

By: Gallego

H.B. No. 4466

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

CHAPTER . 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 defendant in a capital case may request the submission of a special issue under Section 2(e)(2), Article 37.071, only if the defendant files a notice of intent to request the submission with the court and the attorney representing the state not later than the 30th day before the date the trial commences.

Art. 46D.04. HEARING. (a) If a jury in a capital case returns an affirmative finding on each issue submitted under Section 2(b), Article 37.071, and a negative finding under Section 2(e)(2), Article 37.071, the defendant immediately after the jury

1 returns findings under Article 37.071 may file a petition for a
2 hearing described by Subsection (c).

3 (b) On receipt of a petition under Subsection (a), the court
4 shall appoint two disinterested experts experienced and qualified
5 in the field of diagnosing mental retardation to examine the
6 defendant and determine whether the defendant is a person with
7 mental retardation. The court shall order the defendant to submit
8 to an examination by experts appointed under this article.

9 (c) After the examination of the defendant by the experts
10 appointed under this article, the court in a hearing shall consider
11 the findings of those experts and the findings of other experts, if
12 any, offered by the attorney representing the state or the
13 defendant.

14 (d)(1) If after considering all findings offered under
15 Subsection (c) the court finds by a preponderance of the evidence
16 that the defendant is a person with mental retardation, the court
17 shall sentence the defendant to imprisonment as provided by Section
18 2(j), Article 37.071.

19 (2) If the court finds by a preponderance of the
20 evidence that the defendant is not a person with mental
21 retardation, the court shall sentence the defendant to death as
22 provided by Section 2(g), Article 37.071.

23 (3) If the court is unable to make a finding under
24 Subdivision (1) and is also unable to make a finding under
25 Subdivision (2), the court shall sentence the defendant to
26 imprisonment as provided by Section 2(j), Article 37.071.

27 Art. 46D.05. APPEAL. (a) The defendant and the state are

1 entitled to appeal a finding of a court described by Article
2 46D.04(d).

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

12 (a)(1) If a defendant is tried for a capital offense in
13 which the state seeks the death penalty, on a finding that the
14 defendant is guilty of a capital offense, the court shall conduct a
15 separate sentencing proceeding to determine whether the defendant
16 shall be sentenced to death or life imprisonment. The proceeding
17 shall be conducted in the trial court and, except as provided by
18 Article 44.29(c) [~~of this code~~], before the trial jury as soon as
19 practicable. In the proceeding, evidence may be presented by the
20 state and the defendant or the defendant's counsel as to any matter
21 that the court deems relevant to sentence, including evidence of
22 the defendant's background or character or the circumstances of the
23 offense that mitigates against the imposition of the death penalty
24 and including evidence as to whether the defendant is a person with
25 mental retardation. This subdivision shall not be construed to
26 authorize the introduction of any evidence secured in violation of
27 the Constitution of the United States or of the State of Texas. The

1 state and the defendant or the defendant's counsel shall be
2 permitted to present argument for or against sentence of death. The
3 court, the attorney representing the state, the defendant, or the
4 defendant's counsel may not inform a juror or a prospective juror of
5 the effect of a failure of a jury to agree on issues submitted under
6 Subsection (b) [~~(c)~~] or (e) [~~of this article~~].

7 SECTION 3. Section 2(e), Article 37.071, Code of Criminal
8 Procedure, is amended to read as follows:

9 (e)(1) The court shall instruct the jury that if the jury
10 returns an affirmative finding to each issue submitted under
11 Subsection (b) [~~of this article~~], it shall answer the following
12 issue:

13 Whether, taking into consideration all of the evidence,
14 including the circumstances of the offense, the defendant's
15 character and background, and the personal moral culpability of the
16 defendant, there is a sufficient mitigating circumstance or
17 circumstances to warrant that a sentence of life imprisonment
18 rather than a death sentence be imposed.

19 (2) If raised by the evidence, the court, on the
20 written request of the attorney representing the defendant, shall
21 instruct the jury that if the jury returns an affirmative finding to
22 each issue submitted under Subsection (b), the jury shall answer
23 the following issue:

24 Whether the defendant is a person with mental retardation.

25 (3) The court, on the written request of the attorney
26 representing the defendant, shall:

27 (A) instruct the jury that if the jury answers

1 that a circumstance or circumstances warrant that a sentence of
2 life imprisonment rather than a death sentence be imposed or
3 answers that the defendant is a person with mental retardation, the
4 court will sentence the defendant to imprisonment in the
5 institutional division of the Texas Department of Criminal Justice
6 for life; and

7 (B) charge the jury in writing as follows:

8 "Under the law applicable in this case, if the defendant is
9 sentenced to imprisonment in the institutional division of the
10 Texas Department of Criminal Justice for life, the defendant will
11 become eligible for release on parole, but not until the actual time
12 served by the defendant equals 40 years, without consideration of
13 any good conduct time. It cannot accurately be predicted how the
14 parole laws might be applied to this defendant if the defendant is
15 sentenced to a term of imprisonment for life because the
16 application of those laws will depend on decisions made by prison
17 and parole authorities, but eligibility for parole does not
18 guarantee that parole will be granted."

19 SECTION 4. Section 2(f), Article 37.071, Code of Criminal
20 Procedure, is amended to read as follows:

21 (f) The court shall charge the jury that in answering an
22 [~~the~~] issue submitted under Subsection (e) [~~of this article~~], the
23 jury:

24 (1) shall answer the issue "yes" or "no";

25 (2) may not answer the issue "no" unless it agrees
26 unanimously and may not answer the issue "yes" unless 10 or more
27 jurors agree;

1 (3) need not agree on what particular evidence
2 supports an affirmative finding on the issue; and

3 (4) in respect to the issue submitted under Subsection
4 (e)(1), shall consider mitigating evidence to be evidence that a
5 juror might regard as reducing the defendant's moral
6 blameworthiness.

7 SECTION 5. Section 2, Article 37.071, Code of Criminal
8 Procedure, is amended by amending Subsection (g) and adding
9 Subsection (j) to read as follows:

10 (g) If the jury returns an affirmative finding on each issue
11 submitted under Subsection (b) [~~of this article~~] and a negative
12 finding on each [~~an~~] issue submitted under Subsection (e) [~~of this~~
13 ~~article~~], except as provided by Subsection (j) the court shall
14 sentence the defendant to death. If the jury returns a negative
15 finding on any issue submitted under Subsection (b) [~~of this~~
16 ~~article~~] or an affirmative finding on any [~~an~~] issue submitted
17 under Subsection (e) [~~of this article~~] or is unable to answer any
18 issue submitted under Subsection (b) or (e) [~~of this article~~], the
19 court shall sentence the defendant to imprisonment [~~confinement~~] in
20 the institutional division of the Texas Department of Criminal
21 Justice for life.

22 (j) The court shall sentence the defendant to imprisonment
23 in the institutional division of the Texas Department of Criminal
24 Justice for life, if as provided by Article 46D.04 the court:

25 (1) finds by a preponderance of the evidence that the
26 defendant is a person with mental retardation; or

27 (2) is unable to find by a preponderance of the

1 evidence that the defendant is a person with mental retardation and
2 is also unable to find by a preponderance of the evidence that the
3 defendant is not a person with mental retardation.

4 SECTION 6. The change in law made by this Act applies only
5 to a capital case that commences on or after the effective date of
6 this Act. A capital case that commences before the effective date
7 of this Act is covered by the law in effect when the case commenced,
8 and the former law is continued in effect for that purpose.

9 SECTION 7. This Act takes effect September 1, 2009.