

By: Rose

H.B. No. 136

A BILL TO BE ENTITLED

AN ACT

relating to the applicability of the death penalty to a capital offense committed by a person with severe mental illness.

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 SEVERE MENTAL ILLNESS

Art. 46D.001. DEFINITION. In this chapter, "person with severe mental illness" means a person who has a psychiatric illness listed in Section 1355.001(1), Insurance Code, and as a result of that illness has active psychotic symptoms that substantially impair the person's capacity to:

(1) appreciate the nature, consequences, or wrongfulness of the person's conduct;

(2) exercise rational judgment in relation to the person's conduct; or

(3) conform the person's conduct to the requirements of the law.

Art. 46D.002. RESTRICTION ON DEATH PENALTY. A defendant who at the time of commission of a capital offense was a person with severe mental illness may not be sentenced to death.

Art. 46D.003. HEARING. (a) Not later than the 30th day before the date trial begins, counsel for a defendant in a capital case may file notice requesting that the judge hearing the case hold

1 a hearing to determine whether the defendant was a person with
2 severe mental illness at the time of the commission of the alleged
3 offense.

4 (b) Notice filed under Subsection (a) must be accompanied by
5 evidence supporting the claim that the defendant was a person with
6 severe mental illness at the time of the commission of the alleged
7 offense.

8 (c) If the defendant does not file timely notice as provided
9 by Subsection (a), the court may not hold a hearing under this
10 article unless the court finds that good cause existed for failure
11 to file timely notice.

12 (d) On receipt of notice under Subsection (a), the judge
13 shall notify all interested parties of the notice. If the judge
14 determines that the notice was timely and was accompanied by the
15 supporting evidence required by Subsection (b), a jury shall be
16 impaneled to determine whether the defendant was a person with
17 severe mental illness at the time of the commission of the alleged
18 offense. A defendant may waive the right to jury determination
19 under this subsection and request that the judge make the
20 determination if the judge and the prosecuting attorney do not
21 object.

22 (e) If the judge finds that the notice was not timely filed
23 or was not accompanied by the supporting evidence required by
24 Subsection (b), the judge shall:

25 (1) deny the defendant's request;

26 (2) make written findings of fact explaining the
27 grounds for denial;

1 (3) provide the findings of fact to all interested
2 parties; and

3 (4) file a copy of the findings of fact with the papers
4 in the case.

5 (f) Instructions submitted to the jury on the issue of
6 severe mental illness shall require the jury to state in its verdict
7 whether the defendant was a person with severe mental illness at the
8 time of the commission of the alleged offense.

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

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

17 Art. 46D.004. BURDEN OF PROOF. At a hearing under this
18 chapter, the burden is on the defendant to prove by a preponderance
19 of the evidence that the defendant was a person with severe mental
20 illness at the time of the commission of the alleged offense.

21 Art. 46D.005. PRESUMPTION OF SEVERE MENTAL ILLNESS. (a) A
22 determination made before the commission of the alleged offense by
23 a qualified institution or individual, including a psychologist, an
24 educational institution, a local intellectual and developmental
25 disability authority, the United States Social Security
26 Administration, a court, or another governmental agency or social
27 service provider, that a defendant had symptoms of a psychiatric

1 illness listed in Section 1355.001(1), Insurance Code, creates an
2 evidentiary presumption that the defendant was a person with severe
3 mental illness at the time of the commission of the alleged offense.

4 (b) The state may offer evidence to rebut a presumption of
5 severe mental illness.

6 Art. 46D.006. SENTENCING ALTERNATIVES. (a) If the judge or
7 jury, whichever is the finder of fact, determines that the
8 defendant was a person with severe mental illness at the time of the
9 commission of the alleged offense and the defendant is subsequently
10 convicted of capital murder, Article 37.071 does not apply to the
11 defendant, and the judge shall sentence the defendant to
12 imprisonment in the Texas Department of Criminal Justice for life
13 without parole.

14 (b) If the judge or jury, whichever is the finder of fact,
15 determines that the defendant was not a person with severe mental
16 illness at the time of the commission of the alleged offense, the
17 judge shall conduct the trial in the same manner as if a hearing
18 under this chapter had not been held. At the trial of the offense:

19 (1) the jury may not be informed of the fact that the
20 judge or a jury has determined under this chapter that the defendant
21 was not a person with severe mental illness; and

22 (2) the defendant may present evidence of mental
23 disability as permitted by Article 37.071.

24 (c) The judge or jury, whichever is the finder of fact, must
25 make any determination described by this article before the date
26 the trial of the alleged capital offense begins.

27 Art. 46D.007. APPOINTMENT OF DISINTERESTED EXPERTS. (a) On

1 the request of either party or on the judge's own motion, the judge
2 shall appoint one or more disinterested experts experienced and
3 qualified in the field of diagnosing mental illness to examine the
4 defendant and determine whether the defendant is a person with
5 severe mental illness.

6 (b) The judge may, after giving proper notice to the
7 defendant, order the defendant to submit to an examination by
8 experts appointed under this article.

9 (c) An examination described by this article:

10 (1) must be narrowly tailored to determine whether the
11 defendant has the specific illness claimed; and

12 (2) may not include:

13 (A) any discussion of the alleged offense;

14 (B) personality or intellectual testing; or

15 (C) a future danger assessment.

16 (d) An expert appointed under this article must provide the
17 counsel for the defendant with all underlying notes and data
18 related to the examination.

19 Art. 46D.008. STATEMENTS NOT ADMISSIBLE. No statement made
20 by the defendant in a hearing or examination under this chapter may
21 be admitted into evidence during the trial of the alleged offense.

22 Art. 46D.009. INTERLOCUTORY APPEAL. Neither the defendant
23 nor the state is entitled to an interlocutory appeal of a
24 determination made under this chapter.

25 SECTION 2. Chapter 46D, Code of Criminal Procedure, as
26 added by this Act, applies only to a trial that begins on or after
27 the effective date of this Act, regardless of whether the alleged

1 offense was committed before, on, or after that date.

2 SECTION 3. This Act takes effect December 1, 2017.