

By: Straus

H.B. No. 3265

A BILL TO BE ENTITLED

AN ACT

1  
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

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.