

26104723D

1 **HOUSE BILL NO. 1070**

2 Offered January 14, 2026

3 Prefiled January 14, 2026

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

6 Patron—Rasoul

7 Committee Referral Pending

8 **Be it enacted by the General Assembly of Virginia:**9 **1. That the Code of Virginia is amended by adding a section numbered 19.2-263.4 as follows:**10 **§ 19.2-263.4. Procedure for use of prior conviction as element of offense charged.**11 *In any jury trial where a prior conviction is an element of the offense charged or is used to enhance the*
12 *punishment of the offense charged, upon motion of the defendant or his counsel made not less than 10 days*
13 *prior to trial, the following procedure shall apply:*14 *1. Prior to the impaneling of the jury, the court shall determine whether the defendant has waived the*
15 *right for the jury to determine a prior conviction as an element of the offense charged.*16 *2. Upon a finding of a valid waiver, the court shall hold a hearing outside of the presence of any*
17 *prospective jurors to determine whether the defendant is the person previously convicted of the predicate*
18 *offense alleged in the indictment. At such hearing, the Commonwealth shall present evidence to the court to*
19 *prove that the defendant is the same person who was convicted of the prior offense. The defendant or his*
20 *counsel may present rebuttal evidence to disprove the defendant's identity, conviction, or otherwise challenge*
21 *the Commonwealth's evidence.*22 *3. If the court finds beyond a reasonable doubt that the defendant is the same person who was convicted*
23 *of a prior offense and is currently charged, the court shall enter such finding on the record. However, no*
24 *evidence of such prior conviction shall be presented to the jury during the guilt phase of the trial.*25 *4. In any indictment, information, warrant, or other charging document that is read or shown to the jury,*
26 *the offense shall be referred to by a description that omits any reference to the defendant's prior conviction.*
27 *Such prior conviction shall be in a separate count or filing or a clearly designated and redactable portion of*
28 *the indictment that is not read or shown to the jury.*29 *5. The judge shall instruct the jury only on the substantive elements of the charged offense and omit any*
30 *reference to a prior conviction in such elements. Once such finding described in subdivision 3 occurs, the*
31 *element of the prior conviction shall be treated as proven by the Commonwealth for the purpose of*
32 *establishing the grade of the offense or the potential for enhanced punishment.*33 *6. If the jury finds the defendant guilty of the substantive elements of the charged offense, the court's*
34 *finding described in subdivision 3 shall be used by the court or jury, as applicable, for the sentencing phase*
35 *of the trial pursuant to §§ 19.2-295 and 19.2-295.1.*

INTRODUCED

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