

By: Thompson, Dutton, Moody, et al.

H.B. No. 1152

Substitute the following for H.B. No. 1152:

By: Miklos

C.S.H.B. No. 1152

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. Title I, Code of Criminal Procedure, is amended by adding Chapter 46D to read as follows:

CHAPTER 46D. CAPITAL CASE: EFFECT OF MENTAL RETARDATION

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

Art. 46D.02. RESTRICTION ON DEATH PENALTY. Notwithstanding Section 19.03, Penal Code, a defendant convicted of a capital offense who is determined under this chapter to be a person with mental retardation may not be sentenced to death.

Art. 46D.03. INTENT TO RAISE MENTAL RETARDATION AS ISSUE.

(a) A defendant in a capital case may request:

(1) that the judge hearing the case hold a pre-trial hearing to determine whether the defendant is a person with mental retardation; and

(2) the submission of a special issue to the jury under Section 2(e)(2), Article 37.071.

(b) The defendant must file a notice of intent to request a pretrial hearing under Section 2(e)(2), Article 37.071 with the court and the attorney representing the state not later than the

60th day before the date the trial commences.

Art. 46D.04. PRETRIAL HEARING. A judge shall hold a pretrial hearing. After presentation of the evidence, a judge shall make a determination that the defendant is a person with mental retardation or is not a person with mental retardation.

Art. 46D.05. BURDEN OF PROOF. At a hearing under this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant is a person with mental retardation.

Art. 46D.06. SENTENCING ALTERNATIVES. (a) If the judge determines that the defendant was a person with mental retardation and the defendant is subsequently convicted of the offense, the judge may sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(b) If the judge determines that the defendant was not a person with mental retardation, the judge shall conduct the trial in the same manner as if a hearing under this chapter had not been held. At the trial of the offense:

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

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

(c) The judge must make the determination of mental retardation before the trial of the offense commences under Section 19.03, Penal Code.

Art. 46D.07. APPOINTMENT OF DISINTERESTED EXPERTS. On the

1 request of either party or on the judge's own motion, the judge
2 shall appoint two disinterested experts experienced and qualified
3 in the field of diagnosing mental retardation to independently
4 examine the defendant and determine whether the defendant is a
5 person with mental retardation. The judge may order the defendant
6 to submit to an examination by experts appointed under this
7 article.

8 Art. 46D.08. CONSTRUCTION WITH OTHER LAW. If the judge
9 determines that the defendant was not a person with mental
10 retardation and the defendant is subsequently convicted of the
11 offense, the fact finder's determination:

12 (1) does not preclude the defendant from filing a
13 motion under Article 46.05; and

14 (2) notwithstanding Article 46.05(j), is not
15 admissible as evidence in a hearing under Article 46.05.

16 Art. 46D.09. SENTENCING PHASE SPECIAL ISSUE FOR JURY. (a)
17 The court shall allow the jury to consider the evidence whether the
18 defendant is a person with mental retardation offered by the
19 attorney representing the state or the defendant.

20 (b)(1) If after considering all findings offered under
21 Subsection (a) the jury finds by a preponderance of the evidence
22 that the defendant is a person with mental retardation, the court
23 may sentence the defendant to imprisonment as provided by Section
24 2(j), Article 37.071.

25 (2) If the jury does not find that the defendant is a
26 person with mental retardation, the court may sentence the
27 defendant to death as provided by Section 2(g), Article 37.071.

1 Art. 46D.10. APPEAL. Upon conviction and sentencing, the
2 defendant and the state are entitled to appeal a finding of a court
3 described in this Article.

4 SECTION 2. Section 2(a)(1), Article 37.071, Code of
5 Criminal Procedure, is amended to read as follows:

6 (a)(1) If a defendant is tried for a capital offense in
7 which the state seeks the death penalty, on a finding that the
8 defendant is guilty of a capital offense, the court shall conduct a
9 separate sentencing proceeding to determine whether the defendant
10 shall be sentenced to death or life imprisonment without parole.
11 The proceeding shall be conducted in the trial court and, except as
12 provided by Article 44.29(c) of this code, before the trial jury as
13 soon as practicable. In the proceeding, evidence may be presented
14 by the state and the defendant or the defendant's counsel as to any
15 matter that the court deems relevant to sentence, including
16 evidence of the defendant's background or character or the
17 circumstances of the offense that mitigates against the imposition
18 of the death penalty, including evidence as to whether the
19 defendant is a person with mental retardation. This subdivision
20 shall not be construed to authorize the introduction of any
21 evidence secured in violation of the Constitution of the United
22 States or of the State of Texas. The state and the defendant or the
23 defendant's counsel shall be permitted to present argument for or
24 against sentence of death. The introduction of evidence of
25 extraneous conduct is governed by the notice requirements of
26 Section 3(g), Article 37.07. The court, the attorney representing
27 the state, the defendant, or the defendant's counsel may not inform

1 a juror or a prospective juror of the effect of a failure of a jury
2 to agree on issues submitted under Subsection (c) or (e).

3 SECTION 3. Chapter 6, Penal Code, is amended by adding
4 Section 6.05 to read as follows:

5 Sec. 6.05. MENTAL RETARDATION AFFECTING DEATH SENTENCE.

6 (a) In this section, "mental retardation" has the meaning assigned
7 by Section 591.003, Health and Safety Code.

8 (b) A person with mental retardation may not be punished by
9 death.

10 SECTION 4. The change in law made by this Act applies only
11 to a capital case that commences on or after the effective date of
12 this Act. A capital case that commences before the effective date of
13 this Act is covered by the law in effect when the case commenced,
14 and the former law is continued in effect for that purpose.

15 SECTION 5. This Act takes effect September 1, 2009.