

BILL ANALYSIS

H.B. 869
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Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised regarding 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. H.B. 869 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

H.B. 869 amends the Code of Criminal Procedure to prohibit the sentencing to death of a defendant who is a person with an intellectual disability and to provide for a hearing process to determine whether the defendant is such a person. A defendant in a capital case, not later than the first anniversary of the date of the defendant's indictment, may request in writing that the judge hearing the case hold a hearing. The bill provides the following:

- the judge must hold the hearing if the judge determines the request was timely filed; and
- the hearing must be held within the following period:
 - not earlier than the 180th day after the date that the written request was submitted; and
 - not later than the 120th day before the date the trial is scheduled to begin.

A judge may hold a hearing under the bill's provisions outside the presence of the jury if the defendant can show good cause for not filing a request within the prescribed time limit, with respect to a defendant who files an untimely request or who, after the time for filing a request, otherwise presents evidence that the defendant is such a person.

H.B. 869 provides for the following:

- the required appointment of a disinterested expert to examine the defendant and determine whether the defendant is a person with an intellectual disability;
- an examination of the defendant by the expert, if authorized by the judge;
- the limited scope of such an examination;
- a defendant's burden of proof at a hearing and the state's authority to rebut evidence offered by a defendant; and

- the applicability of prevailing medical standards for evidence offered by either party for purposes of a hearing.

H.B. 869 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, which must contain findings of fact explaining the judge's reasoning for the determination and citing evidence in the record.

H.B. 869 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.

H.B. 869 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. The appeal is a direct appeal to the court of criminal appeals, which must expeditiously review the appeal.

H.B. 869 defines "deficits in adaptive behavior," "developmental period," "intellectual disability," and "significantly subaverage general intellectual functioning" for purposes of its provisions.

H.B. 869 applies only to a trial that commences on or after the bill's effective date, regardless of whether the alleged offense was committed before, on, or after that date.

EFFECTIVE DATE

September 1, 2021.