

By: Ellis

S.B. No. 750

A BILL TO BE ENTITLED

AN ACT

relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.

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 INTELLECTUAL DISABILITY

Art. 46D.01. DEFINITIONS. In this chapter:

(1) "Adaptive behavior" means the effectiveness with or degree to which a person meets generally recognized standards of personal independence and social responsibility by using learned conceptual, social, and practical skills in everyday life.

(2) "Intellectual disability" means significant limitations in intellectual functioning that are concurrent with significant deficits in adaptive behavior, including conceptual, social, and practical skills, if those characteristics originate during the developmental period.

(3) "Person with an intellectual disability" means a person with significant limitations in intellectual functioning that are concurrent with significant deficits in adaptive behavior, including conceptual, social, and practical skills, if those characteristics originated during the person's developmental period, as determined by a clinician in the exercise of clinical judgment.

1 (4) "Significant limitations in intellectual
2 functioning" refers to a measured intelligence quotient on a
3 standardized psychometric instrument of two or more standard
4 deviations below the age-group mean for the test used.

5 Art. 46D.02. RESTRICTION ON DEATH PENALTY. A defendant who
6 is a person with an intellectual disability may not be sentenced to
7 death.

8 Art. 46D.03. HEARING. (a) Counsel for a defendant in a
9 capital case, not later than the 30th day before the trial
10 commences, may request that the judge hearing the case hold a
11 hearing to determine whether the defendant is a person with an
12 intellectual disability.

13 (b) If the defendant does not give timely notice as provided
14 by Subsection (a), the court may not hold a hearing described by
15 this article unless the court finds that good cause existed for
16 failure to give timely notice.

17 (c) On receipt of a request under Subsection (a), the judge
18 shall notify all interested parties of the request. If the judge
19 determines that there is evidence to support a finding that the
20 defendant is a person with an intellectual disability, a jury shall
21 be impaneled to determine that issue. A defendant may waive the
22 right to jury determination under this subsection and request that
23 the judge make the determination if the court and the prosecuting
24 attorney do not object.

25 (d) Instructions to the jury submitting the issue of whether
26 the defendant is a person with an intellectual disability shall
27 require the jury to state its finding on that issue in the verdict.

1 (e) If the jury is unable to agree on a unanimous verdict
2 after a reasonable opportunity to deliberate, the judge shall
3 declare a mistrial, discharge the jury, and impanel another jury to
4 determine whether the defendant is a person with an intellectual
5 disability.

6 (f) At the conclusion of the hearing under this article, the
7 judge shall dismiss the jury, and the members of that jury may not
8 serve on a jury in the subsequent trial of the case.

9 Art. 46D.04. BURDEN OF PROOF. (a) At a hearing under this
10 chapter, the burden is on the defendant to prove by a preponderance
11 of the evidence that the defendant is a person with an intellectual
12 disability.

13 (b) A defendant who has an intelligence quotient of 75 or
14 less is presumed to be a person with an intellectual disability.

15 (c) A determination made by a qualified institution or
16 individual, including a psychologist, an educational institution,
17 a local mental health and mental retardation authority, the United
18 States Social Security Administration, a court, or another
19 governmental agency or social service provider that a defendant is
20 a person with an intellectual disability, as defined by the law of
21 this state or any other state, creates an evidentiary presumption
22 that the defendant is a person with an intellectual disability.

23 (d) The state may offer evidence to rebut the defendant's
24 claim or a presumption under Subsection (b) or (c).

25 Art. 46D.05. SENTENCING ALTERNATIVES. (a) If the judge or
26 jury, whichever is the finder of fact, determines that the
27 defendant is a person with an intellectual disability and the

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

5 (b) If the judge or jury, whichever is the finder of fact,
6 determines that the defendant is not a person with an intellectual
7 disability, the judge shall conduct the trial in the same manner as
8 if a hearing under this chapter had not been held. At the trial of
9 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 is not a person with an intellectual disability; and

13 (2) the defendant may present at trial evidence of
14 intellectual 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 alleged offense commences, make a
17 determination under Subsection (a) or (b).

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

25 Art. 46D.07. INTERLOCUTORY APPEAL. (a) The defendant and
26 the state are entitled to appeal a determination described by
27 Article 46D.05(b).

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

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

8 Art. 46D.08. CONSTRUCTION WITH OTHER LAW. If the judge or
9 jury, whichever is the finder of fact, determines that the
10 defendant is not a person with an intellectual disability and the
11 defendant is subsequently convicted of the alleged offense, the
12 fact finder's determination:

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

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

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

19 Sec. 6.05. INTELLECTUAL DISABILITY AFFECTING DEATH
20 SENTENCE. (a) In this section, "intellectual disability" and
21 "person with an intellectual disability" have the meanings assigned
22 by Article 46D.01, Code of Criminal Procedure.

23 (b) A person with an intellectual disability may not be
24 punished by death.

25 (c) A person who is sentenced to death at a trial that
26 commences before September 1, 2013, may submit to the convicting
27 court a motion for a hearing on the issue of whether the person is a

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

11 (d) A finding under this section that the person is not a
12 person with an intellectual disability does not preclude the person
13 from filing a motion under Article 46.05, Code of Criminal
14 Procedure, and is not admissible as evidence in a hearing under that
15 article. A finding under Article 46.05 that the person is competent
16 to be executed does not preclude the person from filing a motion
17 under this section and is not admissible as evidence in a hearing
18 under this section.

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

23 SECTION 4. This Act takes effect September 1, 2013.