

## **BILL ANALYSIS**

Senate Research Center  
76R4713 GWK-F

S.B. 326  
By: Ellis  
Criminal Justice  
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As Filed

### **DIGEST**

Currently, the Texas Penal Code authorizes a court to sentence a mentally retarded person to death in capital murder cases. States that have banned capital punishment for the mentally retarded concede that individuals with an I.Q. of 70 or less should not be executed, since punishment for an offense should be related to the blameworthiness of the offender. As the most extreme sanction available to the state, the death penalty is reserved for an offender who has the highest degree of blameworthiness for an extraordinary, aggravated crime. Although a mentally retarded person may be capable of telling right from wrong and may be held responsible for criminal behavior, a mentally retarded person by definition has sub-average intellectual functioning with concurrent deficits in socially adaptive behavior. S.B. 326 would authorize a defendant to claim mental retardation, and would prohibit a court from sentencing a defendant to death on the finding that the defendant was mentally retarded at the time of the offense.

### **PURPOSE**

As proposed, S.B. 326 prohibits the death penalty in mental retardation cases.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

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

#### **CHAPTER 46B. CAPITAL CASE: EFFECT OF MENTAL RETARDATION**

Sec. 46B.01. DEFINITION. Defines "mental retardation."

Sec. 46B.02. RESTRICTION ON DEATH PENALTY. Prohibits a person who committed an offense while mentally retarded from receiving a death sentence, notwithstanding Section 19.03(b), Penal Code, or Article 37.071, Code of Criminal Procedure.

Sec. 46B.03 HEARING. Authorizes a defense counsel in a capital case to request the court to determine whether the defendant was mentally retarded at the time of the offense. Requires the court to schedule a hearing on the issue of mental retardation and to notify all involved parties.

Sec. 46B.04. BURDEN OF PROOF. Requires the defendant to shoulder the burden of proof for mental retardation. Authorizes the state to offer rebuttal evidence.

Sec. 46B.05. SENTENCING ALTERNATIVES. Requires the court to sentence a certified mentally retarded defendant to life imprisonment in a Texas Department of Criminal Justice institution, if the court finds that the defendant was mentally retarded at the time of the offense and the defendant is convicted. Requires the court to conduct a trial as usual without reference in court or in jury instruction to the mental retardation hearing, if the defendant is not found to be mentally retarded. Authorizes the defendant to present at trial evidence of mental disability as permitted by Article 37.071, Code of Criminal Procedure.

SECTION 2. Effective date: September 1, 1999.

SECTION 3. Emergency clause.