

By: Thompson of Harris, Leach, Moody, White,
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H.B. No. 1139

Substitute the following for H.B. No. 1139:

By: Moody

C.S.H.B. No. 1139

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the applicability of the death penalty to a capital
3 offense committed by a person with an intellectual disability.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Article 44.01(a), Code of Criminal Procedure, is
6 amended to read as follows:

7 (a) The state is entitled to appeal an order of a court in a
8 criminal case if the order:

9 (1) dismisses an indictment, information, or
10 complaint or any portion of an indictment, information, or
11 complaint;

12 (2) arrests or modifies a judgment;

13 (3) grants a new trial;

14 (4) sustains a claim of former jeopardy;

15 (5) grants a motion to suppress evidence, a
16 confession, or an admission, if jeopardy has not attached in the
17 case and if the prosecuting attorney certifies to the trial court
18 that the appeal is not taken for the purpose of delay and that the
19 evidence, confession, or admission is of substantial importance in
20 the case; or

21 (6) is issued under Chapter 46E or 64.

22 SECTION 2. Title 1, Code of Criminal Procedure, is amended
23 by adding Chapter 46E to read as follows:

24 CHAPTER 46E. CAPITAL CASE: EFFECT OF INTELLECTUAL DISABILITY

1 Art. 46E.001. DEFINITIONS. In this chapter:

2 (1) "Deficits in adaptive behavior" means sufficient
3 deficits in adaptive functioning under prevailing medical
4 standards for determining intellectual disability.

5 (2) "Developmental period" means the developmental
6 period of a person's life, as determined by prevailing medical
7 standards.

8 (3) "Intellectual disability" means significantly
9 subaverage general intellectual functioning that is concurrent
10 with deficits in adaptive behavior and originates during the
11 developmental period.

12 (4) "Significantly subaverage general intellectual
13 functioning" refers to a measured intelligence quotient on a
14 standardized psychometric instrument of approximately two or more
15 standard deviations below the age-group mean for the test used,
16 considering the standard error of measurement applicable to the
17 instrument.

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

21 Art. 46E.003. HEARING; DETERMINATION. (a) The attorney
22 for a defendant in a capital case, not later than the 180th day
23 before the date the trial is scheduled to begin, may request in
24 writing that the judge hearing the case hold a hearing to determine
25 whether the defendant is a person with an intellectual disability.

26 (b) A request under Subsection (a) must be accompanied by
27 evidence from a credible source indicating that the defendant is a

1 person with an intellectual disability.

2 (c) On receipt of a request under this article, if the judge
3 determines that the request was timely filed and was accompanied by
4 any evidence from a credible source indicating that the defendant
5 is a person with an intellectual disability, the judge shall hold a
6 hearing to determine the issue not later than the 120th day before
7 the date the trial is scheduled to begin.

8 (d) If the attorney for a defendant files an untimely
9 request under Subsection (a), or after the time for filing a request
10 under Subsection (a) otherwise presents evidence that the defendant
11 is a person with an intellectual disability, the judge may hold a
12 hearing under this chapter outside the presence of the jury if the
13 attorney can show good cause for not filing a request within the
14 time limit prescribed by Subsection (a).

15 (e) For purposes of Subsection (d), an attorney
16 demonstrates good cause for not filing a request within the time
17 limit prescribed by Subsection (a) if the attorney:

18 (1) represents to the court that the attorney has
19 represented the defendant in the case for fewer than six months; or

20 (2) demonstrates that the attorney exercised
21 reasonable diligence to obtain evidence required by Subsection (b)
22 but was unable to do so for reasons beyond the attorney's control.

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

1 intellectual disability.

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

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

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

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

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

17 Art. 46E.007. DETERMINATION AND ORDER RELATED TO
18 INTELLECTUAL DISABILITY. (a) As soon as practicable but not later
19 than the 30th day after the conclusion of a hearing under this
20 chapter, the judge shall determine whether the defendant is a
21 person with an intellectual disability and issue an appropriate
22 order. The order must contain findings of fact explaining the
23 judge's reasoning for the determination and citing evidence in the
24 record.

25 (b) If the judge does not determine that the defendant is a
26 person with an intellectual disability, the judge shall conduct the
27 trial of the offense in the same manner as if a hearing under this

1 chapter had not been held. At the trial:

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

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

6 SECTION 3. The changes in law made by this Act apply only to
7 a trial that commences on or after the effective date of this Act,
8 regardless of whether the alleged offense was committed before, on,
9 or after that date.

10 SECTION 4. This Act takes effect September 1, 2019.