

By: Vaught

H.B. No. 3803

A BILL TO BE ENTITLED

AN ACT

relating to the election of jury trial in the punishment phase of a criminal proceeding.

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

SECTION 1. Section 2(b), Article 37.07, Code of Criminal Procedure, is amended to read as follows:

(b) Except as provided in Article 37.071, if a finding of guilty is returned, it shall 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 and the defendant filed the defendant's ~~[his]~~ sworn motion for community supervision before the trial began, and (2) in other cases where the defendant or the state so elects in writing before the commencement of the voir dire examination of the jury panel, the punishment shall be assessed by the same jury, except as provided in Section 3(c) of this article and in Article 44.29. If a finding of guilty is returned, the defendant or the state may, with the consent of the opposing party ~~[attorney for the state]~~, change the ~~[his]~~ election made concerning ~~[of one]~~ who assesses the punishment.

SECTION 2. Article 44.29(b), Code of Criminal Procedure, is amended to read as follows:

(b) If the court of appeals or the Court of Criminal Appeals awards a new trial to a defendant other than a defendant convicted

1 of an offense under Section 19.03, Penal Code, only on the basis of
2 an error or errors made in the punishment stage of the trial, the
3 cause shall stand as it would have stood in case the new trial had
4 been granted by the court below, except that the court shall
5 commence the new trial as if a finding of guilt had been returned
6 and proceed to the punishment stage of the trial under Subsection
7 (b), Section 2, Article 37.07, of this code. If the defendant or
8 the state elects, the court shall empanel a jury for the sentencing
9 stage of the trial in the same manner as a jury is empaneled by the
10 court for other trials before the court. At the new trial, the
11 court shall allow both the state and the defendant to introduce
12 evidence to show the circumstances of the offense and other
13 evidence as permitted by Section 3 of Article 37.07 of this code.

14 SECTION 3. The change in law made by this Act applies only
15 to a trial for an offense committed on or after the effective date
16 of this Act. A trial for an offense committed before the effective
17 date of this Act is governed by the law in effect at the time the
18 offense was committed, and the former law is continued in effect for
19 that purpose. For the purposes of this section, an offense was
20 committed before the effective date of this Act if any element of
21 the offense occurred before that date.

22 SECTION 4. This Act takes effect September 1, 2007.