88R1329 ADM-F

By:  Thompson of Harris, Cook H.B. No. 381

A BILL TO BE ENTITLED

AN ACT

relating to the applicability of the death penalty to a capital offense committed by a person with an intellectual disability.

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

SECTION 1.  Article 44.01, Code of Criminal Procedure, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a)  The state is entitled to appeal an order of a court in a criminal case if the order:

(1)  dismisses an indictment, information, or complaint or any portion of an indictment, information, or complaint;

(2)  arrests or modifies a judgment;

(3)  grants a new trial;

(4)  sustains a claim of former jeopardy;

(5)  grants a motion to suppress evidence, a confession, or an admission, if jeopardy has not attached in the case and if the prosecuting attorney certifies to the trial court that the appeal is not taken for the purpose of delay and that the evidence, confession, or admission is of substantial importance in the case; or

(6)  is issued under Chapter 46D or 64.

(a-1)  The state's appeal of an order issued under Chapter 46D is a direct appeal to the court of criminal appeals. The court of criminal appeals shall expeditiously review the appeal.

SECTION 2.  Title 1, Code of Criminal Procedure, is amended by adding Chapter 46D to read as follows:

CHAPTER 46D. CAPITAL CASE: EFFECT OF INTELLECTUAL DISABILITY

Art. 46D.001.  DEFINITIONS. In this chapter:

(1)  "Deficits in adaptive behavior" means sufficient deficits in adaptive functioning under prevailing medical standards for determining intellectual disability.

(2)  "Developmental period" means the developmental period of a person's life, as determined by prevailing medical standards.

(3)  "Intellectual disability" means significantly subaverage general intellectual functioning that is concurrent with deficits in adaptive behavior and originates during the developmental period.

(4)  "Significantly subaverage general intellectual functioning" refers to 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.

Art. 46D.002.  RESTRICTION ON DEATH PENALTY. A defendant who is a person with an intellectual disability may not be sentenced to death.

Art. 46D.003.  HEARING; DETERMINATION. (a)  The attorney for a defendant in a capital case, not later than the first anniversary of the date of the defendant's indictment, may request in writing that the judge hearing the case hold a hearing to determine whether the defendant is a person with an intellectual disability.

(b)  On receipt of a request under this article, if the judge determines that the request was timely filed, the judge shall hold a hearing in accordance with this chapter to determine the issue. The hearing must be held:

(1)  not earlier than 180 days after the date that the written request was submitted under Subsection (a); and

(2)  not later than the 120th day before the date the trial is scheduled to begin.

(c)  If the attorney for a defendant files an untimely request under Subsection (a), or after the time for filing a request under Subsection (a) otherwise presents evidence that the defendant is a person with an intellectual disability, the judge may hold a hearing in accordance with this chapter if the attorney can show good cause for not filing a request within the time limit prescribed by Subsection (a). The hearing may not be held before a jury empaneled in the case.

Art. 46D.004.  APPOINTMENT OF DISINTERESTED EXPERT. (a) After the judge receives a request under Article 46D.003, and 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 intellectual disabilities to examine the defendant and determine whether the defendant is a person with an intellectual disability.

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

(c)  An examination described by this article must be narrowly tailored to determine whether the defendant has an intellectual disability.

Art. 46D.005.  BURDEN OF PROOF. (a)  At a hearing under this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant is a person with an intellectual disability.

(b)  The state may offer evidence to rebut evidence offered by the defendant.

Art. 46D.006.  PREVAILING MEDICAL STANDARDS. Evidence offered by either party for purposes of a hearing under this chapter must be consistent with prevailing medical standards for the diagnosis of intellectual disabilities.

Art. 46D.007.  DETERMINATION BY JURY AND ORDER RELATED TO INTELLECTUAL DISABILITY. (a) Except as provided by Subsection (f), the judge shall empanel a jury solely for the purpose of determining whether the defendant is a person with an intellectual disability. The judge shall empanel the jury in the same manner as a jury is empaneled by the court for a felony other than a capital felony.

(b)  After the conclusion of the hearing, the judge shall instruct the jury to state in its verdict whether the defendant is a person with an intellectual disability.

(c)  The jury's verdict that the defendant is a person with an intellectual disability must be unanimous.

(d)  If the jury determines that the defendant is a person with an intellectual disability, the judge shall issue an appropriate order in accordance with this chapter that the defendant is a person with an intellectual disability.

(e)  If the jury does not determine that the defendant is a person with an intellectual disability, the judge shall conduct the trial of the offense in the same manner as if a hearing under this chapter had not been held. At the trial:

(1)  the trial jury may not be informed of the fact that a hearing was held under this chapter; and

(2)  the defendant may present evidence of intellectual disability as otherwise permitted by law.

(f)  The defendant may, with the consent of the attorney representing the state, waive a hearing before a jury and request a hearing before the judge under Article 46D.008.

Art. 46D.008.  DETERMINATION BY JUDGE AND ORDER RELATED TO INTELLECTUAL DISABILITY. (a) If a hearing before a jury is waived in accordance with Article 46D.007(f), the hearing must be held before the judge, outside the presence of a jury.

(b)  As soon as practicable but not later than the 30th day after the conclusion of a hearing under this article, the judge shall determine whether the defendant is a person with an intellectual disability and issue an appropriate order. The order must contain findings of fact explaining the judge's reasoning for the determination and citing evidence in the record.

(c)  If the judge does not determine that the defendant is a person with an intellectual disability, the judge shall conduct the trial of the offense in the same manner as if a hearing under this chapter had not been held. At the trial:

(1)  the jury may not be informed of the fact that the judge held a hearing under this chapter; and

(2)  the defendant may present evidence of intellectual disability as otherwise permitted by law.

SECTION 3.  The changes in law made by this Act apply 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 4.  This Act takes effect September 1, 2023.