87R2794 ADM-D

By:  Rose, Thompson of Harris, Coleman, Leach, H.B. No. 140

     Krause

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: 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.  NOTICE OF INTENT TO RAISE ISSUE OF SEVERE MENTAL ILLNESS. (a) A defendant planning to offer evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense must file with the court a notice of the defendant's intention to offer that evidence.

(b)  The notice must:

(1)  contain a certification that a copy of the notice has been served on the attorney representing the state; and

(2)  be filed not later than the 30th day before the date the case is set for trial.

Art. 46D.004.  EFFECT OF FAILURE TO GIVE NOTICE. Unless notice is timely filed under Article 46D.003, evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense is not admissible at the guilt or innocence stage unless the court finds that good cause exists for failure to give notice.

Art. 46D.005.  DETERMINATION OF ISSUE BY JURY. (a) The issue of whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense shall be submitted to the jury only if the issue is supported by evidence. The jury shall determine the issue and must return a special verdict on the issue that is separate from the jury's verdict on the issue of guilt or innocence.

(b)  The defendant must prove by clear and convincing evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

Art. 46D.006.  APPOINTMENT OF DISINTERESTED EXPERT. (a) On the request of either party or on the judge's own motion, the judge shall 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.

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

(c)  An examination described by this article:

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

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

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

(e)  A statement made by the defendant in an examination under this article may not be admitted into evidence during the trial of the offense.

Art. 46D.007.  EFFECT OF DETERMINATION. (a) 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, Article 37.071 does not apply to the defendant, and the judge shall sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(b)  If the jury determines that the defendant was not 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, the judge shall conduct a sentencing proceeding in accordance with Article 37.071. Evidence of a mental disability of the defendant may be presented during that proceeding to the extent permitted by Article 37.071.

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

SECTION 3.  This Act takes effect September 1, 2021.