

## 1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 19.2-295.1 of the Code of Virginia, relating to sentencing proceeding by*  
3 *the jury after conviction.*

4  
5 Approved

[H 77]

6 **Be it enacted by the General Assembly of Virginia:**

7 **1. That § 19.2-295.1 of the Code of Virginia is amended and reenacted as follows:**

8 § 19.2-295.1. Sentencing proceeding by the jury after conviction.

9 In cases of trial by jury, upon a finding that the defendant is guilty of a felony or a Class 1  
10 misdemeanor, or upon a finding in the trial de novo of an appealed misdemeanor conviction that the  
11 defendant is guilty of a Class 1 misdemeanor, a separate proceeding limited to the ascertainment of  
12 punishment shall be held as soon as practicable before the same jury. At such proceeding, the  
13 Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and shall present the  
14 defendant's prior criminal history, including prior convictions and the punishments imposed, by certified,  
15 attested or exemplified copies of the final order, including adult convictions and juvenile convictions and  
16 adjudications of delinquency. Prior convictions shall include convictions and adjudications of  
17 delinquency under the laws of any state, the District of Columbia, the United States or its territories.  
18 The Commonwealth shall provide to the defendant 14 days prior to trial notice of its intention to  
19 introduce copies of final orders evidencing the defendant's prior criminal history, including prior  
20 convictions and punishments imposed. Such notice shall include (i) the date of each prior conviction, (ii)  
21 the name and jurisdiction of the court where each prior conviction was had, (iii) each offense of which  
22 he was convicted, and (iv) the punishment imposed. Prior to commencement of the trial, the  
23 Commonwealth shall provide to the defendant photocopies of certified copies of the final orders which it  
24 intends to introduce at sentencing. After the Commonwealth has introduced in its case-in-chief of the  
25 sentencing phase such evidence of prior convictions or victim impact testimony, or both, or if no such  
26 evidence is introduced, the defendant may introduce relevant, admissible evidence related to punishment.  
27 Nothing in this section shall prevent the Commonwealth or the defendant from introducing relevant,  
28 admissible evidence in rebuttal.

29 If the jury cannot agree on a punishment ~~and if~~, *the court shall impanel a different jury to ascertain*  
30 *punishment, unless* the defendant, the attorney for the Commonwealth, and the court agree, in the  
31 manner provided in § 19.2-257, ~~then~~ *that* the court shall fix punishment.

32 If the sentence imposed pursuant to this section is subsequently set aside or found invalid solely due  
33 to an error in the sentencing proceeding, the court shall impanel a different jury to ascertain punishment,  
34 unless the defendant, the attorney for the Commonwealth and the court agree, in the manner provided in  
35 § 19.2-257, that the court shall fix punishment.

ENROLLED

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