

LD1328264

HOUSE BILL NO. 1806

Offered January 19, 1995

A BILL to amend and reenact §§ 19.2-264.4 and 19.2-299.1 of the Code of Virginia, relating to capital sentencing.

Patrons—Hamilton, Behm, Dudley, Fisher, Ingram, Kilgore, Nixon, Purkey and Wardrup; Senators: Andrews and Maxwell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-264.4 and 19.2-299.1 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-264.4. Sentence proceeding.

A. Upon a finding that the defendant is guilty of an offense which may be punishable by death, a proceeding shall be held which shall be limited to a determination as to whether the defendant shall be sentenced to death or life imprisonment. In case of trial by jury, where a sentence of death is not recommended, the defendant shall be sentenced to imprisonment for life.

B. In cases of trial by jury, evidence may be presented as to any matter which the court deems relevant to sentence, ~~except that~~ including evidence of the specific harm caused by the defendant's commission of the offense and the impact that the commission of the offense had on the victim or victims. For purposes of this section, a victim shall be as defined in § 19.2-299.1. However, reports under the provisions of § 19.2-299, or under any rule of court, shall not be admitted into evidence.

Evidence which may be admissible, subject to the rules of evidence governing admissibility, may include the circumstances surrounding the offense, the history and background of the defendant, and any other facts in mitigation of the offense. Facts in mitigation may include, but shall not be limited to, the following: (i) The defendant has no significant history of prior criminal activity, (ii) the capital felony was committed while the defendant was under the influence of extreme mental or emotional disturbance, (iii) the victim was a participant in the defendant's conduct or consented to the act, (iv) at the time of the commission of the capital felony, the capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirements of law was significantly impaired, (v) the age of the defendant at the time of the commission of the capital offense or (vi) mental retardation of the defendant.

C. The penalty of death shall not be imposed unless the Commonwealth shall prove beyond a reasonable doubt that there is a probability based upon evidence of the prior history of the defendant or of the circumstances surrounding the commission of the offense of which he is accused that he would commit criminal acts of violence that would constitute a continuing serious threat to society, or that his conduct in committing the offense was outrageously or wantonly vile, horrible or inhuman, in that it involved torture, depravity of mind or aggravated battery to the victim.

D. The verdict of the jury shall be in writing, and in one of the following forms:

(1) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and that (after consideration of his prior history that there is a probability that he would commit criminal acts of violence that would constitute a continuing serious threat to society) or his conduct in committing the offense is outrageously or wantonly vile, horrible or inhuman in that it involved (torture) (depravity of mind) (aggravated battery to the victim), and having considered the evidence in mitigation of the offense, unanimously fix his punishment at death.

Signed, foreman"

or

(2) "We, the jury, on the issue joined, having found the defendant guilty of (here set out statutory language of the offense charged) and having considered all of the evidence in aggravation and mitigation of such offense, fix his punishment at imprisonment for life.

Signed, foreman"

E. In the event the jury cannot agree as to the penalty, the court shall dismiss the jury, and impose a sentence of imprisonment for life.

§ 19.2-299.1. When Victim Impact Statement required; contents; uses.

The presentence report prepared pursuant to § 19.2-299 shall, on motion of the attorney for the Commonwealth with the consent of the victim, in all cases involving ~~noncapital~~ murder, manslaughter, abduction, death or injury resulting from driving under the influence in violation of § 18.2-266, malicious wounding, robbery or criminal sexual assault, include a Victim Impact Statement and may, in

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60 the discretion of the court, include a Victim Impact Statement, in any other case ~~except capital murder~~
61 in which the court determines that the defendant, in committing the felony for which he has been
62 convicted, may have caused significant physical, psychological or economic injury to the victim. For
63 purposes of this section, a victim is (i) an individual who has suffered physical, psychological or
64 economic harm as a direct result of the commission of a felony, (ii) a spouse, child, parent or legal
65 guardian of a minor victim, or (iii) a spouse, child, parent or legal guardian of a victim of a homicide in
66 noncapital cases.

67 A Victim Impact Statement, which shall be kept confidential and shall be sealed upon entry of the
68 sentencing order, shall (i) identify the victim, (ii) itemize any economic loss suffered by the victim as a
69 result of the offense, (iii) identify the nature and extent of any physical or psychological injury suffered
70 by the victim as a result of the offense, (iv) detail any change in the victim's personal welfare, lifestyle
71 or familial relationships as a result of the offense, (v) identify any request for psychological or medical
72 services initiated by the victim or the victim's family as a result of the offense, and (vi) provide such
73 other information as the court may require related to the impact of the offense upon the victim.

74 If the court does not order a presentence investigation and report, the attorney for the Commonwealth
75 may prepare a Victim Impact Statement.

76 The Victim Impact Statement may be considered by the court in determining the appropriate
77 sentence. A copy of the statement prepared pursuant to this section shall be made available to the
78 defendant or counsel for the defendant without court order at least five days prior to the sentencing
79 hearing. The statement shall not be admissible in any civil proceeding for damages arising out of the
80 acts upon which the conviction was based. The statement, however, may be utilized by the Virginia
81 Workers' Compensation Commission in its determinations on claims by victims of crimes pursuant to
82 Chapter 21.1 (§ 19.2-368.1 et seq.) of this title.