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HOUSE BILL NO. 172

**AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee for Courts of Justice
on _____)**

(Patron Prior to Substitute—Delegate Mehta)

A BILL to amend and reenact §§ 19.2-262.01 and 19.2-295 of the Code of Virginia, relating to criminal cases; request for a jury to ascertain punishment.

Be it enacted by the General Assembly of Virginia:

1. That §§ 19.2-262.01 and 19.2-295 of the Code of Virginia are amended and reenacted as follows:

§ 19.2-262.01. Voir dire examination of persons called as jurors.

In A. Except as provided in subsection B, in any criminal case, the court and counsel for either party shall have the right to examine under oath any person who is called as a juror therein and shall have the right to ask such person or juror directly any relevant question to ascertain whether the juror can sit impartially in either the guilt or sentencing phase of the case. Such questions may include whether the person or juror is related to either party, has any interest in the cause, has expressed or formed any opinion, or is sensible of any bias or prejudice therein. The court and counsel for either party may inform any such person or juror as to the potential punishment, or range or ranges of punishment, to ascertain if the person or juror can sit impartially in the guilt or sentencing phase of the case. The party objecting to any juror may introduce competent evidence in support of the objection, and if it appears to the court that the juror does not stand indifferent in the cause, another shall be drawn or called and placed in his stead for the trial of that case.

A juror, knowing anything relative to the fact in issue, shall disclose the same in open court.

Counsel for either party shall have the right to examine the jurors regarding the potential punishment, or ranges or ranges of punishment, regardless of whether the jury will ascertain punishment pursuant to § 19.2-295.

B. In the case of a juvenile defendant, the court and counsel for either party may inform any such person or juror as to the potential punishment, or range or ranges of punishment, to ascertain if the person or juror can sit impartially in the guilt or sentencing phase of the case. However, the provisions of § 16.1-272 shall apply for sentencing of such juvenile.

§ 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 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. *The accused may withdraw such request for a jury to ascertain punishment up until the commencement of the sentencing proceeding.*

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.