SUBJECT: Separate proceeding after mistrial in sentencing phase of criminal trial

COMMITTEE: Criminal Jurisprudence — favorable, without amendment

VOTE: 6 ayes — Keel, Riddle, Pena, Denny, Escobar, Raymond

1 nay — Hodge

1 present not voting — P. Moreno

1 absent — Reyna

WITNESSES: For — Sean Colston, Tarrant County District Attorney's Office; Shannon Edmonds, Texas District and County Attorneys Association; Clifford C. Herberg, Bexar County District Attorney's Office; Doug O'Connell, Travis County District Attorney's Office; Paula H. Storts, Harris County District Attorney's Office; Raymond Angelini

Against — Keith Hampton, Texas Criminal Defense Lawyers Association; Kristin Etter; David Gonzalez; Linda Icenhauer-Ramirez

BACKGROUND: Under Code of Criminal Procedure art. 37.07, in criminal cases in which juries assess punishment, verdicts are not considered complete until the jury has rendered a verdict both on the guilt or innocence of the defendant and, if the defendant was found guilty, on punishment. If the jury fails to agree on either, the court must declare a mistrial. If another trial is held, a new jury must be chosen to decide both guilt or innocence and the punishment.

DIGEST: HB 3265 would require that in criminal cases for which a jury was determining punishment and for which they could not agree on that punishment, a mistrial would be declared only for the punishment phase. The court would impanel another jury to determine punishment.

The bill would take effect September 1, 2005, and would apply only to trials in which guilty verdicts were rendered on or after that date.

SUPPORTERS SAY:

HB 3265 would help streamline court proceedings when a jury could not agree on a punishment and would conserve judicial resources. It also could spare some victims and witnesses from going through an entire second trial. Currently, a mistrial is declared if a jury has found a defendant guilty but cannot agree on a punishment. If the prosecutor chooses to retry the case, a new trial that includes both phases — guilt-innocence and sentencing — is launched with a new jury. This wastes judicial resources when a valid conviction of a legal jury has determined beyond a reasonable doubt that the defendant was guilty. HB 3265 would allow the guilty verdict to stand and require only a new sentencing procedure.

The procedure that would be established by HB 3265 would be in line with other parts of Texas criminal procedure and would inflict no damage on the interplay between the state's bifurcated trial system and its sentencing schemes. In the current system, juries make punishment decisions within the ranges set by the Penal Code and based on the evidence before them. This would continue under HB 3265. Having a jury assess punishment when that jury did not decide guilt or innocence would be similar to what happens now in two other situations: when a defendant pleads guilty and requests jury sentencing and when an appeals court has sent a case back to the trial court for a new sentencing procedure. The bill would put Texas in line with the 49 other states with similar procedures.

Retrying an entire case is needlessly time-consuming and costly when guilt already has been decided. In some situations it is impossible or simply a bad idea to retry a case. Elderly victims or witnesses can die or become incapacitated, child victims may not be able to hold up to testify for a second trial, and other witnesses may have moved or be difficult to locate. In some of these cases, a prosecutor might have to agree to a plea agreement even though a trial might have yielded a different punishment.

Under HB 3265, some trial participants could be spared the time and trauma of testifying again if fewer witness were called. Even if all of the same witnesses who testified during a trial had to appear again in a second sentencing procedure, their testimony could be truncated. Witnesses and victims called for a sentencing-only hearing might be less traumatized than they would be if they had to go through an entire trial again.

HB 3265 could streamline court proceedings in other ways. Criminal trials are technical and detailed proceedings, and some details would not have to be repeated during a sentencing-only procedure. For example, in a trial,

prosecutors may have to go into great detail and call several witnesses to establish who handled a specific piece of evidence. In a second, sentencing-only proceeding, prosecutors could simply discuss the evidence admitted at the trial without establishing the chain of custody. Weeks worth of testimony from the guilt-or-innocence phase could be reduced to day or so.

HB 3265 would not infringe on any right of a defendant, nor would it prevent a second sentencing jury from hearing all the information in a case. Both prosecutors and defense attorneys would have subpoena power to call any witnesses they wanted to during a second sentencing procedure. Defense attorneys could rebut testimony and cross-examine prosecution witnesses.

HB 3265 would not skew the procedure to help either the prosecution or the defense. In some cases, a second jury could be more lenient on a defendant, being removed from the emotion of a trial and not having heard all of the details brought out at trial.

Concerns about HB 3265 infringing on defendants' constitutional rights are unfounded. If a mistrial has occurred, a defendant has not been harmed and has nothing to appeal. Under the bill, defendants still would have their full appellate rights upon receiving a sentence and complete judgment. Defendants would be allowed to appeal both the guilt or innocence from the first trial and the punishment given by the second jury. In other states, similar procedures have not been found unconstitutional

HB 3265 would not apply to capital cases because those trials and sentencing procedures are governed by their own, unique statues.

OPPONENTS SAY:

HB 3265 would establish a system that does not consider the balance struck between the Texas trial and sentencing proceedings. It would not streamline court proceedings or result in an economy of judicial resources. The current system works well, is fair to all parties, and should not be changed for the minimal number of cases to which the circumstances contemplated by HB 3265 would apply.

Texas set up its bifurcated trial system and its sentencing structure in part based on the idea that juries who decided guilt or innocence also would decide punishment. Removing the jury deciding punishment from the trial would rob jurors of the chance to hear and consider all the facts of a case

that are important in helping juries decide appropriate punishments within the wide sentencing ranges in the Texas Penal Code. A first-degree felony can carry a penalty of five to 99 years in prison, and deciding what is appropriate within this range is best done by a jury that has seen and heard the entire trial. Juries could hear something during a trial's sentencing phase that casts light on something they learned during the guilt or innocence phase, and they should be able to consider this.

HB 3265 would not streamline court proceedings. Under the bill, prosecutors and defense attorneys would call all the same witnesses that appeared at a trial so that the new jurors would have full information. This means witnesses would have to return to court and give their testimony again, as they do under current law.

HB 3265 could establish a procedure skewed against defendants. Knowing that another group of 12 people has decided that the defendant was guilty could make jurors feel like they had more of a license to impose harsh penalties on a defendant because they were distanced from the first decision.

HB 3265 could raise constitutional issues if it infringed on a defendant's right to an interlocutory appeal. Appellate courts have jurisdiction to review judgments, and if a mistrial occurred, there would be no judgment to appeal.

NOTES:

The companion bill, SB 830 by Wentworth, is pending in the Senate Jurisprudence Committee.