

By: Thompson of Harris

H.B. No. 4308

A BILL TO BE ENTITLED

AN ACT

relating to prohibiting seeking or imposing the death penalty on the basis of a person's race or ethnicity.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Article 11.071, Code of Criminal Procedure, is amended by adding Section 10A to read as follows:

Sec. 10A. CLAIM INVOLVING RACE OR ETHNICITY.

Notwithstanding any other provision of this article, a defendant who is raising a habeas corpus claim involving racial or ethnic bias or discrimination or other impermissible use of race or ethnicity in the defendant's case may present any evidence authorized for use under Article 53.02, including statistical evidence derived from this state or from the county where the defendant was convicted, in support of the claim. The convicting court shall hold a hearing on the claim in the same manner as a hearing is held under Article 53.02.

SECTION 2. Chapter 44, Code of Criminal Procedure, is amended by adding Article 44.26 to read as follows:

Art. 44.26. CLAIM INVOLVING RACE OR ETHNICITY IN CAPITAL CASE. (a) This article applies only to an appeal in a capital case in which the defendant was sentenced to death.

(b) Notwithstanding any other law, a defendant who has raised a claim involving racial or ethnic bias or discrimination or other impermissible use of race or ethnicity in the defendant's

1 case may present any evidence authorized for use under Article
2 53.02, including statistical evidence derived from this state or
3 from the county where the defendant was convicted, in support of the
4 claim.

5 SECTION 3. Title 1, Code of Criminal Procedure, is amended
6 by adding Chapter 53 to read as follows:

7 CHAPTER 53. PROCEDURE IN CERTAIN DEATH PENALTY CASES

8 Art. 53.01. RACIAL OR ETHNIC DISCRIMINATION PROHIBITED. No
9 person shall be subject to or given a sentence of death or executed
10 under any judgment that was sought or obtained on the basis of race
11 or ethnicity.

12 Art. 53.02. PROOF OF RACIAL OR ETHNIC DISCRIMINATION;
13 PROCEDURE. (a) To be eligible to file a motion under this chapter,
14 the defendant must knowingly and voluntarily waive any objection to
15 the imposition of a sentence to life imprisonment without parole
16 based on any common law, statutory law, or provision of the federal
17 or state constitution that would otherwise require that the
18 defendant be eligible for parole. The waiver must be in writing,
19 signed by the defendant, and included in the motion seeking relief
20 under this article.

21 (b) If the court determines that a hearing is required under
22 Subsection (h), the court shall make an oral inquiry of the
23 defendant on the record to confirm the defendant's waiver to the
24 imposition of a sentence to life imprisonment without parole. If
25 the court grants relief under this article, the judgment must
26 include the finding that the defendant waived any objection to the
27 imposition of a sentence of life imprisonment without parole.

1 (c) The defendant has the burden of proving by a
2 preponderance of the evidence that race or ethnicity was a
3 significant factor in the decision to seek or impose the sentence of
4 death in the county at the time the death sentence was sought or
5 imposed. For the purposes of this article, "the time the death
6 sentence was sought or imposed" is the period from 10 years before
7 the date of the commission of the offense to the date that is two
8 years after the date the death sentence is imposed.

9 (d) The state may offer evidence in rebuttal of the
10 defendant's claims or evidence, including statistical evidence.
11 The court may consider evidence of the impact on the defendant's
12 trial of any program the purpose of which is to eliminate race or
13 ethnicity as a factor in seeking or imposing a sentence of death.

14 (e) Evidence to establish a finding that race or ethnicity
15 was a significant factor in the decision to seek or impose the
16 sentence of death in the county at the time the death sentence was
17 sought or imposed may include:

18 (1) statistical evidence derived from this state or
19 from the county where the defendant was sentenced to death; or

20 (2) other evidence specific to the defendant's case
21 showing that the race or ethnicity of the defendant was a
22 significant factor in the decision to seek or impose the sentence of
23 death, including:

24 (A) evidence showing that race or ethnicity was a
25 significant factor in the decision to exercise peremptory
26 challenges during jury selection; or

27 (B) evidence of discriminatory sentiments from

1 any participant in the trial, including a juror, the judge, or a
2 prosecutor.

3 (f) The evidence under Subsection (e)(2) may include sworn
4 testimony of an attorney, prosecutor, law enforcement officer,
5 judicial official, juror, or other person involved in the criminal
6 justice system. Testimony by a juror under this subsection must
7 comply with Rule 606(b), Texas Rules of Evidence.

8 (g) Statistical evidence alone is not sufficient to
9 establish that race or ethnicity was a significant factor in the
10 decision to seek or impose the sentence of death.

11 (h) A motion filed under this article must state with
12 particularity how the evidence supports a claim that race or
13 ethnicity was a significant factor in the decision to seek or impose
14 the sentence of death in the defendant's case in the county at the
15 time the death sentence was sought or imposed. The claim must be
16 raised by the defendant at the pretrial conference or hearing under
17 Article 28.01 or in any postconviction proceeding. If the court
18 finds that the defendant's motion fails to state a sufficient claim
19 under this article, the court shall dismiss the claim without an
20 evidentiary hearing. If the court finds that the defendant's
21 motion states a sufficient claim under this article, the court
22 shall set a hearing on the claim and may prescribe a time before the
23 hearing for each party to present a summary of the evidence the
24 party intends to introduce.

25 (i) If the court finds that race or ethnicity was a
26 significant factor in a decision to seek or impose the sentence of
27 death in the defendant's case at the time the death sentence was

1 sought or imposed, the court shall order that a death sentence not
2 be sought, or that the death sentence imposed by the judgment be
3 vacated and the defendant resentenced to life imprisonment without
4 the possibility of parole.

5 (j) Filing a motion under this article does not limit or
6 restrict the adjudication of any future constitutional claims made
7 by the defendant or limit or restrict the defendant's eligibility
8 for any other postconviction procedure authorized by this code,
9 including another action under this chapter. The provisions of
10 Article 28.01 prohibiting further adjudication of certain matters
11 not raised at a pretrial hearing do not apply to matters related to
12 a defendant's motion under this article.

13 SECTION 4. The change in law made by this Act applies to a
14 defendant alleged to have committed a capital offense regardless of
15 whether the alleged offense was committed before, on, or after the
16 effective date of this Act.

17 SECTION 5. This Act takes effect September 1, 2021.