1-1   By: Straus, Pena (Senate Sponsor - Wentworth)   H.B. No. 3265
1-2   (In the Senate - Received from the House April 25, 2005;
1-3   April 26, 2005, read first time and referred to Committee on
1-4   Jurisprudence; May 13, 2005, reported favorably by the following
1-5   vote: Yeas 4, Nays 0; May 13, 2005, sent to printer.)

1-6   A BILL TO BE ENTITLED
1-7   AN ACT

1-8   relating to the declaration of a mistrial in the punishment phase of
1-9   a criminal proceeding.
1-10   BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-11   SECTION 1.   Sections 2(a) and (b), Article 37.07, Code of
1-12 Criminal Procedure, are amended to read as follows:
1-13   (a) In all criminal cases, other than misdemeanor cases of
1-14 which the justice court or municipal court has jurisdiction, which
1-15 are tried before a jury on a plea of not guilty, the judge shall,
1-16 before argument begins, first submit to the jury the issue of guilt
1-17 or innocence of the defendant of the offense or offenses charged,
1-18 without authorizing the jury to pass upon the punishment to be
1-19 imposed. If the jury fails to agree on the issue of guilt or
1-20 innocence, the judge shall declare a mistrial and discharge the
1-21 jury, and jeopardy does not attach in the case.
1-22   (b) Except as provided in Article 37.071, if a finding of
1-23 guilty is returned, it shall then be the responsibility of the judge
1-24 to assess the punishment applicable to the offense; provided,
1-25 however, that (1) in any criminal action where the jury may
1-26 recommend community supervision [probation] and the defendant
1-27 filed his sworn motion for community supervision [probation] before
1-28 the trial began, and (2) in other cases where the defendant so
1-29 elects in writing before the commencement of the voir dire
1-30 examination of the jury panel, the punishment shall be assessed by
1-31 the same jury, except as provided in Section 3(c) of this article
1-32 and in Article 44.29. If a finding of guilty is returned, the
1-33 defendant may, with the consent of the attorney for the state,
1-34 change his election of one who assesses the punishment.
1-35   SECTION 2.   Section 3(c), Article 37.07, Code of Criminal
1-36 Procedure, is amended to read as follows:
1-37   (c) If the jury finds the defendant guilty and [In cases
1-38 where] the matter of punishment is referred to the jury, the verdict
1-39 shall not be complete until a [the] jury [has rendered a] verdict
1-40 has been rendered on both [on] the guilt or innocence of the
1-41 defendant and the amount of punishment[, where the jury finds the
1-42 defendant guilty]. In the event the jury shall fail to agree on the
1-43 issue of punishment, a mistrial shall be declared only in the
1-44 punishment phase of the trial, the jury shall be discharged, and no
1-45 jeopardy shall attach. The court shall impanel another jury as soon
1-46 as practicable to determine the issue of punishment.
1-47   SECTION 3.   (a) The change in law made by this Act applies
1-48 only to a trial in which the jury renders a guilty verdict on or
1-49 after the effective date of this Act.
1-50   (b) A trial in which the jury renders a guilty verdict
1-51 before the effective date of this Act is covered by the law in
1-52 effect when the guilty verdict was rendered, and the former law is
1-53 continued in effect for that purpose.
1-54   SECTION 4.   This Act takes effect September 1, 2005.

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