

BILL ANALYSIS

H.B. 381
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In June of 2002, the U.S. Supreme Court ruled in *Atkins v. Virginia* that executing people with intellectual disabilities violated the Eighth Amendment prohibition against cruel and unusual punishment, and states were left to develop appropriate ways to enforce this constitutional prohibition. Years later, the Supreme Court declared Texas' standard for assessing intellectual disability in capital cases unconstitutional, as the state had been using obsolete medical standards for determining whether those convicted of a capital offense are exempt from the death penalty because of an intellectual disability.

Currently, there is no uniform pretrial procedure in Texas to determine whether a capital defendant has an intellectual disability, and this system has created, in the words of the Texas Court of Criminal Appeals (CCA), "disparity" and "uncertainty" that do not protect defendants with an intellectual disability or the state. The CCA further called for legislation to create universal standards for determining intellectual disability across the state. H.B. 381 seeks to address these issues by prohibiting the sentencing to death of a defendant who is a person with an intellectual disability and by creating a hearing process for purposes of determining whether a capital defendant is a person with an intellectual disability.

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. 381 amends the Code of Criminal Procedure to prohibit the sentencing to death of a defendant who is a person with an intellectual disability and to provide for a hearing process to determine whether the defendant is such a person. The bill authorizes the defendant's attorney in a capital case, not later than the first anniversary of the date of the defendant's indictment, to request in writing that the judge hearing the case hold such a hearing. On receipt of that request and if the judge determines the request was timely filed, the judge must hold the hearing within the following period:

- not earlier than 180 days after the date that the written request was submitted; and
- not later than the 120th day before the date the trial is scheduled to begin.

If a defendant's attorney files an untimely request, or after the prescribed time limit otherwise presents evidence that the defendant is a person with an intellectual disability, the judge may hold a hearing in accordance with the bill's provisions if the attorney can show good cause for

not filing a request within the prescribed time limit. The bill prohibits such a hearing from being held before a jury empaneled in the case.

H.B. 381 provides for the following:

- the required appointment of a disinterested expert to examine the defendant and determine whether the defendant is a person with an intellectual disability;
- an examination of the defendant by the expert, if authorized by the judge;
- the narrow tailoring of such an examination to whether the defendant has an intellectual disability;
- a defendant's burden to prove by a preponderance of the evidence that they are a person with an intellectual disability at a hearing and the state's authority to rebut evidence offered by the defendant; and
- the applicability of prevailing medical standards for evidence offered by either party for purposes of a hearing.

H.B. 381 requires a judge to empanel a jury solely for the purpose of determining whether the defendant is a person with an intellectual disability in the same manner as a jury is empaneled for a felony other than a capital felony. The bill requires the judge to instruct the jury to state in its verdict whether the defendant is a person with an intellectual disability after the conclusion of the hearing, and, if the jury unanimously determines that the defendant is a person with an intellectual disability, to issue an appropriate order that the defendant is such a person. If the jury does not determine that the defendant is a person with an intellectual disability, the judge must conduct the trial of the offense in the same manner as if the hearing had not been held. The bill prohibits the jury at that trial from being informed of the fact that the judge held the hearing and authorizes the defendant to present evidence of intellectual disability as otherwise permitted by law. The bill authorizes the defendant, with the consent of the state's attorney, to waive a hearing before a jury and request a hearing before the judge outside the presence of a jury. If the hearing before a jury is waived, the hearing must be held before the judge, outside of the jury's presence.

H.B. 381 requires the judge, not later than the 30th day after the conclusion of the hearing, to determine whether the defendant is a person with an intellectual disability and to issue an appropriate order, which must contain findings of fact explaining the judge's reasoning for the determination and citing evidence in the record. If the judge does not make such a determination, the judge must conduct the trial of the offense in the same manner as if the hearing had not been held. The bill prohibits the jury at that trial from being informed of the fact that the judge held the hearing and authorizes the defendant to present evidence of intellectual disability as otherwise permitted by law.

H.B. 381 entitles the state to appeal a court order issued under the bill's provisions related to intellectual disability. The appeal is a direct appeal to the court of criminal appeals, which must expeditiously review the appeal.

H.B. 381 defines the following terms:

- "intellectual disability" as significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period;
- "deficits in adaptive behavior" as sufficient deficits in adaptive functioning under prevailing medical standards for determining intellectual disability;
- "developmental period" as the developmental period of a person's life, as determined by prevailing medical standards; and
- "significantly subaverage general intellectual functioning" as a measured intelligence quotient on a standardized psychometric instrument of approximately two or more standard deviations below the age-group mean for the test used, considering the standard error of measurement applicable to the instrument.

H.B. 381 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, 2023.