

By: Hinojosa

S.B. No. 1139

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 to make a finding that 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 and schedule a hearing on the issue of mental retardation.

Art. 46D.04. BURDEN OF PROOF. (a) At a hearing under this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant was a person with mental

1 retardation at the time of the commission of the alleged offense.

2 (b) The state may offer evidence to rebut the defendant's  
3 claim.

4 Art. 46D.05. SENTENCING ALTERNATIVES. (a) If the judge  
5 finds that the defendant was a person with mental retardation at the  
6 time of the commission of the alleged offense and the defendant is  
7 subsequently convicted of the offense, Article 37.071 does not  
8 apply to the defendant, and the judge shall sentence the defendant  
9 to imprisonment in the Texas Department of Criminal Justice for  
10 life without parole.

11 (b) If the judge finds that the defendant was not a person  
12 with mental retardation at the time of the commission of the alleged  
13 offense, the judge shall conduct the trial in the same manner as if  
14 a hearing under this chapter had not been held. At the trial of the  
15 offense:

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

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

21 (c) The judge must, before the trial of the offense under  
22 Section 19.03, Penal Code, commences, make the finding described by  
23 Subsection (b).

24 Art. 46D.06. APPOINTMENT OF DISINTERESTED EXPERTS. On the  
25 request of either party or on the judge's own motion, the judge  
26 shall appoint disinterested experts experienced and qualified in  
27 the field of diagnosing mental retardation to examine the defendant

1 and determine whether the judge should make a finding that the  
2 defendant is a person with mental retardation. The judge may order  
3 the defendant to submit to an examination by experts appointed  
4 under this article.

5 Art. 46D.07. INTERLOCUTORY APPEAL. (a) The defendant and  
6 the state are entitled to appeal a finding described by Article  
7 46D.05(b).

8 (b) The court of criminal appeals shall adopt rules as  
9 necessary for the administration of the appeals process established  
10 by this article.

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

15 Art. 46D.08. CONSTRUCTION WITH OTHER LAW. If the judge  
16 finds that the defendant was not a person with mental retardation at  
17 the time of the commission of the alleged offense and the defendant  
18 is subsequently convicted of the offense, the judge's finding:

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

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

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

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

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

3       (c) A person who is sentenced to death at a trial that  
4 commences before September 1, 2009, may submit to the convicting  
5 court a motion for a hearing on the issue of mental retardation, to  
6 be conducted in the same manner as a hearing under Chapter 46D, Code  
7 of Criminal Procedure. On a finding by the court that documentary  
8 evidence supports an assertion that the person was a person with  
9 mental retardation at the time of the commission of the alleged  
10 offense, the court may order a hearing that, except for occurring  
11 after sentencing, is conducted in the same manner as a hearing under  
12 Chapter 46D, Code of Criminal Procedure. After making a finding as  
13 to whether the person was a person with mental retardation, the  
14 court shall immediately forward a copy of the finding to the court  
15 of criminal appeals.

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

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

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