

BILL ANALYSIS

C.S.H.B. 3080
By: Rose
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that defendants with mental illness who fail to understand their actions or why they are being punished should not be sentenced to death. C.S.H.B. 3080 seeks to address this issue by prohibiting a defendant who at the time of the commission of a capital offense was a person with severe mental illness from being sentenced to death.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 3080 amends the Code of Criminal Procedure to prohibit a defendant who at the time of the commission of a capital offense was a person with severe mental illness from being sentenced to death. The bill defines "person with severe mental illness" for purposes of its provisions as a person who has schizophrenia, schizo-affective disorder, or bipolar disorder and as a result of that disorder has active psychotic symptoms that substantially impair the person's capacity to appreciate the nature, consequences, or wrongfulness of the person's conduct or exercise rational judgment in relation to the person's conduct. The bill authorizes counsel for a defendant in a capital case to file not later than the 30th day before the date trial begins notice requesting that the judge hearing the case hold a hearing to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense. The bill requires such notice to be accompanied by evidence supporting the claim that the defendant was a person with severe mental illness at the time of the alleged offense and, if the defendant does not give such timely notice, prohibits a court from holding the hearing unless the court finds that good cause existed for the failure to give timely notice. The bill requires the judge on receipt of such notice to notify all interested parties of the notice, grants the attorney for the state an opportunity to respond, and, if the judge determines that the notice was timely and was accompanied by the required supporting evidence, requires a jury to be impaneled to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense. The bill authorizes the defendant to waive the right to such a jury determination and to instead request that the judge make the determination if the judge and the prosecuting attorney do not object. The bill requires the judge, if the judge finds that such notice was not timely filed or was not accompanied by the required supporting evidence, to deny the defendant's request, make written findings of fact explaining the grounds for denial, provide the findings of fact to all interested parties, and file a copy of the findings of fact with the papers in the case. The bill requires instructions to the jury submitting the issue of severe mental illness to

require the jury to state in its verdict whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense and, if the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, requires the judge to declare a mistrial, to discharge the jury, and to impanel another jury to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense. The bill requires the judge, at the conclusion of the hearing, to dismiss the jury and prohibits the members of that jury from serving on a jury in any subsequent trial of the case.

C.S.H.B. 3080 places the burden on the defendant to prove at such a hearing 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. The bill requires the judge to sentence the defendant to imprisonment in the Texas Department of Criminal Justice for life without parole if the finder of fact determines that the defendant was a person with severe mental illness at the time of the commission of the alleged offense and the defendant is subsequently convicted of capital murder, or to conduct the trial in the same manner as if a determination hearing had not been held if the finder of fact determines the defendant was not a person with severe mental illness at the time of the commission of the alleged offense. The bill prohibits the jury at such a trial from being informed of a judge's or jury's determination that the defendant was not a person with severe mental illness and authorizes the defendant to present at trial evidence of mental disability as permitted under statutory capital case procedures. The bill requires the finder of fact, before the capital murder trial begins, to make the determination as to whether the defendant was not a person with a severe mental illness at the time of the commission of the alleged offense.

C.S.H.B. 3080 requires the judge, on the request of either party or on the judge's own motion, to appoint one or more disinterested experts experienced and qualified in the field of diagnosing mental illness to examine the defendant and determine whether the defendant is a person with severe mental illness. The bill authorizes the judge, after giving proper notice to the defendant, to order the defendant to submit to an examination by such experts and sets out requirements for such an examination. The bill requires such an appointed expert to provide the counsel for the defendant with all underlying notes and data related to the examination. The bill prohibits the admission into evidence during the trial of the alleged offense of any statement made by the defendant in a mental illness determination hearing or examination. The bill establishes that neither the defendant nor the state is entitled to an interlocutory appeal of a determination under the bill's provisions.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3080 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

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

CHAPTER 46D. CAPITAL CASE: EFFECT OF SEVERE MENTAL ILLNESS
Art. 46D.001. DEFINITION. In this chapter, "person with severe mental illness" means a person who has a psychiatric illness

HOUSE COMMITTEE SUBSTITUTE

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

CHAPTER 46D. CAPITAL CASE: EFFECT OF SEVERE MENTAL ILLNESS
Art. 46D.001. DEFINITION. In this chapter, "person with severe mental illness" means a person who has one of the

listed in Section 1355.001(1), Insurance Code, and as a result of that illness has active psychotic symptoms that substantially impair the person's capacity to:

- (1) appreciate the nature, consequences, or wrongfulness of the person's conduct;
- (2) exercise rational judgment in relation to the person's conduct; or
- (3) conform the person's conduct to the requirements of the law.

Art. 46D.002. RESTRICTION ON DEATH PENALTY.

Art. 46D.003. HEARING. (a) Counsel for a defendant in a capital case, not later than the 30th day before the date trial begins, may file notice requesting that the judge hearing the case hold a hearing to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(b) Notice filed under Subsection (a) must be accompanied by evidence supporting the claim that the defendant was a person with severe mental illness at the time of the alleged offense.

(c) If the defendant does not give timely notice as provided by Subsection (a), the court may not hold a hearing under this article unless the court finds that good cause existed for failure to give timely notice.

(d) On receipt of notice under Subsection (a), the judge shall notify all interested parties of the notice.

If the judge determines that the notice was timely and was accompanied by the supporting evidence described by Subsection (b), a jury shall be impaneled to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense. A defendant may waive the right to jury determination under this subsection and request that the judge make the determination if the judge and the prosecuting attorney do not object.

(e) If the judge finds the notice was not timely filed or was not accompanied by supporting evidence required by Subsection (b), the judge shall:

- (1) deny the defendant's request;
- (2) make written findings of fact explaining

following disorders: schizophrenia, schizoaffective disorder, or bipolar disorder, and as a result of that disorder has active psychotic symptoms that substantially impair the person's capacity to:

- (1) appreciate the nature, consequences, or wrongfulness of the person's conduct; or
- (2) exercise rational judgment in relation to the person's conduct;

Art. 46D.002. RESTRICTION ON DEATH PENALTY.

Art. 46D.003. HEARING. (a) Counsel for a defendant in a capital case, not later than the 30th day before the date trial begins, may file notice requesting that the judge hearing the case hold a hearing to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(b) Notice filed under Subsection (a) must be accompanied by evidence supporting the claim that the defendant was a person with severe mental illness at the time of the alleged offense.

(c) If the defendant does not give timely notice as provided by Subsection (a), the court may not hold a hearing under this article unless the court finds that good cause existed for failure to give timely notice.

(d) On receipt of notice under Subsection (a), the judge shall notify all interested parties of the notice, and the attorney for the state shall have an opportunity to respond.

If the judge determines that the notice was timely and was accompanied by the supporting evidence described by Subsection (b), a jury shall be impaneled to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense. A defendant may waive the right to jury determination under this subsection and request that the judge make the determination if the judge and the prosecuting attorney do not object.

(e) If the judge finds the notice was not timely filed or was not accompanied by supporting evidence required by Subsection (b), the judge shall:

- (1) deny the defendant's request;
- (2) make written findings of fact explaining

the grounds for denial;

(3) provide the findings of fact to all interested parties; and

(4) file a copy of the findings of fact with the papers in the case.

(f) Instructions to the jury submitting the issue of severe mental illness shall require the jury to state in its verdict whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(g) If the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, the judge shall declare a mistrial, discharge the jury, and impanel another jury to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(h) At the conclusion of the hearing under this article, the judge shall dismiss the jury, and the members of that jury may not serve on a jury in any subsequent trial of the case.

Art. 46D.004. 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 was a person with severe mental illness at the time of the commission of the alleged offense.

(b) A determination made before the commission of the alleged offense by a qualified institution or individual, including a psychologist, an educational institution, a local intellectual disability authority, the United States Social Security Administration, a court, or another governmental agency or social service provider that a defendant had symptoms of a psychiatric illness listed in Section 1355.001(1), Insurance Code, creates an evidentiary presumption that the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(c) The state may offer evidence to rebut a presumption of severe mental illness.

Art. 46D.005. SENTENCING ALTERNATIVES.

Art. 46D.006. APPOINTMENT OF DISINTERESTED EXPERTS. (a) On the request of either party or on the judge's own motion, the judge shall appoint one or more

the grounds for denial;

(3) provide the findings of fact to all interested parties; and

(4) file a copy of the findings of fact with the papers in the case.

(f) Instructions to the jury submitting the issue of severe mental illness shall require the jury to state in its verdict whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(g) If the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, the judge shall declare a mistrial, discharge the jury, and impanel another jury to determine whether the defendant was a person with severe mental illness at the time of the commission of the alleged offense.

(h) At the conclusion of the hearing under this article, the judge shall dismiss the jury, and the members of that jury may not serve on a jury in any subsequent trial of the case.

Art. 46D.004. BURDEN OF PROOF. (a) At a hearing under this chapter, the burden is on the defendant 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.

Art. 46D.005. SENTENCING ALTERNATIVES.

Art. 46D.006. APPOINTMENT OF DISINTERESTED EXPERTS. (a) On the request of either party or on the judge's own motion, the judge shall appoint one or more

disinterested experts experienced and qualified in the field of diagnosing mental illness to examine the defendant and determine whether the defendant is a person with severe mental illness.

(b) The judge may, after giving proper notice to the defendant, order the defendant to submit to an examination by experts appointed under this article.

(c) An examination described by this article:

(1) must be narrowly tailored to determine if the defendant has the specific illness claimed; and

(2) may not include:

(A) any discussion of the alleged offense;

(B) personality or intellectual testing; or

(C) a future danger assessment.

(d) An expert appointed under this article must provide the counsel for the defendant with all underlying notes and data related to the examination.

Art. 46D.007. STATEMENTS NOT ADMISSIBLE.

Art. 46D.008. INTERLOCUTORY APPEAL.

SECTION 2. Chapter 46D, 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. This Act takes effect September 1, 2017.

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(b) The judge may, after giving proper notice to the defendant, order the defendant to submit to an examination by experts appointed under this article.

(c) An examination described by this article:

(1) must be narrowly tailored to determine if the defendant has the specific illness claimed; and

(2) may not include:

(C) a future danger assessment.

(d) An expert appointed under this article must provide the counsel for the defendant with all underlying notes and data related to the examination.

Art. 46D.007. STATEMENTS NOT ADMISSIBLE.

Art. 46D.008. INTERLOCUTORY APPEAL.

SECTION 2. Same as introduced version.

SECTION 3. Same as introduced version.