

# SENATE AMENDMENTS

## 2<sup>nd</sup> Printing

By: Thompson of Harris, Leach, Moody, White,  
Walle, et al.

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, Code of Criminal Procedure, is  
6 amended by amending Subsection (a) and adding Subsection (a-1) to  
7 read as follows:

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

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

13 (2) arrests or modifies a judgment;

14 (3) grants a new trial;

15 (4) sustains a claim of former jeopardy;

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

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

23 (a-1) The state's appeal of an order issued under Chapter  
24 46E is a direct appeal to the court of criminal appeals. The court

1 of criminal appeals shall expeditiously review the appeal.

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

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

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

6 (1) "Deficits in adaptive behavior" means sufficient  
7 deficits in adaptive functioning under prevailing medical  
8 standards for determining intellectual disability.

9 (2) "Developmental period" means the developmental  
10 period of a person's life, as determined by prevailing medical  
11 standards.

12 (3) "Intellectual disability" means significantly  
13 subaverage general intellectual functioning that is concurrent  
14 with deficits in adaptive behavior and originates during the  
15 developmental period.

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

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

25 Art. 46E.003. HEARING; DETERMINATION. (a) The attorney  
26 for a defendant in a capital case, not later than the first  
27 anniversary of the date of the defendant's indictment, may request

1 in writing that the judge hearing the case hold a hearing to  
2 determine whether the defendant is a person with an intellectual  
3 disability.

4 (b) On receipt of a request under this article, if the judge  
5 determines that the request was timely filed, the judge shall hold a  
6 hearing to determine the issue. The hearing must be held:

7 (1) not earlier than 180 days after the date that the  
8 written request was submitted under Subsection (a); and

9 (2) not later than the 120th day before the date the  
10 trial is scheduled to begin.

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

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

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

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

1 intellectual disability.

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

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

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

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

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

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

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

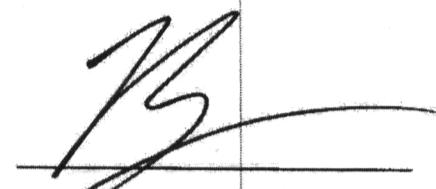
1           SECTION 3. The changes in law made by this Act apply only to  
2 a trial that commences on or after the effective date of this Act,  
3 regardless of whether the alleged offense was committed before, on,  
4 or after that date.

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

ADOPTED

MAY 22 2019

*Leroy Spaw*  
Secretary of the Senate

By: 

H.B. No. 1139

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

By: SENATOR WHITMIRE

C.S. H.B. No. 1139

*John Whitmire*

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

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

8 Art. 46E.001. RESTRICTION ON DEATH PENALTY. A defendant  
9 who is a person with an intellectual disability may not be sentenced  
10 to death.

11 Art. 46E.002. PREVAILING MEDICAL STANDARDS. Evidence  
12 offered by either party for purposes of determining whether a  
13 defendant is a person with an intellectual disability must be  
14 consistent with prevailing medical standards for the diagnosis of  
15 intellectual disabilities.

16 SECTION 2. The changes in law made by this Act apply only to  
17 a trial that commences on or after the effective date of this Act,  
18 regardless of whether the alleged offense was committed before, on,  
19 or after that date.

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

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 23, 2019**

**TO:** Honorable Dennis Bonnen, Speaker of the House, House of Representatives

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1139** by Thompson, Senfronia (Relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Code of Criminal Procedure to prohibit the sentencing to death a defendant with an intellectual disability and require that evidence offered by either party for the purpose of determining if a defendant has a intellectual disability must be consistent with prevailing medical standards.

Based on the analysis of the Office of Court Administration, the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

The bill would take effect September 1, 2019, and apply to trials that begin on or after that date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** WP, SD, LBO, MW, DA

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 17, 2019**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1139** by Thompson, Senfronia (relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.), **Committee Report 2nd House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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Based on the analysis of the Office of Court Administration, the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

The bill would take effect September 1, 2019, and apply to trials that begin on or after that date.

**Local Government Impact**

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** WP, LBO, MW, DA



**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**May 7, 2019**

**TO:** Honorable John Whitmire, Chair, Senate Committee on Criminal Justice

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1139** by Thompson, Senfronia (Relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Code of Criminal Procedure to prohibit the sentencing to death a defendant with an intellectual disability, which the bill defines as significantly below average general intellectual functioning that is concurrent with significant deficits in adaptive behavior and originates during the developmental period.

The bill would allow the attorney of a defendant in a capital case to request in writing, no later than the first anniversary of the date of the defendant's indictment, a hearing to determine whether the defendant has an intellectual disability as defined in the bill and, upon request, appoint an expert to examine the defendant to determine whether the defendant has an intellectual disability. Evidence offered during the hearing must comport with prevailing medical standards for diagnosis of intellectual disabilities, and not later than 30 days of the end of the hearing, the judge must issue written findings explaining the judge's reasoning, citing evidence, and determining whether the defendant is or is not a person with an intellectual disability.

Based on the analysis of the Office of Court Administration, the bill may result in more hearings but the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

The bill would take effect September 1, 2019, and apply to trials that begin on or after that date.

**Local Government Impact**

According to the Office of Court Administration, costs associated with the provisions of the bill may increase certain cost to counties, but since experts are already being utilized in cases that meet the criteria, no significant fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** WP, LBO, MW, DA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**March 27, 2019**

**TO:** Honorable Nicole Collier, Chair, House Committee on Criminal Jurisprudence

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1139** by Thompson, Senfronia (relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.), **Committee Report 1st House, Substituted**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
--

The bill would amend the Code of Criminal Procedure to prohibit the sentencing to death a defendant with an intellectual disability, which the bill defines as significantly below average general intellectual functioning that is concurrent with significant deficits in adaptive behavior and originates during the developmental period.

The bill would allow the attorney of a defendant in a capital case to request in writing, no later than 180 days before the trial, a hearing to determine whether the defendant has an intellectual disability as defined in the bill and, upon request, appoint an expert to examine the defendant to determine whether the defendant has an intellectual disability. Evidence offered during the hearing must comport with prevailing medical standards for diagnosis of intellectual disabilities, and within 30 days of the end of the hearing, the judge must issue written findings explaining the judge's reasoning, citing evidence, and determining whether the defendant is or is not a person with an intellectual disability.

Based on the analysis of the Office of Court Administration, the bill may result in more hearings but the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

The bill would take effect September 1, 2019, and apply to trials that begin on or after that date.

**Local Government Impact**

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**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** WP, LBO, MW, DA

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 86TH LEGISLATIVE REGULAR SESSION**

**March 17, 2019**

**TO:** Honorable Nicole Collier, Chair, House Committee on Criminal Jurisprudence

**FROM:** John McGeady, Assistant Director    Sarah Keyton, Assistant Director  
Legislative Budget Board

**IN RE: HB1139** by Thompson, Senfronia (Relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.), **As Introduced**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend the Code of Criminal Procedure to prohibit the sentencing to death a defendant with an intellectual disability, which the bill defines as significantly below average general intellectual functioning that is concurrent with significant deficits in adaptive behavior and originates during the developmental period.

The bill would allow the attorney of a defendant in a capital case to request in writing, no later than 30 days before the trial, a hearing to determine whether the defendant has an intellectual disability as defined in the bill and, upon request, appoint an expert to examine the defendant to determine whether the defendant has an intellectual disability. Evidence offered during the hearing must comport with prevailing medical standards for diagnosis of intellectual disabilities, and within 120 days of the end of the hearing, the judge must issue written findings explaining the judge's reasoning, citing evidence, and determining whether the defendant is or is not a person with an intellectual disability.

Based on the analysis of the Office of Court Administration, the bill may result in more hearings but the duties and responsibilities associated with implementing the provisions of the bill could be accomplished using existing resources.

The bill would take effect and apply to trials that begin on or after September 1, 2019.

**Local Government Impact**

According to the Office of Court Administration, costs associated with the provisions of the bill may increase certain cost to counties, but since experts are already being utilized in cases that meet the criteria, no significant fiscal impact is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council

**LBB Staff:** WP, LBO, MW, DA