

By: Rose

H.B. No. 1936

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 schizophrenia, a schizoaffective disorder, or a 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 the commission of a capital offense was a person with severe mental illness 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 was a person with severe mental illness at the time of

1 the commission of the alleged offense.

2 (b) A request 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 commission of the alleged  
5 offense.

6 (c) If the defendant does not submit the request within the  
7 period required by Subsection (a), the judge may not hold a hearing  
8 under this article unless the judge finds that good cause existed  
9 for the failure to timely request the hearing.

10 (d) On receipt of a request under Subsection (a), the judge  
11 shall notify the attorney representing the state of the request and  
12 allow the attorney an opportunity to respond. If the judge finds  
13 that the request was timely filed under Subsection (a) and was  
14 accompanied by the supporting evidence described by Subsection (b),  
15 the judge shall hold a hearing to determine whether the defendant  
16 was a person with severe mental illness at the time of the  
17 commission of the alleged offense.

18 (e) If the judge finds that the request was not timely filed  
19 under Subsection (a) or was not accompanied by the supporting  
20 evidence described by Subsection (b), the judge shall:

21 (1) deny the defendant's request;

22 (2) make written findings of fact explaining the  
23 grounds for the denial;

24 (3) provide the findings of fact to the defendant and  
25 the attorney representing the state; and

26 (4) file a copy of the findings of fact with the papers  
27 in the case.

1        (f) At the conclusion of the hearing under this article, the  
2 judge shall make the determination described by Subsection (d).

3        Art. 46D.004. BURDEN OF PROOF. At a hearing under Article  
4 46D.003, the defendant must prove by clear and convincing evidence  
5 that the defendant was a person with severe mental illness at the  
6 time of the commission of the alleged offense.

7        Art. 46D.005. EFFECT OF DETERMINATION ON SUBSEQUENT TRIAL.

8        (a) If the judge determines after a hearing under Article 46D.003  
9 that the defendant was a person with severe mental illness at the  
10 time of the commission of an alleged capital offense, and the  
11 defendant is subsequently convicted of that offense, Article 37.071  
12 does not apply to the defendant, and the judge shall sentence the  
13 defendant to imprisonment in the Texas Department of Criminal  
14 Justice for life without parole.

15        (b) If the judge determines after a hearing under Article  
16 46D.003 that the defendant was not a person with severe mental  
17 illness at the time of the commission of an alleged capital offense,  
18 the judge shall conduct the trial of that offense in the same manner  
19 as if a hearing under Article 46D.003 had not been held. At the  
20 trial of the offense the jury may not be informed of the fact that  
21 the judge has determined that the defendant was not a person with  
22 severe mental illness, and that determination does not prohibit the  
23 defendant from introducing evidence of a mental disability as  
24 otherwise permitted by law.

25        Art. 46D.006. APPOINTMENT OF DISINTERESTED EXPERT. (a) On  
26 the request of either party or on the judge's own motion, the judge  
27 shall appoint a disinterested expert experienced and qualified in

1 the field of diagnosing mental illness to examine the defendant and  
2 determine whether the defendant is a person with severe mental  
3 illness.

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

7 (c) An examination described by this article:

8 (1) must be narrowly tailored to determine whether the  
9 defendant has the specific disorder claimed; and

10 (2) may not include an assessment of the risk of danger  
11 the defendant may pose to any person.

12 (d) An expert appointed under this article must provide the  
13 defendant's attorney with all notes and data from the examination.

14 Art. 46D.007. STATEMENT NOT ADMISSIBLE. A statement made  
15 by the defendant in a hearing or examination under this chapter may  
16 not be admitted into evidence during the trial of the offense.

17 Art. 46D.008. INTERLOCUTORY APPEAL. Neither the defendant  
18 nor the state is entitled to make an interlocutory appeal of a  
19 determination made under Article 46D.003.

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

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