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SENATE BILL NO. 78

Offered January 13, 2010

Prefiled January 5, 2010

A *BILL to amend and reenact §§ 19.2-257 and 19.2-264.3 of the Code of Virginia, relating to sentencing for capital offenses.*

Patron—Reynolds

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 19.2-257 and 19.2-264.3 of the Code of Virginia are amended and reenacted as follows:**

§ 19.2-257. Trial without jury in felony cases; exception.

Upon a plea of guilty in a felony case, *other than a Class 1 felony*, tendered in person by the accused after being advised by counsel, the court shall hear and determine the case without the intervention of a jury; or if the accused plead not guilty, with his consent after being advised by counsel and the concurrence of the attorney for the Commonwealth and of the court entered of record, the court shall hear and determine the case without the intervention of a jury. In such cases the court shall have and exercise all the powers, privileges and duties given to juries by any statute relating to crimes and punishments.

§ 19.2-264.3. Procedure for trial by jury.

A. In any case in which the offense may be punishable by death which is tried before a jury the court shall first submit to the jury the issue of guilt or innocence of the defendant of the offense charged in the indictment, or any other offense supported by the evidence for which a lesser punishment is provided by law and the penalties therefor, *unless the court accepts a plea of guilty from the defendant to the offense which may be punishable by death.*

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed, it shall fix the punishment as provided in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense which may be punishable by death, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of the penalty, which shall be fixed as is provided in § 19.2-264.4.

D. *If the court accepts a plea of guilty to an offense which may be punishable by death, a jury impaneled for the purpose shall fix punishment as provided in § 19.2-264.4. With the defendant's consent after being advised by counsel and the concurrence of the attorney for the Commonwealth and of the court entered of record, the court shall hear and determine the sentence without the intervention of a jury. The entry of a plea of guilty shall not affect the admission of evidence relevant to the factors set forth in subsections B and C of § 19.2-264.4 that may be offered by the Commonwealth or the defense.*

E. If the sentence of death is subsequently set aside or found invalid, and the defendant or the Commonwealth requests a jury for purposes of resentencing, the court shall impanel a different jury on the issue of penalty.

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