

HB 278 -- DEATH PENALTY

SPONSOR: Hannegan

This bill specifies that a person cannot be sentenced to death if he or she is found to have suffered from a serious mental illness at the time of the commission of the offense. The bill specifies what must apply in order for a person to be found to be suffering from a serious mental illness. The diagnosis of a person with one or more of the specified conditions may be made at any time prior to, on, or after the commission of the offense or the day on which the matter is raised. Diagnosis of the condition or conditions does not preclude the person from presenting evidence that the person had a serious mental illness at the time of the commission of the offense or from having the benefit of the rebuttable presumption specified in the bill.

A person charged with murder in the first degree may raise the issue of having a serious mental illness at the time of the commission of the offense to exempt himself or herself from eligibility for a sentence of death. If the defense raises the matter, the court shall, at the request of the state or defense, order an evaluation of the accused in accordance with the provisions of the bill, and the state shall not use any evidence acquired as a result of any evaluation ordered under the section against the defendant unless and until the defense presents the evidence at a hearing on the matter. The state may then call the examiner and use the information the examiner obtained at the hearing on this issue.

If a person raises the matter of his or her serious mental illness at the time of the commission of the offense and submits evidence likely to prove that he or she had a serious mental illness and it existed at the time of the commission of the offense, the prosecution shall have the opportunity to present evidence to contest the serious mental illness or to rebut the presumption that the condition, if present, significantly impaired the person's capacity at the time of the commission of the offense.

If the person raises the matter of his or her serious mental illness at the time of the commission of the offense, and the state contests the application of the exemption based on the information the defense provides, the defense shall be entitled to a pretrial hearing and determination on eligibility for the exemption. The determination of eligibility for the exemption shall be made pretrial by the court. The bill specifies procedures related to the presenting of evidence and rebutting the presumption.

A person's pleading of not guilty due to mental disease or defect

or incapacity to stand trial, or a finding after such a plea that the person does not suffer from mental disease or defect or has capacity to stand trial, does not preclude the person from raising the matter of the person's serious mental illness at the time of the commission of the offense and, if a person so raises that matter, does not limit or affect any of the procedures described in this section or the authority of a court to make any finding described in this bill.

Additionally, under current law, if a jury cannot decide or agree upon a defendant's punishment upon conviction of first degree murder, the jury is instructed that the court shall assess and declare the punishment at life imprisonment without eligibility for probation, parole, or release except by act of the Governor or death. This bill removes death as an option for the court to declare as punishment in cases where the jury cannot decide or agree upon the punishment.

This bill is the same as HCS HBs 1756 and 1925 (2020).