

By: Ellis

S.B. No. 167

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 1, 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. 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. 46D.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 commission of the offense. A defendant may waive the right to jury

1 determination under this subsection and request that the judge make
2 the determination.

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

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

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

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

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

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

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

1 convicted of the offense, Article 37.071 does not apply to the
2 defendant, and the judge shall sentence the defendant to
3 imprisonment in the Texas Department of Criminal Justice for life
4 without parole.

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

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

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

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

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

26 Art. 46D.07. INTERLOCUTORY APPEAL. (a) The defendant and
27 the state are entitled to appeal a determination described by

1 Article 46D.05(b).

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

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

9 Art. 46D.08. CONSTRUCTION WITH OTHER LAW. If the judge or
10 jury, whichever is the finder of fact, determines that the
11 defendant was not a person with mental retardation at the time of
12 the commission of the alleged offense and the defendant is
13 subsequently convicted of the offense, the fact finder's
14 determination:

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

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

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

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

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

26 (c) A person who is sentenced to death at a trial that
27 commences before September 1, 2009, may submit to the convicting

1 court a motion for a hearing on the issue of mental retardation, to
2 be conducted in the same manner as a hearing under Chapter 46D, Code
3 of Criminal Procedure. On a finding by the court that documentary
4 evidence supports an assertion that the person was a person with
5 mental retardation at the time of the commission of the alleged
6 offense, the court may order a hearing that, except for occurring
7 after sentencing, is conducted in the same manner as a hearing under
8 Chapter 46D, Code of Criminal Procedure. After making a finding as
9 to whether the person was a person with mental retardation, the
10 court shall immediately forward a copy of the finding to the court
11 of criminal appeals.

12 (d) A finding under this section that the person was not a
13 person with mental retardation at the time of the commission of the
14 alleged offense does not preclude the person from filing a motion
15 under Article 46.05, Code of Criminal Procedure, and is not
16 admissible as evidence in a hearing under that article. A finding
17 under Article 46.05 that the person is competent to be executed does
18 not preclude the person from filing a motion under this section and
19 is not admissible as evidence in a hearing under this section.

20 SECTION 3. Chapter 46D, Code of Criminal Procedure, as
21 added by this Act, applies only to a trial that commences on or
22 after the effective date of this Act, regardless of whether the
23 alleged offense was committed before, on, or after that date.

24 SECTION 4. This Act takes effect September 1, 2009.