

## **BILL ANALYSIS**

H.B. 140  
By: Rose  
Criminal Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding the use of the death penalty for offenders with severe and persistent mental illnesses, such as schizophrenia, schizoaffective disorder, or bipolar disorder. It has been suggested that those afflicted by such disorders have a diminished capacity to appreciate the consequences of their actions or to participate fully in their own defense. H.B. 140 seeks to address this issue by providing protections for such offenders on the determination that the offender had a severe mental illness with active psychotic symptoms at the time of the offense.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

H.B. 140 amends the Code of Criminal Procedure to prohibit the imposition of the death penalty on a defendant who was a person with severe mental illness at the time of the commission of a capital offense. The bill requires a defendant planning to offer evidence of such to file with the court not later than the 30th day before the date the case is set for trial a notice of intention to offer that evidence. The notice must contain a certification that a copy of the notice has been served on the state's attorney. If the notice is not timely filed, the evidence is not admissible at the guilt or innocence stage unless the court finds that good cause exists for failure to give notice. The bill requires the following with regard to the issue of whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense:

- the issue to be submitted to the jury only if supported by evidence;
- the jury to determine the issue and return a special verdict that is separate from its verdict on the issue of guilt or innocence; and
- the defendant to prove that the defendant was a person with severe mental illness by clear and convincing evidence.

H.B. 140 requires the judge, on their own motion or on either party's request, to appoint a disinterested expert experienced and qualified in the field of diagnosing mental illness to examine the defendant and determine whether the defendant is a person with severe mental illness. After notifying the defendant, the judge may order the defendant to submit to such an examination. The bill sets out the requirements for the examination and requires an appointed expert to provide the defendant's attorney and the state's attorney with all notes and data from the examination. The bill prohibits a defendant's statement in such an examination from being

admitted into evidence during the trial of the offense.

H.B. 140 makes the statutory procedures for capital cases inapplicable if the jury determines that the defendant was a person with severe mental illness at the time of the commission of an alleged capital offense and the defendant is convicted of that offense and requires the judge to sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole. If the jury determines that the defendant was not such a person and the defendant is convicted of that offense, the judge is required to conduct a sentencing proceeding in accordance with the capital case procedures. During that proceeding, evidence of a mental disability of the defendant may be presented to the extent permitted by the procedures.

H.B. 140 defines "person with severe mental illness" as 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 appreciate the nature, consequences, or wrongfulness of the person's conduct or to exercise rational judgment in relation to the person's conduct.

H.B. 140 applies only to a trial that commences on or after the bill's effective date, regardless of whether the alleged offense was committed before, on, or after that date.

**EFFECTIVE DATE**

September 1, 2021.