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## SENATE BILL NO. 123

Offered January 12, 2022

Prefiled January 7, 2022

A BILL to amend and reenact §§ 19.2-288, 19.2-295, 19.2-295.1, and 19.2-295.3 of the Code of Virginia, relating to criminal cases; sentencing by jury.

Patron—Obenshain

Referred to Committee on the Judiciary

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

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

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

If a person indicted for murder ~~be is found guilty by the jury guilty of any punishable homicide, they the jury~~ shall in their verdict fix the degree thereof. ~~The court shall and~~ ascertain the extent of the punishment to be inflicted within the bounds prescribed by §§ 18.2-30 ~~to through~~ 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.~~

**§ 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, ~~when of~~ a person is convicted of a criminal offense; ~~unless the accused is tried by a jury and has requested that the jury ascertain punishment. Such request for a jury to ascertain punishment shall be filed as a written pleading with the court at least 30 days prior to trial shall be ascertained by the jury, or by the court in cases tried without a jury.~~

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.~~

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

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

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59 § 19.2-257, that the court shall fix punishment.

60 **§ 19.2-295.3. Admission of victim impact testimony.**

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