

By: West

S.B. No. 1270

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) The defendant has the burden of proving by a preponderance of the evidence that race was a significant factor in the decision to seek or impose the sentence of death in the county at the time the death sentence was sought or imposed.

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

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

1 (1) statistical evidence derived from the county where
2 the defendant was sentenced to death, including evidence that death
3 sentences were sought or imposed more frequently as punishment for
4 capital offenses against persons of one race than as punishment for
5 capital offenses against persons of another race; or

6 (2) other evidence specific to the defendant's case
7 showing that the race of the defendant was a significant factor in
8 the decision to seek or impose the sentence of death, including
9 evidence showing that race was a significant factor in the decision
10 to exercise peremptory challenges during jury selection.

11 (d) The evidence under Subsection (c)(2) may include sworn
12 testimony of an attorney, prosecutor, law enforcement officer,
13 judicial officer, juror, or other person involved in the criminal
14 justice system. Testimony by a juror under this subsection must
15 comply with Rule 606(b), Texas Rules of Evidence.

16 (e) A motion filed under this article must state with
17 particularity how the evidence supports a claim that race was a
18 significant factor in the decision to seek or impose the sentence of
19 death in the county at the time the death sentence was sought or
20 imposed. The claim must be raised by the defendant at the pretrial
21 conference or hearing under Article 28.01 and may be raised by the
22 defendant in any postconviction proceeding. The court shall set a
23 hearing on the claim and may prescribe a time before the hearing for
24 each party to present a summary of the evidence the party intends to
25 introduce.

26 (f) If the court finds that race was a significant factor in
27 a decision to seek or impose the sentence of death at the time the

1 death sentence was sought or imposed, the court shall order that a
2 death sentence not be sought, or that the death sentence imposed by
3 the judgment be vacated and the defendant resentenced to life
4 imprisonment without the possibility of parole.

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

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

16 (b) Notwithstanding Article 53.02(e), Code of Criminal
17 Procedure, as added by this Act, prescribing the proceedings at
18 which a claim under Article 53.02 may be raised, a person sentenced
19 to death before the effective date of this Act who is not otherwise
20 eligible to file a motion under this chapter in a postconviction
21 proceeding may file a separate motion under Article 53.02, Code of
22 Criminal Procedure, as added by this Act, but not after the first
23 anniversary of the effective date of this Act.

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