

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 236
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Criminal Justice
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Committee Report (Substituted)

DIGEST AND PURPOSE

In 1989, the United States Supreme Court decided in *Penry v. Lynaugh* that executing people who have mental retardation does not constitute cruel and unusual punishment. The decision did, however, provide for jury instructions to incorporate evidence of mental retardation as a possible mitigating factor in the imposition of the death penalty. Although the United States Supreme Court has not outlawed the execution of persons with mental retardation, there is some concern among Texans that the execution of these persons is unjust because persons with mental retardation may be less culpable for their crimes or may not have the capacity to understand the consequences of their actions. C.S.H.B. 236 enables a defendant in a capital case to request a hearing regarding whether the court shall appoint disinterested experts to determine if a defendant is a person with mental retardation and requires the court to sentence a defendant found by a jury to be a person with mental retardation to confinement in the institutional division of the Texas Department of Criminal Justice for life.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the court of criminal appeals in SECTION 1 (Article 46B.07, Code of Criminal Procedure) in this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Code of Criminal Procedure, by adding Chapter 46B, as follows:

CHAPTER 46B. CAPITAL CASE: EFFECT OF MENTAL RETARDATION

Art. 46B.01. DEFINITION. Defines “mental retardation.”

Art. 46B.02. RESTRICTION ON DEATH PENALTY. Prohibits a defendant who at the time of commission of a capital offense was a person with mental retardation from being sentenced to death, notwithstanding Section 19.03(b), Penal Code, or Article 37.071.

Art. 46B.03. HEARING. Authorizes counsel for a defendant in a capital case, at any time before the trial commences, to request that the judge hearing the case hold a hearing to determine whether the defendant was a person with mental retardation at the time of the commission of the alleged offense. Requires the court, on receipt of a request under this section, to notify all interested parties of the request and schedule a hearing on the issue of mental retardation.

Art. 46B.04. BURDEN OF PROOF. Provides that the burden, at a hearing under this chapter, is on the defendant to prove by a preponderance of the evidence that the defendant was a person with mental retardation as defined by Section 591.003, Health and Safety Code, at the time of the commission of the alleged offense. Authorizes the state to offer evidence to rebut the presumption of mental retardation or the defendant’s claim.

Art. 46B.05. SENTENCING ALTERNATIVES. Provides that if the court finds that the

defendant was a person with mental retardation at the time of the commission of the alleged offense and the defendant is subsequently convicted of the offense, Article 37.071 does not apply to the defendant, except that the court is required to sentence the defendant in the same manner as if a jury in the case had returned an affirmative finding on the issue of mitigation under Article 37.071. Requires the court, if the court finds that the defendant was not a person with mental retardation at the time of the commission of the alleged offense, to conduct the trial in the same manner as if a hearing under this chapter had not been held. Provides that at the trial of the offense, the jury is prohibited from being informed of the fact that the court has found under this article that the defendant was not a person with mental retardation, and the defendant is authorized to present at trial evidence of mental disability as permitted by Article 37.071. Requires the court, before the trial of the offense under Section 19.03, Penal Code, commences, to make the finding described by this section or announce that the court will not make the finding.

Art. 46B.06. APPOINTMENT OF DISINTERESTED EXPERTS. Requires the court, on the request of either party or on the court's own motion, to appoint disinterested experts experienced and qualified in the field of diagnosing mental retardation to examine the defendant and determine whether the defendant is a person with mental retardation. Authorizes the court to order the defendant to submit to an examination by experts appointed under this article.

Art. 46B.07. INTERLOCUTORY APPEAL. Provides that the defendant and the state are entitled to appeal an order of a court making a finding described by Article 46B.05 or the court's decision not to make a finding under that article. Requires the court of criminal appeals to adopt rules as necessary for the administration of the appeals process established by this article. Provides that an appeal under this article is a direct appeal to the court of criminal appeals, and requires the court of criminal appeals, as provided by court rule, to give priority to the review of an appeal under this article over other cases before the court.

SECTION 2. Provides that Chapter 46B, Code of Criminal Procedure, as added by this Act, applies 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 3. Effective date: September 1, 2001.