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HOUSE BILL NO. 1070

Offered January 14, 2026

Prefiled January 14, 2026

A BILL to amend the Code of Virginia by adding a section numbered 19.2-263.4, relating to procedure for use of prior conviction as element of offense charged.

Patron—Rasoul

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 19.2-263.4 as follows:

§ 19.2-263.4. Procedure for use of prior conviction as element of offense charged.

In any jury trial where a prior conviction is an element of the offense charged or is used to enhance the punishment of the offense charged, upon motion of the defendant or his counsel made not less than 10 days prior to trial, the following procedure shall apply:

1. Prior to the impaneling of the jury, the court shall determine whether the defendant has waived the right for the jury to determine a prior conviction as an element of the offense charged.

2. Upon a finding of a valid waiver, the court shall hold a hearing outside of the presence of any prospective jurors to determine whether the defendant is the person previously convicted of the predicate offense alleged in the indictment. At such hearing, the Commonwealth shall present evidence to the court to prove that the defendant is the same person who was convicted of the prior offense. The defendant or his counsel may present rebuttal evidence to disprove the defendant's identity, conviction, or otherwise challenge the Commonwealth's evidence.

3. If the court finds beyond a reasonable doubt that the defendant is the same person who was convicted of a prior offense and is currently charged, the court shall enter such finding on the record. However, no evidence of such prior conviction shall be presented to the jury during the guilt phase of the trial.

4. In any indictment, information, warrant, or other charging document that is read or shown to the jury, the offense shall be referred to by a description that omits any reference to the defendant's prior conviction. Such prior conviction shall be in a separate count or filing or a clearly designated and redactable portion of the indictment that is not read or shown to the jury.

5. The judge shall instruct the jury only on the substantive elements of the charged offense and omit any reference to a prior conviction in such elements. Once such finding described in subdivision 3 occurs, the element of the prior conviction shall be treated as proven by the Commonwealth for the purpose of establishing the grade of the offense or the potential for enhanced punishment.

6. If the jury finds the defendant guilty of the substantive elements of the charged offense, the court's finding described in subdivision 3 shall be used by the court or jury, as applicable, for the sentencing phase of the trial pursuant to §§ 19.2-295 and 19.2-295.1.

INTRODUCED

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