

By: Thompson of Harris

H.B. No. 2458

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting seeking or imposing the death penalty on the basis of a person's race.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 1, Code of Criminal Procedure, is amended by adding Chapter 53 to read as follows:

CHAPTER 53. PROCEDURE IN CERTAIN DEATH PENALTY CASES

Art. 53.01. RACIAL DISCRIMINATION PROHIBITED. No person shall be subject to or given a sentence of death or executed under any judgment that was sought or obtained on the basis of race.

Art. 53.02. PROOF OF RACIAL DISCRIMINATION; PROCEDURE. (a) To be eligible to file a motion under this chapter, the defendant must knowingly and voluntarily waive any objection to the imposition of a sentence to life imprisonment without parole based on any common law, statutory law, or provision of the federal or state constitution that would otherwise require that the defendant be eligible for parole. The waiver must be in writing, signed by the defendant, and included in the motion seeking relief under this article.

(b) If the court determines that a hearing is required under Subsection (h), the court shall make an oral inquiry of the defendant on the record to confirm the defendant's waiver to the imposition of a sentence to life imprisonment without parole. If the court grants relief under this article, the judgment must

1 include the finding that the defendant waived any objection to the  
2 imposition of a sentence of life imprisonment without parole.

3 (c) The defendant has the burden of proving by a  
4 preponderance of the evidence that race was a significant factor in  
5 the decision to seek or impose the sentence of death in the county  
6 at the time the death sentence was sought or imposed. For the  
7 purposes of this article, "the time the death sentence was sought or  
8 imposed" is the period from 10 years before the date of the  
9 commission of the offense to the date that is two years after the  
10 date the death sentence is imposed.

11 (d) The state may offer evidence in rebuttal of the  
12 defendant's claims or evidence, including statistical evidence.  
13 The court may consider evidence of the impact on the defendant's  
14 trial of any program the purpose of which is to eliminate race as a  
15 factor in seeking or imposing a sentence of death.

16 (e) Evidence to establish a finding that race was a  
17 significant factor in the decision to seek or impose the sentence of  
18 death in the county at the time the death sentence was sought or  
19 imposed may include:

20 (1) statistical evidence derived from the county where  
21 the defendant was sentenced to death; or

22 (2) other evidence specific to the defendant's case  
23 showing that the race of the defendant was a significant factor in  
24 the decision to seek or impose the sentence of death, including  
25 evidence showing that race was a significant factor in the decision  
26 to exercise peremptory challenges during jury selection.

27 (f) The evidence under Subsection (e)(2) may include sworn

1 testimony of an attorney, prosecutor, law enforcement officer,  
2 judicial official, juror, or other person involved in the criminal  
3 justice system. Testimony by a juror under this subsection must  
4 comply with Rule 606(b), Texas Rules of Evidence.

5 (g) Statistical evidence alone is not sufficient to  
6 establish that race was a significant factor in the decision to seek  
7 or impose the sentence of death.

8 (h) A motion filed under this article must state with  
9 particularity how the evidence supports a claim that race was a  
10 significant factor in the decision to seek or impose the sentence of  
11 death in the defendant's case in the county at the time the death  
12 sentence was sought or imposed. The claim must be raised by the  
13 defendant at the pretrial conference or hearing under Article 28.01  
14 or in any postconviction proceeding. If the court finds that the  
15 defendant's motion fails to state a sufficient claim under this  
16 article, the court shall dismiss the claim without an evidentiary  
17 hearing. If the court finds that the defendant's motion states a  
18 sufficient claim under this article, the court shall set a hearing  
19 on the claim and may prescribe a time before the hearing for each  
20 party to present a summary of the evidence the party intends to  
21 introduce.

22 (i) If the court finds that race was a significant factor in  
23 a decision to seek or impose the sentence of death in the  
24 defendant's case at the time the death sentence was sought or  
25 imposed, the court shall order that a death sentence not be sought,  
26 or that the death sentence imposed by the judgment be vacated and  
27 the defendant resentenced to life imprisonment without the

1 possibility of parole.

2        (j) Filing a motion under this article does not limit or  
3 restrict the defendant's eligibility for any other postconviction  
4 procedure authorized by this code, including another action under  
5 this chapter. The provisions of Article 28.01 prohibiting further  
6 adjudication of certain matters not raised at a pretrial hearing do  
7 not apply to matters related to a defendant's motion under this  
8 article.

9        SECTION 2. Chapter 53, Code of Criminal Procedure, as added  
10 by this Act, applies to a defendant alleged to have committed a  
11 capital offense regardless of whether the alleged offense was  
12 committed before, on, or after the effective date of this Act.

13        SECTION 3. This Act takes effect September 1, 2013.