

By: Rose

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 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) 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

1 hold 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 alleged offense.

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

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

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

24 (1) deny the defendant's request;

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

27 (3) provide the findings of fact to all interested

1 parties; and

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

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

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

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

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

20 (b) A determination made before the commission of the
21 alleged offense by a qualified institution or individual, including
22 a psychologist, an educational institution, a local intellectual
23 disability authority, the United States Social Security
24 Administration, a court, or another governmental agency or social
25 service provider that a defendant had symptoms of a psychiatric
26 illness listed in Section 1355.001(1), Insurance Code, creates an
27 evidentiary presumption that the defendant was a person with severe

1 mental illness at the time of the commission of the alleged offense.

2 (c) The state may offer evidence to rebut a presumption of
3 severe mental illness.

4 Art. 46D.005. SENTENCING ALTERNATIVES. (a) If the judge or
5 jury, whichever is the finder of fact, determines that the
6 defendant was a person with severe mental illness at the time of the
7 commission of the alleged offense and the defendant is subsequently
8 convicted of capital murder, Article 37.071 does not apply to the
9 defendant, and the judge shall sentence the defendant to
10 imprisonment in the Texas Department of Criminal Justice for life
11 without parole.

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

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

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

22 (c) The judge or jury, whichever is the finder of fact,
23 must, before the trial of the offense under Section 19.03, Penal
24 Code, commences, make the determination described by Subsection
25 (b).

26 Art. 46D.006. APPOINTMENT OF DISINTERESTED EXPERTS. (a) On
27 the request of either party or on the judge's own motion, the judge

1 shall appoint one or more disinterested experts experienced and
2 qualified in the field of diagnosing mental illness to examine the
3 defendant and determine whether the defendant is a person with
4 severe mental illness.

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

8 (c) An examination described by this article:

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

11 (2) may not include:

12 (A) any discussion of the alleged offense;

13 (B) personality or intellectual testing; or

14 (C) a future danger assessment.

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

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

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

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

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