

# 1995 SESSION

INTRODUCED

LD8525825

## HOUSE BILL NO. 1787

Offered January 19, 1995

*A BILL to amend and reenact § 19.2-295.1 of the Code of Virginia, relating to bifurcated trial; jury sentencing.*

Patrons—Woodrum, Almand, Ball, Copeland, Cunningham, Guest and Reynolds; Senators: Cross and Robb

Referred to Committee for Courts of Justice

### **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 for a felony.

In cases of trial by jury, upon a finding that the defendant is guilty of a felony, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury *unless sentencing by a jury is waived by the defendant with the concurrence of the attorney for the Commonwealth and the trial court.* At such proceeding, the Commonwealth shall present the defendant's prior criminal convictions by certified, attested or exemplified copies of the record of conviction, 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 *notice* to the defendant fourteen days prior to trial *of its intention to introduce evidence of the defendant's prior convictions. The Commonwealth's notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of the court where each prior conviction was had, and (iii) a description of the offense for each prior conviction. The defendant may examine and photocopies of photocopy certified copies of the defendant's prior criminal convictions which it the Commonwealth intends to introduce at sentencing.* After the Commonwealth has introduced such evidence of prior convictions, the defendant may introduce relevant, admissible evidence related to punishment. *If the Commonwealth does not introduce evidence of prior criminal convictions, the trial court may, in its discretion, refuse the defendant's introduction of evidence related to punishment.* If the defendant is found guilty of an offense other than a felony, *the jury shall be instructed as to the punishment shall be fixed as otherwise provided by law and shall not receive any additional evidence.* Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant, admissible evidence in rebuttal.

*If the jury cannot unanimously agree upon a sentence, the trial court shall sentence the defendant. If the conviction is reversed solely because of error occurring in the sentencing phase of the trial, the trial proceeding on remand shall be limited to the ascertainment of punishment which shall be done by a new jury empaneled by the court for that purpose. The defendant may waive such a jury with the concurrence of the attorney for the Commonwealth and the trial court and submit to the court for re-sentencing.*

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