

## **BILL ANALYSIS**

Senate Research Center

S.B. 1738  
By: Armbrister  
Criminal Justice  
4-16-97  
As Filed

### **DIGEST**

Currently, under Article 44.29 of the Code of Criminal Procedure, a defendant has the right to request a jury trial at the punishment phase of a criminal case, but the state has no commensurate right. Under Article 37.07 of the same code, if a case is reversed on appeal for error committed at the punishment phase, the case is only remanded for a new trial on punishment and not on guilt or innocence; however, if a jury convicts a defendant and is unable to reach a decision at the punishment phase, the case is retried both as to guilt or innocence and punishment. Concern has been raised regarding the inconsistencies of these statutes regarding criminal proceedings. S.B. 1738 addresses these problems by affording the State of Texas the right to go to jury at the punishment phase of a criminal case, and by requiring a court, if a jury finds a defendant guilty but is unable to reach a decision on punishment, to order the case retried as to punishment.

### **PURPOSE**

As proposed, S.B. 1738 provides for the assessment of punishment in criminal proceedings.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 2(b), Article 37.07, Code of Criminal Procedure, to provide that if a finding of guilty is returned, it shall be the responsibility of the judge to assess the punishment applicable, provided that in cases where the defendant or the state so elects in writing, the punishment shall be assessed by the same jury, except as provided in Section 3(c) and in Article 44.29. Authorizes the defendant or the state, if a guilty finding is returned, with the consent of the attorney for the opposing party, rather than the state, to change the defendant's or the state's election of one who assesses the punishment.

SECTION 2. Amends Section 3(c), Article 37.07, Code of Criminal Procedure, to prohibit a guilty verdict, in cases where the matter of punishment is referred to the jury, from being set aside as a result of the jury's failure to agree on the amount of punishment. Deletes the prohibition barring the verdict from being complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and the amount of punishment, where the jury finds the defendant guilty. Requires the court, in the event the jury should fail to agree as to punishment, to order a new trial for the punishment stage of the trial. Deletes the provisions establishing that in the event the jury shall fail to agree, a mistrial shall be declared, the jury discharged, and no jeopardy shall attach.

SECTION 3. Amends Article 44.29(b), Code of Criminal Procedure, to require a court, if the defendant or the state elects, to empanel a jury for the sentencing stage of the trial in the same manner as a jury is empaneled by the court for other trials before the court.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 1997.

SECTION 6. Emergency clause.