86R4918 ADM-F

By:  Miles S.B. No. 418

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.001.  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 significantly below average general intellectual functioning that is concurrent with significant deficits in adaptive behavior and originates during the developmental period.

(3)  "Significantly below average general intellectual functioning" refers to a measured intelligence quotient on a standardized psychometric instrument of two or more standard deviations below the age-group mean for the test used, considering the standard error of measurement applicable to the instrument.

Art. 46D.002.  RESTRICTION ON DEATH PENALTY. A defendant who is a person with an intellectual disability may not be sentenced to death.

Art. 46D.003.  HEARING; DETERMINATION. (a)  The attorney for a defendant in a capital case, not later than the 30th day before the date trial is scheduled to begin, may request in writing that the judge hearing the case hold a hearing to determine whether the defendant is a person with an intellectual disability.

(b)  A request under Subsection (a) must be accompanied by evidence supporting the claim that the defendant is a person with an intellectual disability.

(c)  On receipt of a request under this article, if the judge determines that the request was timely filed and was accompanied by evidence sufficient to support a finding that the defendant is a person with an intellectual disability, the judge shall hold a hearing to determine the issue.

(d)  For purposes of Subsection (c), evidence sufficient to support a finding that the defendant is a person with an intellectual disability may consist solely of a representation from a credible source that the defendant may be a person with an intellectual disability.

Art. 46D.004.  APPOINTMENT OF DISINTERESTED EXPERT. (a)  On the request of either party or on the judge's own motion, the judge shall appoint a disinterested expert experienced and qualified in the field of diagnosing intellectual disabilities to examine the defendant and determine whether the defendant is a person with an intellectual disability.

(b)  The judge may order the defendant to submit to an examination by an expert appointed under this article.

(c)  An examination described by this article must be narrowly tailored to determine whether the defendant has an intellectual disability.

Art. 46D.005.  BURDEN OF PROOF. (a)  At a hearing under this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant is a person with an intellectual disability.

(b)  The state may offer evidence to rebut evidence offered by the defendant.

Art. 46D.006.  PREVAILING MEDICAL STANDARDS. Evidence offered by either party for purposes of a hearing under this chapter must be consistent with prevailing medical standards for the diagnosis of intellectual disabilities.

Art. 46D.007.  FINDING OF FACT RELATED TO INTELLECTUAL DISABILITY. (a)  Not later than the 120th day after the conclusion of a hearing under this chapter, the judge shall issue a written finding of fact as to whether the defendant is a person with an intellectual disability. The finding of fact must explain the judge's reasoning and cite evidence in the record.

(b)  If the judge finds that the defendant is a person with an intellectual disability and the defendant is subsequently convicted of a capital offense, Article 37.071 does not apply to the defendant, and the judge shall sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(c)  If the judge does not find that the defendant is a person with an intellectual disability, the judge shall conduct the trial of the offense in the same manner as if a hearing under this chapter had not been held. At the trial:

(1)  the jury may not be informed of the fact that the judge held a hearing under this article; and

(2)  the defendant may present evidence of intellectual disability as otherwise permitted by law.

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

SECTION 3.  This Act takes effect September 1, 2019.