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HOUSE BILL NO. 315

Offered January 12, 2000

A BILL to amend and reenact §§ 19.2-295.1 and 19.2-298.01 of the Code of Virginia, relating to use of discretionary sentencing guidelines by the sentencing jury.

Patron—Melvin

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-295.1 and 19.2-298.01 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-295.1. Sentencing proceeding by the jury after conviction for a felony.

In cases of trial by jury, upon a finding that the defendant is guilty of a felony, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury. At such proceeding, the Commonwealth shall present the defendant's prior criminal convictions by certified, attested or exemplified copies of the record of conviction, including adult convictions and juvenile convictions and adjudications of delinquency. Prior convictions shall include convictions and adjudications of delinquency under the laws of any state, the District of Columbia, the United States or its territories. The Commonwealth shall provide to the defendant fourteen days prior to trial notice of its intention to introduce evidence of the defendant's prior criminal convictions. Such notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was had, and (iii) each offense of which he was convicted. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the defendant's prior criminal convictions which it intends to introduce at sentencing. After the Commonwealth has introduced such evidence of prior convictions, or if no such evidence is introduced, the defendant may introduce relevant, admissible evidence related to punishment. Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal. If the defendant is found guilty of an offense other than a felony, punishment shall be fixed as otherwise provided by law.

The jury may recommend to the court a punishment based upon its review of completed sentencing guidelines worksheets, but shall be instructed by the court to fix actual punishment in accordance with the governing statutes. If the jury cannot agree on a an actual punishment and if the defendant, the attorney for the Commonwealth, and the court agree, in the manner provided in § 19.2-257, then the court shall fix punishment.

If the sentence on appeal is subsequently set aside or found invalid solely due to an error in the sentencing proceeding, the court shall impanel a different jury to ascertain punishment, unless the defendant, the attorney for the Commonwealth and the court agree, in the manner provided in § 19.2-257, that the court shall fix punishment.

§ 19.2-298.01. Use of discretionary sentencing guidelines.

A. In all felony cases, other than Class 1 felonies, the court shall (i) have presented to it the appropriate discretionary sentencing guidelines worksheets and (ii) review and consider the suitability of the applicable discretionary sentencing guidelines established pursuant to Chapter 8 (§ 17.1-800 et seq.) of Title 17.1. Before imposing sentence, the court shall state for the record that such review and consideration have been accomplished and shall make the completed worksheets a part of the record of the case and open for inspection. In cases tried by a jury, the jury shall ~~not~~ be presented ~~any~~ ~~information regarding sentencing guidelines with completed sentencing guidelines worksheets prior to commencement of the sentencing phase of the trial.~~

B. In any felony case, other than Class 1 felonies, in which the court imposes a sentence which is either greater or less than that indicated by the discretionary sentencing guidelines, the court shall file with the record of the case a written explanation of such departure.

C. In felony cases, other than Class 1 felonies, tried by a jury and in felony cases tried by the court without a jury upon a plea of not guilty, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets. In felony cases tried upon a plea of guilty, including cases which are the subject of a plea agreement, the court shall direct a probation officer of such court to prepare the discretionary sentencing guidelines worksheets, or, with the concurrence of the accused, the court and the attorney for the Commonwealth, the worksheets shall be prepared by the attorney for the Commonwealth.

D. Except as provided in subsection E, discretionary sentencing guidelines worksheets prepared

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60 pursuant to this section shall be subject to the same distribution as presentence investigation reports
61 prepared pursuant to subsection A of § 19.2-299.

62 E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the
63 circuit court in which the case was tried shall cause a copy of such order or orders, the original of the
64 discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure
65 explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing
66 Commission within five days.

67 F. The failure to follow any or all of the provisions of this section or the failure to follow any or all
68 of the provisions of this section in the prescribed manner shall not be reviewable on appeal or the basis
69 of any other post-conviction relief.

70 G. The provisions of this section shall apply only to felony cases in which the offense is committed
71 on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of
72 the discretionary sentencing guidelines only, a person sentenced to a boot camp incarceration program
73 pursuant to § 19.2-316.1, a detention center incarceration program pursuant to § 19.2-316.2 or a
74 diversion center incarceration program pursuant to § 19.2-316.3 shall be deemed to be sentenced to a
75 term of incarceration.