

By: Thompson of Harris, Leach, Cook, et al.

H.B. No. 381

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

13 (2) arrests or modifies a judgment;

14 (3) grants a new trial;

15 (4) sustains a claim of former jeopardy;

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

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

23 (a-1) The state's appeal of an order issued under Chapter
24 46D is a direct appeal to the court of criminal appeals. The court

1 of criminal appeals shall expeditiously review the appeal.

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

4 CHAPTER 46D. CAPITAL CASE: EFFECT OF INTELLECTUAL DISABILITY

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

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

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

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

16 (4) "Significantly subaverage general intellectual
17 functioning" refers to a measured intelligence quotient on a
18 standardized psychometric instrument of approximately two or more
19 standard deviations below the age-group mean for the test used,
20 considering the standard error of measurement applicable to the
21 instrument.

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

25 Art. 46D.003. HEARING; DETERMINATION. (a) The attorney
26 for a defendant in a capital case, not later than the first
27 anniversary of the date of the defendant's indictment, may request

1 in writing that the judge hearing the case hold a hearing to
2 determine whether the defendant is a person with an intellectual
3 disability.

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

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

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

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

20 Art. 46D.004. APPOINTMENT OF DISINTERESTED EXPERT. (a)
21 After the judge receives a request under Article 46D.003, and on the
22 request of either party or on the judge's own motion, the judge
23 shall appoint a disinterested expert experienced and qualified in
24 the field of diagnosing intellectual disabilities to examine the
25 defendant and determine whether the defendant is a person with an
26 intellectual disability.

27 (b) The judge may order the defendant to submit to an

1 examination by an expert appointed under this article.

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

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

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

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

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

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

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

27 (d) If the jury determines that the defendant is a person

1 with an intellectual disability, the judge shall issue an
2 appropriate order in accordance with this chapter that the
3 defendant is a person with an intellectual disability.

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

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

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

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

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

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

25 (c) If the judge does not determine that the defendant is a
26 person with an intellectual disability, the judge shall conduct the
27 trial of the offense in the same manner as if a hearing under this

1 chapter had not been held. At the trial:

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

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

6 SECTION 3. The changes in law made by this Act apply only to
7 a trial that commences on or after the effective date of this Act,
8 regardless of whether the alleged offense was committed before, on,
9 or after that date.

10 SECTION 4. This Act takes effect September 1, 2023.