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SENATE BILL NO. 326

Senate Amendments in [] - February 11, 2020

A BILL to amend and reenact § 19.2-295.1 of the Code of Virginia, relating to sentencing proceeding by the jury after conviction; recommendation of leniency.

Patron Prior to Engrossment—Senator Deeds

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:**1. That § 19.2-295.1 of the Code of Virginia is amended and reenacted as follows:****§ 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 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.

In ascertaining punishment, the jury may recommend that the sentence imposed be suspended in whole or in part, or that sentences imposed for multiple offenses be served concurrently, except where such suspension of sentence or concurrent service is prohibited by law. If the jury recommends suspension of the sentence imposed, or that sentences for multiple offenses be served concurrently, the trial court shall not impose a period of active incarceration in excess of the active term of incarceration recommended by the jury. [The jury may also recommend that the defendant be placed on probation, make full or partial restitution, perform community service, or receive mental health or substance abuse treatment in lieu of incarceration or as a condition of any suspended sentence, and the court shall follow such recommendation of the jury unless good cause is shown for why the recommendation is inappropriate or unavailable.]

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.

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.

ENGROSSED

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