

20200902D

## SENATE BILL NO. 5007

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary  
on August 20, 2020)

(Patron Prior to Substitute—Senator Morrissey)

A BILL to amend and reenact §§ 19.2-257, 19.2-264.3, 19.2-288, 19.2-295, 19.2-295.1, and 19.2-295.3 of the Code of Virginia, relating to criminal cases; sentencing reform.

**Be it enacted by the General Assembly of Virginia:**

1. That §§ 19.2-257, 19.2-264.3, 19.2-288, 19.2-295, 19.2-295.1, and 19.2-295.3 of the Code of Virginia are amended and reenacted as follows:

**§ 19.2-257. Trial without jury in felony cases.**

A. Upon a plea of guilty in a felony case, 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 pleads *pleads* 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.

B. *The attorney for the Commonwealth shall not withhold his concurrence to proceeding without the intervention of a jury if the accused consents to proceeding in such a manner when an order declaring a judicial emergency has been entered pursuant to § 17.1-330 and such order suspends criminal jury trials.*

**§ 19.2-264.3. Procedure for trial by jury.**

A. In any case in which the offense may be punishable by death ~~which~~ *that* 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.

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed *and the accused has requested that the jury ascertain punishment of the offense as provided in subsection A of § 19.2-295*, it shall fix the punishment as provided in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense ~~which~~ *that* 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.

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.

**§ 19.2-288. Verdict when accused found guilty of punishable homicide.**

If a person indicted for murder be found by the jury guilty of any punishable homicide, they shall in their verdict fix the degree thereof ~~and~~. *The court shall ascertain the extent of the punishment to be inflicted within the bounds prescribed by §§ 18.2-30 to 18.2-36, unless the accused has requested that the jury ascertain punishment of the offense as provided in subsection A of § 19.2-295. However, in any case in which the accused is found guilty of capital murder, the provisions of Article 4.1 (§ 19.2-264.2 et seq.) of Chapter 15 shall apply.*

**§ 19.2-295. Ascertainment of punishment.**

A. Within the limits prescribed by law, *the court shall ascertain* the term of confinement in the state correctional facility or in jail and the amount of fine, if any, ~~of when a person is convicted of a criminal offense, shall be ascertained by the jury, or by the court in cases tried without a jury unless the accused is tried by a jury and has requested that the jury ascertain punishment. The accused must request sentencing by a jury before the jury is dismissed by the court after ascertaining guilt.~~

B. *When the accused is tried by a jury, deliberations of the jury shall be confined to a determination of the guilt or innocence of the accused, except that when the ascertainment of punishment by the jury has been requested by the accused, a proceeding in accordance with § 19.2-295.1 shall apply, or when the accused is found guilty of capital murder, the provisions of Article 4.1 (§ 19.2-264.2 et seq.) of Chapter 15 shall apply.*

C. In any case in which a jury has fixed a sentence as provided in this chapter and the sentence is modified by the court pursuant to the authority contained within this chapter, the court shall file with the record of the case a written explanation of such modification including the cause therefor.

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

In 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

60 defendant is guilty of a Class 1 misdemeanor, a separate proceeding limited to the ascertainment of  
61 punishment shall be held as soon as practicable before the same jury *when ascertainment of punishment*  
62 *by jury has been requested by the accused as provided in subsection A of § 19.2-295*. At such  
63 proceeding, the Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and  
64 shall present the defendant's prior ~~criminal history, including prior convictions and the punishments~~  
65 ~~imposed, adult felony convictions~~ by certified, attested, or exemplified copies of the final order,  
66 ~~including adult convictions and juvenile convictions and adjudications of delinquency~~. Prior convictions  
67 shall include convictions and adjudications of delinquency under the laws of any state, the District of  
68 Columbia, the United States or its territories. The Commonwealth shall provide to the defendant 14 days  
69 prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's prior  
70 criminal history, including prior convictions and punishments imposed. Such notice shall include (i) the  
71 date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was  
72 had, (iii) each offense of which he was convicted, and (iv) the punishment imposed. Prior to  
73 commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified  
74 copies of the final orders ~~which~~ *that* it intends to introduce at sentencing. After the Commonwealth has  
75 introduced in its case-in-chief of the sentencing phase such evidence of prior convictions or victim  
76 impact testimony, or both, or if no such evidence is introduced, the defendant may introduce ~~relevant,~~  
77 ~~admissible~~ *any* evidence related to punishment. Nothing in this section shall prevent the Commonwealth  
78 or the defendant from introducing relevant, admissible evidence in rebuttal.

79 If the jury cannot agree on a punishment, the court shall ~~impanel a different jury to ascertain~~  
80 ~~punishment, unless the defendant, the attorney for the Commonwealth, and the court agree, in the~~  
81 ~~manner provided in § 19.2-257, that the court shall fix punishment.~~

82 If the sentence imposed pursuant to this section is subsequently set aside or found invalid solely due  
83 to an error in the sentencing proceeding, the court shall impanel a different jury to ascertain punishment,  
84 unless the defendant, the attorney for the Commonwealth and the court agree, in the manner provided in  
85 § 19.2-257, that the court shall fix punishment.

86 **§ 19.2-295.3. Admission of victim impact testimony.**

87 Whether by trial or upon a plea of guilty, upon a finding that the defendant is guilty of a felony, the  
88 court shall permit the victim, as defined in § 19.2-11.01, upon motion of the attorney for the  
89 Commonwealth, to testify in the presence of the accused regarding the impact of the offense upon the  
90 victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of  
91 subsection A of § 19.2-299.1. In the case of trial by jury *and when the accused has requested the jury*  
92 *to ascertain punishment as provided in subsection A of § 19.2-295*, the court shall permit the victim to  
93 testify at the sentencing hearing conducted pursuant to § 19.2-295.1 ~~or in~~. *In all other cases of trial by*  
94 *jury*, the case of trial by the court, or *the case of* a guilty plea, the court shall permit the victim to  
95 testify before the court prior to the imposition of ~~a~~ *the* sentence *by the presiding judge*. Victim impact  
96 testimony in all capital murder cases shall be admitted in accordance with § 19.2-264.4.