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SENATE BILL NO. 810

Offered January 8, 2020
Prefiled January 8, 2020

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 worksheets by juries.

Patrons—Morrissey; Delegates: Bagby, Hope and Samirah

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-295.1 and 19.2-298.01 of the Code of Virginia are 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.

After all relevant, admissible evidence has been introduced and the Commonwealth and defendant have concluded their arguments for the sentencing phase, the jury shall be presented with the applicable discretionary sentencing guidelines worksheets. When the jury receives the applicable discretionary sentencing guidelines worksheets, the court shall instruct the jury that the applicable discretionary sentencing guidelines worksheets are discretionary and not binding. The applicable discretionary sentencing guidelines worksheets shall at all times be kept confidential by each juror and shall be filed under seal as a part of the record in the case.

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.

§ 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~~ *with the applicable discretionary* sentencing guidelines *worksheets at the sentencing proceeding as provided in § 19.2-295.1*.

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

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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 pursuant to this section, *including the discretionary sentencing guidelines worksheets provided to a jury,* shall be subject to the same distribution as presentence investigation reports prepared pursuant to subsection A of § 19.2-299.

E. Following the entry of a final order of conviction and sentence in a felony case, the clerk of the circuit court in which the case was tried shall cause a copy of such order or orders, the original of the discretionary sentencing guidelines worksheets prepared in the case, and a copy of any departure explanation prepared pursuant to subsection B to be forwarded to the Virginia Criminal Sentencing Commission within five days. Similarly, the statement required by §§ 19.2-295 and 19.2-303 and regarding departure from or modification of a sentence fixed by a jury shall be forwarded to the Virginia Criminal Sentencing Commission.

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

G. The provisions of this section shall apply only to felony cases in which the offense is committed on or after January 1, 1995, and for which there are discretionary sentencing guidelines. For purposes of the discretionary sentencing guidelines only, a person sentenced to a community corrections alternative program pursuant to § 19.2-316.4 shall be deemed to be sentenced to a term of incarceration.