

BILL ANALYSIS

H.B. 3265
By: Straus
Criminal Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

In a criminal case, the verdict is not complete until the conclusion of both the guilt or innocence phase and the punishment phase of the trial. Current law requires that if a defendant has been found guilty, and a judge grants a motion for a mistrial during the punishment phase, a mistrial is declared and the entire case must be retried.

House Bill 3265 would allow for cases in which the jury cannot agree on the issue of punishment, a partial mistrial shall be declared on punishment only and a new jury shall be impaneled only for the punishment phase.

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

SECTION 1. Amends Sections 2(a) and (b), Article 37.07, Code of Criminal Procedure, as follows:

(a) Requires the judge, if the jury fails to agree on the issue of guilt or innocence, to declare a mistrial and discharge the jury, and provides that jeopardy does not attach in the case.

(b) Requires, if a finding of guilty is returned, except as provided in Article 37.071 (Procedure in Capital Case), that it then be the responsibility of the judge to assess the punishment applicable to the offense; provided, however, that (1) in any criminal action where the jury may recommend community supervision, rather than probation, and the defendant filed his sworn motion for community supervision, rather than probation, before the trial began, and (2) in other cases where the defendant so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment is required to be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29 (Effect of Reversal). Makes a conforming change

SECTION 2. Amends Section 3(c), Article 37.07, Code of Criminal Procedure, to require the verdict, if the jury finds the defendant guilty and the matter of punishment is referred to the jury, to not be complete until a jury verdict has been rendered on both the guilt or innocence of the defendant and the amount of punishment. Requires a mistrial, in the event the jury fails to agree on the issue of punishment, to be declared only in the punishment phase of the trial, the jury to be discharged, and no jeopardy to attach. Requires the court to impanel another jury as soon as practicable to determine the issue of punishment. Deletes existing text related to a verdict of guilty found by a jury. Makes nonsubstantive changes.

SECTION 3. Makes application of this Act prospective.

SECTION 4. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

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