

By: Peña

H.B. No. 111

Substitute the following for H.B. No. 111:

By: Moody

C.S.H.B. No. 111

A BILL TO BE ENTITLED

AN ACT

relating to the joint or separate prosecution of a capital felony charged against two or more defendants.

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

SECTION 1. Article 36.09, Code of Criminal Procedure, is amended to read as follows:

Art. 36.09. SEVERANCE ON SEPARATE INDICTMENTS. (a) Two or more defendants who are jointly or separately indicted or complained against for the same offense or any offense growing out of the same transaction may be, in the discretion of the court, tried jointly or separately as to one or more defendants; provided that in any event either defendant may testify for the other or on behalf of the state; and provided further, that in cases in which, upon timely motion to sever, and evidence introduced thereon, it is made known to the court that there is a previous admissible conviction against one defendant or that a joint trial would be prejudicial to any defendant, the court shall order a severance as to the defendant whose joint trial would prejudice the other defendant or defendants.

(b) Notwithstanding Subsection (a), the court may not join two or more defendants in the same criminal trial if any defendant to be tried is indicted or complained against for a capital felony for which the state seeks the death penalty, and the court shall order a severance as to any two or more defendants who are jointly

1 indicted or complained against for a capital felony if the state
2 seeks the death penalty for any one of those defendants.

3 SECTION 2. The change in law made by this Act applies only
4 to a trial commenced in a criminal case on or after the effective
5 date of this Act. A trial commenced before the effective date of
6 this Act is covered by the law in effect when the trial commenced,
7 and the former law is continued in effect for that purpose.

8 SECTION 3. This Act takes effect September 1, 2009.