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HOUSE BILL NO. 2507

Offered January 20, 1997

A BILL to amend and reenact § 19.2-295.1 of the Code of Virginia, relating to retrial of case after a finding of guilt.

Patron—Forbes

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. 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 to the defendant fourteen days prior to trial notice of its intention to introduce evidence of the defendant's prior criminal convictions. 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, and (iii) each offense of which he was convicted. Prior to commencement of the trial, the Commonwealth shall provide to the defendant 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, 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. If the defendant is found guilty of an offense other than a felony, punishment shall be fixed as otherwise provided by law.

If the jury cannot agree on a punishment and if the defendant, the attorney for the Commonwealth, and the court agree, in the manner provided in § 19.2-257, then the court shall fix punishment. *However, if the defendant, the attorney for the Commonwealth, and the court cannot agree that the court shall fix punishment, then the court shall dismiss the jury and impanel a new jury to ascertain punishment.*

If the sentence on appeal 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.

INTRODUCED

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