

## CHAPTER 291

## S.B. No. 148

An Act relating to a defendant's election of the judge or the jury to assess punishment in a criminal case; amending Subsection (b), Section 2, Article 37.07, Code of Criminal Procedure, 1965.

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Subsection (b), Section 2, Article 37.07, Code of Criminal Procedure, 1965, 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 probation and the defendant filed his sworn motion for probation before the trial began, and (2) in other cases where the defendant so elects in writing *before the commencement of the voir dire examination of the jury panel* [~~at the time he enters his plea in open court~~], the punishment shall be assessed by the same jury. If a finding of guilty is returned, the defendant may, with the consent of the attorney for the state, change his election of one who assesses the punishment."

**SECTION 2.** (a) The change in law made by this Act applies only to the waiver of a jury determination on guilt or innocence or assessment of punishment in a trial commenced on or after the effective date of this Act.

(b) A trial commenced before the effective date of this Act is covered by the law in effect when the trial was commenced, and the former law is continued in effect for this purpose.

**SECTION 3.** This Act takes effect September 1, 1985.

**SECTION 4.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed the Senate on February 11, 1985, by a viva-voce vote; passed the House on May 17, 1985, by a non-record vote.

Approved: June 7, 1985

Effective: September 1, 1985