By: Straus, Pena   H.B. No. 3265

A BILL TO BE ENTITLED

1   AN ACT

2   relating to the declaration of a mistrial in the punishment phase of

3   a criminal proceeding.

4   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5   SECTION 1.   Sections 2(a) and (b), Article 37.07, Code of

6   Criminal Procedure, are amended to read as follows:

7   (a) In all criminal cases, other than misdemeanor cases of

8   which the justice court or municipal court has jurisdiction, which

9   are tried before a jury on a plea of not guilty, the judge shall,

10   before argument begins, first submit to the jury the issue of guilt

11   or innocence of the defendant of the offense or offenses charged,

12   without authorizing the jury to pass upon the punishment to be

13   imposed. If the jury fails to agree on the issue of guilt or

14   innocence, the judge shall declare a mistrial and discharge the

15   jury, and jeopardy does not attach in the case.

16   (b) Except as provided in Article 37.071, if a finding of

17   guilty is returned, it shall then be the responsibility of the judge

18   to assess the punishment applicable to the offense; provided,

19   however, that (1) in any criminal action where the jury may

20   recommend community supervision [probation] and the defendant

21   filed his sworn motion for community supervision [probation] before

22   the trial began, and (2) in other cases where the defendant so

23   elects in writing before the commencement of the voir dire

24   examination of the jury panel, the punishment shall be assessed by

79R2500 KEL-D   1

1 the same jury, except as provided in Section 3(c) of this article

2 and in Article 44.29.   If a finding of guilty is returned, the

3 defendant may, with the consent of the attorney for the state,

4 change his election of one who assesses the punishment.

5   SECTION 2.   Section 3(c), Article 37.07, Code of Criminal

6 Procedure, is amended to read as follows:

7   (c) If the jury finds the defendant guilty and [~~In cases~~

8 ~~where~~] the matter of punishment is referred to the jury, the verdict

9 shall not be complete until a [~~the~~] jury [~~has rendered a~~] verdict

10 has been rendered on both [~~on~~] the guilt or innocence of the

11 defendant and the amount of punishment[~~, where the jury finds the~~

12 ~~defendant guilty~~].   In the event the jury shall fail to agree on the

13 issue of punishment, a mistrial shall be declared only in the

14 punishment phase of the trial, the jury shall be discharged, and no

15 jeopardy shall attach.   The court shall impanel another jury as soon

16 as practicable to determine the issue of punishment.

17   SECTION 3.   (a) The change in law made by this Act applies

18 only to a trial in which the jury renders a guilty verdict on or

19 after the effective date of this Act.

20   (b) A trial in which the jury renders a guilty verdict

21 before the effective date of this Act is covered by the law in

22 effect when the guilty verdict was rendered, and the former law is

23 continued in effect for that purpose.

24   SECTION 4.   This Act takes effect September 1, 2005.