

1 HOUSE BILL NO. 63

2 AMENDMENT IN THE NATURE OF A SUBSTITUTE

3 (Proposed by the House Committee for Courts of Justice

4 on _____)

5 (Patron Prior to Substitute--Delegate Simon)

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

8 **Be it enacted by the General Assembly of Virginia:**9 **1. That §§ 19.2-262.01 and 19.2-295 of the Code of Virginia are amended and reenacted as follows:**10 **§ 19.2-262.01. Voir dire examination of persons called as jurors.**

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

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

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

24 **§ 19.2-295. Ascertainment of punishment.**

25 A. Within the limits prescribed by law, the court shall ascertain the term of confinement in the
26 state correctional facility or in jail and the amount of fine, if any, when a person is convicted of a criminal

27 offense, unless the accused is tried by a jury and has requested that the jury ascertain punishment. Such
28 request for a jury to ascertain punishment shall be filed as a written pleading with the court at least 30
29 days prior to trial. The accused may withdraw such request for a jury to ascertain punishment up until the
30 commencement of the sentencing proceeding.

31 B. When the accused is tried by a jury, deliberations of the jury shall be confined to a determination
32 of the guilt or innocence of the accused, except that when the ascertainment of punishment by the jury has
33 been requested by the accused, a proceeding in accordance with § 19.2-295.1 shall apply.

34 C. In any case in which a jury has fixed a sentence as provided in this chapter and the sentence is
35 modified by the court pursuant to the authority contained within this chapter, the court shall file with the
36 record of the case a written explanation of such modification including the cause therefor.

37 #