

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 686  
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### **DIGEST AND PURPOSE**

Currently, there are more than 300 people on death row known to have mental retardation. Some estimates indicate that 10 percent of the death row population may be afflicted with mental retardation. Since the death penalty was reinstated in 1976, 31 people with mental retardation have been executed in 12 different states. Of the 31 mentally retarded people executed, 19 of them have been executed within the past five years. As proposed, S.B. 686 prohibits the death penalty for persons who are mentally retarded. This bill allows counsel for a defendant in a capital offense to request a hearing to establish if the defendant is a person with mental retardation. The Code of Criminal Procedure states that if a defendant has an intelligence quotient of 70 or less, the defendant is awarded a presumption that he or she is a person with mental retardation. S.B. 686 applies to offenses committed after September 1, 2001, and authorizes a defendant convicted of a capital offense before that date to ask the convicting court for a hearing on the issue of mental retardation. If the court finds that documentary evidence supports the defendant's claim of mental retardation, it is authorized to order a hearing, and if the court finds the defendant to be mentally retarded, it is required to forward a copy of that finding immediately to the court of criminal appeals.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the court of criminal appeals in SECTION 1 (Article 46B.07, Code of Criminal Procedure) in this bill.

### **SECTION BY SECTION ANALYSIS**

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

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

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

Art. 46B.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, notwithstanding Section 19.03(b) (Criminal Homicide), Penal Code, or Article 37.071 (Procedure in Capital Case).

Art. 46B.03. HEARING. Authorizes the defense counsel in a capital case, at any time before the trial commences, to request the judge hearing the case to hold a hearing to determine whether the defendant was a person with mental retardation at the time of the commission of the alleged offense, and then requires the court to notify all interested parties of the request and schedule a hearing on the issue of mental retardation.

Art. 46B.04. BURDEN OF PROOF. Provides that the burden is on the defendant to prove by a preponderance of the evidence that the defendant was a person with mental retardation, which is an intelligence quotient of 70 or less, at the time of the commission of the alleged offense. Authorizes the state to offer evidence to rebut the presumption of mental retardation or

the defendant's claim.

Art. 46B.05. SENTENCING ALTERNATIVES. Provides that if the court 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 does not apply to the defendant, and requires the court to sentence the defendant to life imprisonment in the institutional division of the Texas Department of Criminal Justice. Requires the court, if the defendant is found not to have mental retardation, to conduct the trial in the same manner as if a hearing under this chapter had not been held. Provides that at the trial of the offense: prohibits the jury from being informed of the fact that the court 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. Requires the court, before the trial of the offense under Section 19.03, Penal Code, commences, to either make the findings or not make the findings.

Art. 46B.06. APPOINTMENT OF DISINTERESTED EXPERTS. Requires the court to appoint disinterested experts experienced and qualified in the field of diagnosing mental retardation to examine the defendant and determine whether the defendant is a person with mental retardation, on the request of either party or on the court's own motion. Authorizes the court to order the defendant to submit to an examination by experts appointed under this article.

Art. 46B.07. INTERLOCUTORY APPEAL. Authorizes the defendant and the state to appeal an order of a court making a finding described by Article 46B.05(b) or the court's decision not to make a finding under that article. Requires the court of criminal appeals to adopt rules as necessary for the administration of the appeals process established by this article. 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.

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

Sec. 6.05. MENTAL RETARDATION AFFECTING DEATH SENTENCE. Defines "mental retardation." Prohibits a person from being punished by death for an offense committed while the person was a person with mental retardation. Authorizes a person who is sentenced to death at a trial that commences before September 1, 2001, 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 46B, Code of Criminal Procedure. Requires the court, after making a finding as to whether the person is a person with mental retardation, to immediately forward a copy of the finding to the court of criminal appeals.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2001.