

BILL ANALYSIS

C.S.H.B. 1139
By: Thompson, Senfronia
Criminal Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised over the applicability of the death penalty to a capital offense committed by a defendant who may have an intellectual disability. As a result of these concerns, there have been calls for a uniform pretrial procedure to determine whether such a defendant has such a disability and should instead be sentenced to imprisonment for life. C.S.H.B. 1139 seeks to address these issues by prohibiting the sentencing of a defendant who is a person with an intellectual disability to death and by creating a hearing process for purposes of determining whether a defendant is a person with an intellectual disability.

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. 1139 amends the Code of Criminal Procedure to prohibit the sentencing of a defendant who is a person with an intellectual disability to death. The bill authorizes an attorney for a defendant in a capital case, not later than the 180th day before the date the trial is scheduled to begin, to request in writing that the judge hearing the case hold a hearing to determine whether the defendant is a person with an intellectual disability. The request must be accompanied by evidence from a credible source indicating that the defendant is a person with an intellectual disability.

C.S.H.B. 1139 requires the judge to hold such a hearing not later than the 120th day before the date the trial is scheduled to begin if the judge determines the request was timely filed and was accompanied by any such evidence. If the attorney for a defendant files an untimely request or, after the time for filing a request, otherwise presents evidence that the defendant is a person with an intellectual disability and can show good cause for not filing a request within the time limit, a judge may hold such a hearing outside the presence of the jury. The bill establishes that an attorney demonstrates good cause for not filing a request within the time limit if the attorney represents to the court that the attorney has represented the defendant in the case for fewer than six months or demonstrates that the attorney exercised reasonable diligence to obtain the required evidence but was unable to do so for reasons beyond the attorney's control.

C.S.H.B. 1139 requires a judge, on the request of either party or on the judge's own motion, to 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. The bill authorizes the judge to order the defendant to submit to an examination by the expert and requires such an examination to be narrowly tailored to determine whether the defendant has an intellectual disability.

C.S.H.B. 1139 places the burden of proof on the defendant to prove at such a hearing by a preponderance of the evidence that the defendant is a person with an intellectual disability and authorizes the state to offer evidence to rebut evidence offered by the defendant. Evidence offered by either party for the purposes of the hearing must be consistent with prevailing medical standards for the diagnosis of intellectual disabilities.

C.S.H.B. 1139 requires the judge, not later than the 30th day after the conclusion of the hearing, to determine whether the defendant is a person with an intellectual disability and to issue an appropriate order that must contain findings of fact explaining the judge's reasoning for the determination and citing evidence in the record.

C.S.H.B. 1139 requires the judge, if the judge does not determine that the defendant is a person with an intellectual disability, to conduct the trial of the offense in the same manner as if the hearing had not been held. The bill prohibits the jury at that trial from being informed of the fact that the judge held the hearing and authorizes the defendant to present evidence of intellectual disability as otherwise permitted by law. The bill entitles the state to appeal an order of a court in a criminal case that determines that a defendant is a person with an intellectual disability.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1139 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision authorizing a judge to hold a hearing with regard to an untimely request for a hearing on certain evidence that a defendant is a person with an intellectual disability presented after the time for filing a request.

The substitute makes the following changes with respect to deadlines for a hearing:

- changes the deadline by which an attorney may request a hearing;
- sets a deadline by which the judge must hold the hearing; and
- shortens the deadline by which the judge must make a determination and issue an order.

The substitute entitles the state to appeal a judge's order following the determination.

The substitute removes a provision requiring a judge to sentence a defendant who is found to be a person with an intellectual disability and who is subsequently convicted of a capital offense to life without parole.