

By: Thompson of Harris

H.B. No. 1139

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.

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

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

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

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

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

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

27 (c) An examination described by this article must be

1 narrowly tailored to determine whether the defendant has an
2 intellectual disability.

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

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

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

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

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

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

1 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 article; and

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

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

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