

By: Rose, Coleman

H.B. No. 3080

Substitute the following for H.B. No. 3080:

By: Moody

C.S.H.B. No. 3080

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 one of the following disorders: schizophrenia, schizo-affective disorder, or bipolar disorder, and as a result of that disorder has active psychotic symptoms that substantially impair the person's capacity to:

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

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

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) Counsel for a defendant in a capital case, not later than the 30th day before the date trial begins, may file notice requesting that the judge hearing the case hold a hearing to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged

1 offense.

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

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

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

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

23 (1) deny the defendant's request;

24 (2) make written findings of fact explaining the
25 grounds for denial;

26 (3) provide the findings of fact to all interested
27 parties; and

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

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

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

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

15 Art. 46D.004. BURDEN OF PROOF. (a) At a hearing under this
16 chapter, the burden is on the defendant to prove by clear and
17 convincing evidence that the defendant was a person with severe
18 mental illness at the time of the commission of the alleged offense.

19 Art. 46D.005. SENTENCING ALTERNATIVES. (a) If the judge or
20 jury, whichever is the finder of fact, determines that the
21 defendant was a person with severe mental illness at the time of the
22 commission of the alleged offense and the defendant is subsequently
23 convicted of capital murder, Article 37.071 does not apply to the
24 defendant, and the judge shall sentence the defendant to
25 imprisonment in the Texas Department of Criminal Justice for life
26 without parole.

27 (b) If the judge or jury, whichever is the finder of fact,

1 determines that the defendant was not a person with severe mental
2 illness at the time of the commission of the alleged offense, the
3 judge shall conduct the trial in the same manner as if a hearing
4 under this chapter had not been held. At the trial of the offense:

5 (1) the jury may not be informed of the fact that the
6 judge or a jury has determined under this article that the defendant
7 was not a person with severe mental illness; and

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

10 (c) The judge or jury, whichever is the finder of fact,
11 must, before the trial of the offense under Section 19.03, Penal
12 Code, commences, make the determination described by Subsection
13 (b).

14 Art. 46D.006. APPOINTMENT OF DISINTERESTED EXPERTS. (a)
15 On the request of either party or on the judge's own motion, the
16 judge shall appoint one or more disinterested experts experienced
17 and qualified in the field of diagnosing mental illness to examine
18 the defendant and determine whether the defendant is a person with
19 severe mental illness.

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

23 (c) An examination described by this article:

24 (1) must be narrowly tailored to determine if the
25 defendant has the specific illness claimed; and

26 (2) may not include:

27 (C) a future danger assessment.

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

4 Art. 46D.007. STATEMENTS NOT ADMISSIBLE. No statement made
5 by the defendant in a hearing or examination under this chapter may
6 be admitted into evidence during the trial of the alleged offense.

7 Art. 46D.008. INTERLOCUTORY APPEAL. Neither the defendant
8 nor the state is entitled to an interlocutory appeal of a
9 determination made under this chapter.

10 SECTION 2. Chapter 46D, Code of Criminal Procedure, as
11 added by this Act, applies only to a trial that commences on or
12 after the effective date of this Act, regardless of whether the
13 alleged offense was committed before, on, or after that date.

14 SECTION 3. This Act takes effect September 1, 2017.