

BILL ANALYSIS

Senate Research Center
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S.B. 1139
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 77th Texas Legislature, Regular Session, 2001, passed H.B. 236, which prohibited the state from executing a mentally retarded defendant who was convicted of a capital offense. The bill had set forth provisions for determining whether or not the defendant had mental retardation and for the filing of an appeal of the court's finding. The bill was vetoed by Governor Rick Perry.

In 2002, the United States Supreme Court declared in *Atkins v. Virginia* that the execution of the mentally retarded was cruel and unusual and violated the Eighth Amendment. However, Texas state law does not reflect the Supreme Court's ruling.

This bill aligns Texas law with the Supreme Court's judgment in *Atkins v. Virginia* and provides specific guidelines regarding court proceedings when determining whether a defendant is mentally retarded.

As proposed, S.B. 1139 amends current law relating to the applicability of the death penalty to a capital offense committed by a person with mental retardation

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Court of Criminal Appeals in SECTION 1 (Article 46D.07, Code of Criminal Procedure) of this bill.

SECTION BY SECTION ANALYSIS

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

CHAPTER 46D. CAPITAL CASE: EFFECT OF MENTAL RETARDATION

Art. 46D.01. DEFINITION. Defines "mental retardation."

Art. 46D.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.

Art. 46D.03. HEARING. (a) 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 to make a finding that the defendant was a person with mental retardation at the time of the commission of the alleged offense.

(b) Requires the judge, on receipt of a request under Subsection (a), to notify all interested parties of the request and schedule a hearing on the issue of mental retardation.

Art. 46D.04. BURDEN OF PROOF. (a) Provides that at a hearing under this chapter, the burden is on the defendant to prove by a preponderance of the evidence that the defendant was a person with mental retardation at the time of the commission of the alleged offense.

(b) Authorizes the state to offer evidence to rebut the defendant's claim.

Art. 46D.05. SENTENCING ALTERNATIVES. (a) Provides that if the judge 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 (Procedure in Capital Case) does not apply to the defendant, and requires the judge to sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole.

(b) Requires the judge, if the judge 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. Prohibits the jury at the trial of the offense from being informed of the fact that the judge has found under this article that the defendant was not a person with mental retardation and authorizes the defendant to present at trial evidence of mental disability as permitted by Article 37.071.

(c) Requires that the judge, before the trial of the offense under Section 19.03 (Capital Murder), Penal Code, commences, make the finding described by Subsection (b).

Art. 46D.06. APPOINTMENT OF DISINTERESTED EXPERTS. Requires the judge, on the request of either party or on the judge'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 judge should make a finding that the defendant is a person with mental retardation. Authorizes the judge to order the defendant to submit to an examination by experts appointed under this article.

Art. 46D.07. INTERLOCUTORY APPEAL. (a) Provides that the defendant and the state are entitled to appeal a finding described by Article 46D.05(b).

(b) Requires the court of criminal appeals to adopt rules as necessary for the administration of the appeals process established by this article.

(c) 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.

Art. 46D.08. CONSTRUCTION WITH OTHER LAW. Provides that if the judge finds that the defendant was not a person with mental retardation at the time of the commission of the alleged offense and the defendant is subsequently convicted of the offense, the judge's finding does not preclude the defendant from filing a motion under Article 46.05 (Competency to be Executed) and notwithstanding Article 46.05(j) (relating to the defendant waiving the claim of privilege with respect to certain records relevant to whether the defendant is incompetent to be executed), is not admissible as evidence in a hearing under Article 46.05.

SECTION 2. Amends Chapter 6, Penal Code, by adding Section 6.05, as follows:

Sec. 6.05. MENTAL RETARDATION AFFECTING DEATH SENTENCE. (a) Defines "mental retardation."

(b) Prohibits a person from being punished by death for an offense committed while the person was a person with mental retardation.

(c) Authorizes a person who is sentenced to death at a trial that commences before September 1, 2009, to submit to the convicting court a motion for a hearing on the issue of mental retardation, to be conducted in the same manner as a hearing under Chapter 46D, Code of Criminal Procedure. Authorizes the court, on a finding by the court that documentary evidence supports an assertion that the person was a person with mental retardation at the time of the commission of the alleged offense, to order a hearing that, except for occurring after sentencing, is

conducted in the same manner as a hearing under Chapter 46D, Code of Criminal Procedure. Requires the court, after making a finding as to whether the person was a person with mental retardation, to immediately forward a copy of the finding to the court of criminal appeals.

(d) Provides that a finding under this section that the person was not a person with mental retardation at the time of the commission of the alleged offense does not preclude the person from filing a motion under Article 46.05, Code of Criminal Procedure, and is not admissible as evidence in a hearing under this article. Provides that a finding under Article 46.05 that the person is competent to be executed does not preclude the person from filing a motion under this section and is not admissible as evidence in a hearing under this section.

SECTION 3. Makes application of Chapter 46D, Code of Criminal Procedure, as added by this Act, prospective.

SECTION 4. Effective date: September 1, 2009.