, if the judge determines that the defendant was not a person with mental retardation, to conduct the trial

in the same manner as if the hearing had not been held. The bill prohibits the trial jury from being informed of the fact that a determination was made that the defendant was not a person with mental retardation and authorizes a defendant to present at trial evidence of mental disability as permitted by capital case procedures under state law. The bill requires the judge to make the determination of mental retardation before the commencement of the trial of the offense.

C.S.H.B. 1152 requires the judge, on the request of either party or on the judge's own motion, to appoint two disinterested experts experienced and qualified in the field of diagnosing mental retardation to independently examine the defendant and to determine whether the defendant is a person with mental retardation. The bill authorizes the judge to order the defendant to submit to an examination by such experts. The bill provides that if it is determined that the defendant was not a person with mental retardation and the defendant is subsequently convicted of the offense, the determination does not preclude the defendant from filing a motion asserting that the defendant is incompetent to be executed and is not admissible as evidence in a hearing to determine a defendant's competency to be executed.

C.S.H.B. 1152 requires the court to allow the jury in the sentencing phase of the trial to consider the evidence whether the defendant is a person with mental retardation offered by the attorney representing the state or the defendant. The bill authorizes the court, if the jury finds by a preponderance of the evidence after considering all findings, that the defendant is a person with mental retardation to sentence the defendant to imprisonment as provided by law, or, if the jury does not find that the defendant is a person with mental retardation, to sentence the defendant to death.

C.S.H.B. 1152 entitles the defendant and the state, on conviction and sentencing, to appeal a finding as to whether the defendant is a person with mental retardation.

C.S.H.B. 1152 includes evidence as to whether the defendant is a person with mental retardation as evidence authorized to be presented in a sentencing hearing for a defendant convicted of a capital offense in which the state seeks the death penalty.

C.S.H.B. 1152 amends the Penal Code to prohibit a person with mental retardation from being executed. The bill defines "mental retardation."

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1152 differs from the original by prohibiting the sentencing to death of a defendant convicted of a capital offense who is determined by the bill's provisions to be a person with mental retardation, rather than of a defendant who at the time of commission of a capital offense was a person with mental retardation as in the original, and by making conforming changes to reflect that difference.

C.S.H.B. 1152 differs from the original by authorizing a defendant to request that the judge hold a pretrial hearing to determine whether the defendant is a person with mental retardation, whereas the original authorizes counsel for a defendant to request the hearing. The substitute adds a provision not in the original, authorizing a defendant to request the submission of a special issue to the jury. The substitute removes provisions in the original requiring a judge on a request for a hearing to notify all interested parties and to impanel a jury to determine whether the defendant is a person with mental retardation if the judge determines there is evidence to support a finding of mental retardation. The substitute removes provisions describing the

procedures for such a jury determination.

C.S.H.B. 1152 adds a provision not in the original requiring the defendant to file notice of intent to request a pretrial hearing with the court and the attorney representing the state not later than the 60th day before the date the trial commences. The substitute adds provisions not in the original requiring a judge to hold a pretrial hearing and to make a determination as to whether the defendant is a person with mental retardation after presentation of the evidence.

C.S.H.B. 1152 removes provisions in the original establishing a presumption that a defendant was a person with mental retardation if the defendant has an intelligence quotient of 70 or less, authorizing the state to offer evidence to rebut the presumption of mental retardation or the defendant's claim, and making procedures used in capital cases prescribed by state law inapplicable to a defendant who is determined to have been a person with mental retardation at the time of the commission of the offense and subsequently found guilty of the offense. The substitute differs from the original by authorizing, rather than requiring as in the original, a judge to sentence such a defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

C.S.H.B. 1152 differs from the original in provisions for the appointment of disinterested experts by requiring the judge to appoint two disinterested experts, whereas the original does not specify the number of experts, and by adding the specification that the experts are to independently examine the defendant.

C.S.H.B. 1152 differs from the original by entitling the defendant and the state to appeal a finding of a court determining whether the defendant is a person with mental retardation, rather than a determination that the defendant was not a person with mental retardation, as in the original. The substitute removes a provision in the original requiring the court of criminal appeals to adopt rules as necessary for the administration of such an appeal.

C.S.H.B. 1152 adds provisions not in the original requiring the court to allow the jury in the sentencing phase of a trial to consider the evidence whether the defendant is a person with mental retardation offered by the attorney representing the state or the defendant, and authorizing the judge to sentence the defendant based on the jury's determination. The substitute adds a provision not in the original including evidence as to whether the defendant is a person with mental retardation as evidence authorized to be presented in a sentencing hearing for a defendant convicted of a capital offense in which the state seeks the death penalty.

C.S.H.B. 1152, in provisions of the Penal Code, differs from the original by prohibiting a person with mental retardation from being executed, whereas the original prohibits a person from being executed for an offense committed while the person was a person with mental retardation.

C.S.H.B. 1152 removes provisions in the original authorizing a person who is sentenced to death at a trial that commences before September 1, 2009, to submit to the convicting court a motion for a hearing on the issue of mental retardation and describing the procedures for such a hearing. The substitute removes a provision in the original providing that a finding that the person is competent to be executed does not preclude the person from filing a motion for a mental retardation determination hearing and is not admissible as evidence in such a hearing.