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SENATE BILL NO. 811

Offered January 8, 2020
Prefiled January 8, 2020

A BILL to amend and reenact §§ 19.2-295.1 and 19.2-295.3 of the Code of Virginia, relating to sentencing in a criminal case; bifurcated jury trial.

Patrons—Morrissey; Delegate: Samirah

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-295.1 and 19.2-295.3 of the Code of Virginia are amended and reenacted as follows:

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

A. In cases of trial by jury~~,~~ *in which the charged offense is not punishable by death and in which a defendant has testified in his case-in-chief, a court shall submit the issue of guilt or innocence of the defendant and the ascertainment punishment together for deliberation by such jury. The jury shall render its verdict and its recommended sentence, if applicable, at the same time.*

B. In all other cases of trial by jury, upon a finding that the defendant is guilty of a felony or a Class 1 misdemeanor, or upon a finding in the trial de novo of an appealed misdemeanor conviction that the defendant is guilty of a Class 1 misdemeanor, 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 may present any victim impact testimony pursuant to § 19.2-295.3 and shall present the defendant's prior criminal history, including prior convictions and the punishments imposed, by certified, attested or exemplified copies of the final order, 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 14 days prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's prior criminal history, including prior convictions and punishments imposed. 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, (iii) each offense of which he was convicted, and (iv) the punishment imposed. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the final orders which it intends to introduce at sentencing. After the Commonwealth has introduced in its case-in-chief of the sentencing phase such evidence of prior convictions or victim impact testimony, or both, 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.

C. If the jury cannot agree on a punishment, 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.

D. If the sentence imposed pursuant to this section 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.

§ 19.2-295.3. Admission of victim impact testimony.

Whether by trial or upon a plea of guilty, upon a finding that the defendant is guilty of a felony, the court shall permit the victim, as defined in § 19.2-11.01, upon motion of the attorney for the Commonwealth, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1. In the case of trial by jury, ~~the court shall permit the victim to testify at the sentencing hearing conducted pursuant to § 19.2-295.1 or in the case of~~ trial by the court, or a guilty plea, the court shall permit the victim to testify before the court prior to the imposition of ~~a~~ *the* sentence *by the presiding judge*. Victim impact testimony in all capital murder cases shall be admitted in accordance with § 19.2-264.4.