By: Miles S.B. No. 409

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;

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

(7) grants bail, in an amount considered insufficient by the prosecuting attorney, to a defendant who:

(A) is charged with an offense under any of the following sections of the Penal Code:

(i) Section 19.02 (murder);

(ii) Section 19.03 (capital murder);

(iii) Section 22.02 (aggravated assault) if:

(a) the offense was committed under Subsection (a)(1); or

(b) the defendant used a firearm, club, knife, or explosive weapon, as those terms are defined by Section 46.01, Penal Code, during the commission of the assault;

(iv) Section 20.04 (aggravated kidnapping);

(v) Section 29.03 (aggravated robbery);

(vi) Section 22.021 (aggravated sexual assault);

(vii) Section 21.11 (indecency with a child);

(viii) Section 20A.02 (trafficking of persons); or

(ix) Section 20A.03 (continuous trafficking of persons); or

(B) is charged with an offense punishable as a felony and was released on bail for an offense punishable as a felony at the time the instant offense was committed.

(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 to determine the issue. The hearing must be held:

(1) not earlier than the 180th day 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 under this chapter outside the presence of the jury if the attorney can show good cause for not filing a request within the time limit prescribed by Subsection (a).

Art. 46D.004. APPOINTMENT OF DISINTERESTED EXPERT. (a) 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 AND ORDER RELATED TO INTELLECTUAL DISABILITY. (a) As soon as practicable but not later than the 30th day after the conclusion of a hearing under this chapter, 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.

(b) 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, 2027.