

20200360D

SENATE BILL NO. 5007

Offered August 18, 2020

Prefiled July 31, 2020

A *BILL to amend and reenact §§ 19.2-257, 19.2-264.3, 19.2-288, 19.2-295, 19.2-295.1, 19.2-295.3, and 30-19.1:4 of the Code of Virginia, relating to criminal cases; sentencing reform.*

Patrons—Morrissey, Boysko, Deeds, Ebbin, Edwards, Favola, Hashmi, Locke, McClellan and Surovell;
Delegates: Aird, Bagby, Bourne, Carr, Carroll Foy, Cole, J.G., Herring, Hope, Kory, McQuinn,
Rasoul, Samirah and Scott

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-257, 19.2-264.3, 19.2-288, 19.2-295, 19.2-295.1, 19.2-295.3, and 30-19.1:4 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-257. Trial without jury in felony cases.

A. Upon a plea of guilty in a felony case, tendered in person by the accused after being advised by counsel, the court shall hear and determine the case without the intervention of a jury; or if the accused ~~plead~~ *pleads* not guilty, with his consent after being advised by counsel and the concurrence of the attorney for the Commonwealth and of the court entered of record, the court shall hear and determine the case without the intervention of a jury. In such cases, the court shall have and exercise all the powers, privileges, and duties given to juries by any statute relating to crimes and punishments.

B. *The attorney for the Commonwealth shall not withhold his concurrence to proceeding without the intervention of a jury if the accused consents to proceeding in such a manner when an order declaring a judicial emergency has been entered pursuant to § 17.1-330 and such order suspends criminal jury trials.*

§ 19.2-264.3. Procedure for trial by jury.

A. In any case in which the offense may be punishable by death ~~which~~ *that* is tried before a jury the court shall first submit to the jury the issue of guilt or innocence of the defendant of the offense charged in the indictment, or any other offense supported by the evidence for which a lesser punishment is provided by law and the penalties therefor.

B. If the jury finds the defendant guilty of an offense for which the death penalty may not be imposed *and the accused has requested that the jury ascertain punishment of the offense as provided in subsection A of § 19.2-295*, it shall fix the punishment as provided in § 19.2-295.1.

C. If the jury finds the defendant guilty of an offense ~~which~~ *that* may be punishable by death, then a separate proceeding before the same jury shall be held as soon as is practicable on the issue of the penalty, which shall be fixed as is provided in § 19.2-264.4.

If the sentence of death is subsequently set aside or found invalid, and the defendant or the Commonwealth requests a jury for purposes of resentencing, the court shall impanel a different jury on the issue of penalty.

§ 19.2-288. Verdict when accused found guilty of punishable homicide.

If a person indicted for murder be found by the jury guilty of any punishable homicide, they shall in their verdict fix the degree thereof ~~and~~. *The court shall ascertain the extent of the punishment to be inflicted within the bounds prescribed by §§ 18.2-30 to 18.2-36, unless the accused has requested that the jury ascertain punishment of the offense as provided in subsection A of § 19.2-295. However, in any case in which the accused is found guilty of capital murder, the provisions of Article 4.1 (§ 19.2-264.2 et seq.) of Chapter 15 shall apply.*

§ 19.2-295. Ascertainment of punishment.

A. Within the limits prescribed by law, *the court shall ascertain the term of confinement in the state correctional facility or in jail and the amount of fine, if any, of when a person is convicted of a criminal offense, shall be ascertained by the jury, or by the court in cases tried without a jury unless the accused is tried by a jury and has requested that the jury ascertain punishment. The accused must request sentencing by a jury before the jury is dismissed by the court after ascertaining guilt.*

B. *When the accused is tried by a jury, deliberations of the jury shall be confined to a determination of the guilt or innocence of the accused, except that when the ascertainment of punishment by the jury has been requested by the accused, a proceeding in accordance with § 19.2-295.1 shall apply, or when the accused is found guilty of capital murder, the provisions of Article 4.1 (§ 19.2-264.2 et seq.) of Chapter 15 shall apply.*

C. In any case in which a jury has fixed a sentence as provided in this chapter and the sentence is

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modified by the court pursuant to the authority contained within this chapter, the court shall file with the record of the case a written explanation of such modification including the cause therefor.

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

In cases of trial by jury, upon a finding that the defendant is guilty of a felony or a Class 1 misdemeanor, or upon a finding in the trial de novo of an appealed misdemeanor conviction that the defendant is guilty of a Class 1 misdemeanor, a separate proceeding limited to the ascertainment of punishment shall be held as soon as practicable before the same jury *when ascertainment of punishment by jury has been requested by the accused as provided in subsection A of § 19.2-295*. At such proceeding, the Commonwealth may present any victim impact testimony pursuant to § 19.2-295.3 and shall present the defendant's prior criminal history, ~~including prior convictions and the punishments imposed, adult felony convictions~~ by certified, attested, or exemplified copies of the final order, ~~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 14 days prior to trial notice of its intention to introduce copies of final orders evidencing the defendant's prior criminal history, including prior convictions and punishments imposed. 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, (iii) each offense of which he was convicted, and (iv) the punishment imposed. Prior to commencement of the trial, the Commonwealth shall provide to the defendant photocopies of certified copies of the final orders ~~which~~ *that* it intends to introduce at sentencing. After the Commonwealth has introduced in its case-in-chief of the sentencing phase such evidence of prior convictions or victim impact testimony, or both, or if no such evidence is introduced, the defendant may introduce ~~relevant, admissible~~ *any* 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 on a punishment, 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~~ *declare a mistrial. Any retrial is limited to the charges for which the jury found the defendant guilty.*

If the sentence imposed pursuant to this section 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.

§ 19.2-295.3. Admission of victim impact testimony.

Whether by trial or upon a plea of guilty, upon a finding that the defendant is guilty of a felony, the court shall permit the victim, as defined in § 19.2-11.01, upon motion of the attorney for the Commonwealth, to testify in the presence of the accused regarding the impact of the offense upon the victim. The court shall limit the victim's testimony to the factors set forth in clauses (i) through (vi) of subsection A of § 19.2-299.1. In the case of trial by jury *and when the accused has requested the jury to ascertain punishment as provided in subsection A of § 19.2-295*, the court shall permit the victim to testify at the sentencing hearing conducted pursuant to § 19.2-295.1 ~~or in~~ *In all other cases of trial by jury*, the case of trial by the court, or *the case of* a guilty plea, the court shall permit the victim to testify before the court prior to the imposition of ~~a~~ *the* sentence ~~by the presiding judge~~. Victim impact testimony in all capital murder cases shall be admitted in accordance with § 19.2-264.4.

§ 30-19.1:4. Terms of imprisonment or commitment; fiscal impact statements; appropriations for operating costs.

A. The Virginia Criminal Sentencing Commission shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill ~~which~~ *that* would result in a net increase *or decrease* in periods of imprisonment in state adult correctional facilities. The Department of Planning and Budget shall annually provide the Virginia Criminal Sentencing Commission with the operating cost per inmate.

B. The Department of Planning and Budget, in conjunction with the Department of Juvenile Justice, shall prepare a fiscal impact statement reflecting the operating costs attributable to and necessary appropriations for any bill that would result in a net increase *or decrease* in periods of commitment to the custody of the Department of Juvenile Justice.

C. The requirement for a fiscal impact statement ~~includes, but is not limited to,~~ *includes* those bills which add new crimes for which imprisonment or commitment is authorized, *repeal crimes for which imprisonment or commitment is authorized*, increase *or decrease* the periods of imprisonment or commitment authorized for existing crimes, impose *or eliminate* minimum or mandatory minimum terms of imprisonment or commitment, or modify the law governing release of prisoners or juveniles in such a way that the time served in prison, or the time committed to the custody of the Department of Juvenile Justice, will increase *or decrease*.

D. The fiscal impact statement of any bill introduced on or after July 1, 2002, that would result in a

net increase *or decrease* in periods of imprisonment in state correctional facilities or periods of commitment to the custody of the Department of Juvenile Justice, shall include an analysis of the fiscal impact on local and regional jails, state and local pretrial and community-based probation services agencies, and juvenile detention facilities.

E. The amount of the estimated appropriation reflected in the fiscal impact statement shall be printed on the face of each such bill, but shall not be codified. If the agency responsible for preparing the fiscal impact statement does not have sufficient information to project the impact, the fiscal impact statement shall state this, and the words "Cannot be determined" shall be printed on the face of each such bill.

F. The fiscal impact statement shall ~~include, but not be limited to,~~ *include* details as to any increase or decrease in the offender population. Statements prepared by the Virginia Criminal Sentencing Commission shall detail any necessary adjustments in guideline midpoints for the crime or crimes affected by the bill as well as adjustments in guideline midpoints for other crimes affected by the implementation of the bill that, in the opinion of the Commission, are necessary and appropriate.

G. The agency preparing the fiscal impact statement shall forward copies of such impact statements to the Clerk of the House of Delegates and the Clerk of the Senate for transmittal to each patron of the legislation and to the chairman of each committee of the General Assembly to consider the legislation.

H. For each law enacted ~~which~~ *that* results in a net increase *or decrease* in periods of imprisonment in state correctional facilities or a net increase *or decrease* in periods of commitment or the time committed to the custody of the Department of Juvenile Justice, a one-year appropriation shall be made from the general fund equal to the estimated increase *or decrease* in operating costs of such law, in current dollars, of the highest *or lowest* of the next six fiscal years following the effective date of the law. "Operating costs" means all costs other than capital outlay costs.

I. The Corrections Special Reserve Fund (the Fund) is hereby established as a nonreverting special fund on the books of the Comptroller. The Fund shall consist of all moneys appropriated by the General Assembly under the provisions of this section and all interest thereon. Any moneys deposited in the Fund shall remain in the Fund at the end of the biennium. Moneys in the Fund shall be expended solely for capital expenses, including the cost of planning or preplanning studies that may be required to initiate capital outlay projects.