

LD4191428

HOUSE BILL NO. 1933

Offered January 20, 1995

A *BILL to amend and reenact § 19.2-295.1 of the Code of Virginia, relating to jury sentencing proceedings after felony conviction.*

Patron—Reynolds

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 of the court entered of record.* 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 ~~photocopies of certified copies of the defendant's prior criminal convictions which it intends to introduce at sentencing.~~ After the Commonwealth has introduced such evidence of prior convictions, *of its intention to introduce into evidence copies of the defendant's prior criminal convictions. The Commonwealth's notice shall include (i) the date of each prior conviction, (ii) the name and jurisdiction of each court for each prior conviction, and (iii) the nature of the offense for each prior conviction. If the Commonwealth introduces evidence of convictions,* 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.

If the jury cannot agree unanimously on a sentence, then the trial court shall declare a mistrial as to sentencing and set the case for a sentencing proceeding by a new jury.

If the defendant is found guilty of an offense other than a felony, ~~punishment shall be fixed as otherwise provided by law.~~ *the jury shall fix the punishment and return it with their guilty verdict without any additional evidence being taken. If the conviction is reversed solely because of error occurring in the sentencing phase by the jury after conviction, then the trial on remand shall be restricted only to sentencing by a jury. In the event a new trial restricted only to sentencing is ordered for any reason and a jury is not waived, the court shall impanel a different jury to decide the issue of penalty.*

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