

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

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.

1 (b) The notice must:

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

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

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

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

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

22 Art. 46D.006. APPOINTMENT OF DISINTERESTED EXPERT. (a) On
23 the request of either party or on the judge's own motion, the judge
24 shall appoint a disinterested expert experienced and qualified in
25 the field of diagnosing mental illness to examine the defendant and
26 determine whether the defendant is a person with severe mental
27 illness.

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

4 (c) An examination described by this article:

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

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

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

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

15 Art. 46D.007. EFFECT OF DETERMINATION. (a) If the jury
16 determines that the defendant was a person with severe mental
17 illness at the time of the commission of an alleged capital offense,
18 and the defendant is convicted of that offense, Article 37.071 does
19 not apply to the defendant, and the judge shall sentence the
20 defendant to imprisonment in the Texas Department of Criminal
21 Justice for life without parole.

22 (b) If the jury determines that the defendant was not a
23 person with severe mental illness at the time of the commission of
24 an alleged capital offense and the defendant is convicted of that
25 offense, the judge shall conduct a sentencing proceeding in
26 accordance with Article 37.071. Evidence of a mental disability of
27 the defendant may be presented during that proceeding to the extent

1 permitted by Article 37.071.

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

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