

SUBJECT: Prohibiting death penalty for crimes by person with severe mental illness

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Collier, Cason, Crockett, Hinojosa, A. Johnson, Vasut

1 nay — Cook

2 absent — K. Bell, Murr

WITNESSES: For — Jennifer Toon, Coalition of Texans with Disabilities; Brenda Richardson Rowe, Concord Church/Harmony CDC; Matthew Lovitt, National Alliance on Mental Illness Texas; Alison Mohr Boleware, National Association of Social Workers-Texas Chapter; Kimberly Harrison, Texas Psychological Association; Jennifer Allmon, The Texas Catholic Conference of Bishops; Amanda Marzullo; (*Registered, but did not testify*: Nick Hudson, American Civil Liberties Union of Texas; Chas Moore, Austin Justice Coalition; Kathy Mitchell, Just Liberty; Rene Perez, Libertarian Party of Texas; Myra Leo, Methodist Healthcare Ministries; Jeff LeBlanc, Republican Liberty Caucus of Texas; Maggie Luna, Statewide Leadership Council; Shea Place, Texas Criminal Defense Lawyers Association; Sarah Reyes, Texas Criminal Justice Coalition; Amelia Casas, Texas Fair Defense Project; Joshua Houston, Texas Impact; Alex Cogan, The Arc of Texas; and six individuals)

Against — Chris Gatewood, Smith County District Attorney's Office; (*Registered, but did not testify*: James Parnell, Dallas Police Association; David Sinclair, Game Warden Peace Officers Association; Ray Hunt, HPOU; Lindy Borchardt, for Sharen Wilson-Tarrant County Criminal District Attorney; John Wilkerson, Texas Municipal Police Association)

On — Ben Wolff, Office of Capital and Forensic Writs

BACKGROUND: Penal Code sec. 12.31 establishes the penalties for capital felonies. In capital murder cases in which the state seeks the death penalty, individuals found guilty must be sentenced to death or life in prison without parole in

the Texas Department of Criminal Justice. In capital murder cases in which the state does not seek the death penalty, those found guilty must be sentenced to life without parole.

Concerns have been raised about imposing the death penalty on individuals with severe mental illness who have a diminished capacity to appreciate the consequences and wrongfulness of their actions and to participate in their defense.

DIGEST: HB 140 would prohibit death sentences for capital murder defendants who were determined under the criteria in the bill to be a person with severe mental illness at the time of the offense. If found guilty of capital murder, these defendants would have to be sentenced to life in prison without parole.

The bill would define "person with severe mental illness" to mean a person who had schizophrenia, a schizoaffective disorder, or a bipolar disorder and, as a result of that disorder, had active psychotic symptoms that substantially impaired the person's capacity to appreciate the nature, consequences, or wrongfulness of the person's conduct or to exercise rational judgment in relation to the person's conduct.

Notice of intent to raise issue. A defendant planning to offer evidence that the defendant was a person with severe mental illness at the time of the alleged offense would have to file a notice with the court at least 30 days before a trial. The notice would have to tell the court that the defendant intended to offer the evidence and certify that a copy of the notice had been given to the prosecutor in the case.

Unless timely notice was given, evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense would not be admissible at the guilt or innocence stage of the trial unless the court found that good cause existed for failing to give notice

Jury determination. The issue of whether the defendant was a person

with severe mental illness at the time of the commission of the alleged offense would be submitted to the jury only if the issue was supported by evidence. The jury would have to decide the issue and return a special verdict on the issue that was separate from the jury's verdict on guilt or innocence. A defendant would have to prove by clear and convincing evidence that the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

Appointment of expert. On the request of either party or on the judge's own motion, the judge would have to appoint a disinterested expert experienced and qualified in the field of diagnosing mental illness to examine the defendant and determine whether the defendant was a person with severe mental illness.

The judge could order the defendant to submit to an exam by the expert. Exams would have to be narrowly tailored to determine whether the defendant had the specific disorder claimed and could not include an assessment of the risk of danger the defendant could pose to any person. Appointed experts would have to provide the defense attorney and the prosecutor all notes and data from the exam. Statements made by the defendant during an exam could not be admitted into evidence during the trial.

Effect of determination. If the jury determined that the defendant was not a person with severe mental illness at the time of the commission of an alleged offense and the defendant was convicted of that offense, the judge would have to conduct a sentencing proceeding under the standard procedures used in capital cases. At that proceeding, defendants could present evidence of a mental disability as allowed under those standard procedures.

The bill would take effect September 1, 2021, and would apply only to a trial that commenced on or after that date.