

004710412

SENATE BILL NO. 74

Offered January 12, 2000

A BILL to amend and reenact §§ 18.2-308 and 18.2-308.1:3 of the Code of Virginia, relating to possession of firearms by those voluntarily admitted to a mental institution.

Patron—Colgan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308 and 18.2-308.1:3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308. Personal protection; carrying concealed weapons; when lawful to carry.

A. If any person carries about his person, hidden from common observation, (i) any pistol, revolver, or other weapon designed or intended to propel a missile of any kind; (ii) any dirk, bowie knife, switchblade knife, ballistic knife, razor, slingshot, spring stick, metal knucks, or blackjack; (iii) any flailing instrument consisting of two or more rigid parts connected in such a manner as to allow them to swing freely, which may be known as a nun chahka, nun chuck, nunchaku, shuriken, or fighting chain; (iv) any disc, of whatever configuration, having at least two points or pointed blades which is designed to be thrown or propelled and which may be known as a throwing star or oriental dart; or (v) any weapon of like kind as those enumerated in this subsection, he shall be guilty of a Class 1 misdemeanor. A second violation of this section or a conviction under this section subsequent to any conviction under any substantially similar ordinance of any county, city, or town shall be punishable as a Class 6 felony, and a third or subsequent such violation shall be punishable as a Class 5 felony. Any weapon used in the commission of a violation of this section shall be forfeited to the Commonwealth and may be seized by an officer as forfeited, and such as may be needed for police officers, conservators of the peace, and the Division of Forensic Science shall be devoted to that purpose, subject to any registration requirements of federal law, and the remainder shall be disposed of as provided in § 18.2-310. For the purpose of this section, a weapon shall be deemed to be hidden from common observation when it is observable but is of such deceptive appearance as to disguise the weapon's true nature.

B. This section shall not apply to any person while in his own place of abode or the curtilage thereof.

Except as provided in subsection J1, this section shall not apply to:

1. Any person while in his own place of business;
2. Any police officers, including Capitol Police officers, sergeants, sheriffs, deputy sheriffs or regular game wardens appointed pursuant to Chapter 2 (§ 29.1-200 et seq.) of Title 29.1;
3. Any regularly enrolled member of a target shooting organization who is at, or going to or from, an established shooting range, provided that the weapons are unloaded and securely wrapped while being transported;
4. Any regularly enrolled member of a weapons collecting organization who is at, or going to or from, a bona fide weapons exhibition, provided that the weapons are unloaded and securely wrapped while being transported;
5. Any person carrying such weapons between his place of abode and a place of purchase or repair, provided the weapons are unloaded and securely wrapped while being transported;
6. Campus police officers appointed pursuant to Chapter 17 (§ 23-232 et seq.) of Title 23;
7. Any person actually engaged in lawful hunting, as authorized by the Board of Game and Inland Fisheries, under inclement weather conditions necessitating temporary protection of his firearm from those conditions; and
8. Any State Police officer retired from the Department of State Police, any local law-enforcement officer retired from a police department or sheriff's office within the Commonwealth and any special agent retired from the Alcoholic Beverage Control Board (i) with a service-related disability or (ii) following at least fifteen years of service with any such law-enforcement agency, board or any combination thereof, other than a person terminated for cause, provided such officer carries with him written proof of consultation with and favorable review of the need to carry a concealed handgun issued by the chief law-enforcement officer of the last such agency from which the officer retired or, in the case of special agents, issued by the Alcoholic Beverage Control Board. A copy of the proof of consultation and favorable review shall be forwarded by the chief or the Board to the Department of State Police for entry into the Virginia Criminal Information Network. The chief law-enforcement officer

INTRODUCED

SB74

60 shall not without cause withhold such written proof if the retired law-enforcement officer otherwise
61 meets the requirements of this section.

62 For purposes of applying the reciprocity provisions of subsection P, any person granted the privilege
63 to carry a concealed handgun pursuant to this subdivision, while carrying the proof of consultation and
64 favorable review required, shall be deemed to have been issued a concealed handgun permit.

65 C. This section shall also not apply to any of the following individuals while in the discharge of
66 their official duties, or while in transit to or from such duties:

- 67 1. Carriers of the United States mail;
- 68 2. Officers or guards of any state correctional institution;
- 69 3. [Repealed.]

70 4. Conservators of the peace, except that the following conservators of the peace shall not be
71 permitted to carry a concealed handgun without obtaining a permit as provided in subsection D hereof:
72 (a) notaries public; (b) registrars; (c) drivers, operators or other persons in charge of any motor vehicle
73 carrier of passengers for hire; or (d) commissioners in chancery;

74 5. Noncustodial employees of the Department of Corrections designated to carry weapons by the
75 Director of the Department of Corrections pursuant to § 53.1-29;

76 6. Law-enforcement agents of the Armed Forces of the United States and federal agents who are
77 otherwise authorized to carry weapons by federal law while engaged in the performance of their duties;

78 7. Law-enforcement agents of the United States Naval Criminal Investigative Service; and

79 8. Harbormaster of the City of Hopewell.

80 D. Any person twenty-one years of age or older may apply in writing to the clerk of the circuit court
81 of the county or city in which he resides for a five-year permit to carry a concealed handgun.
82 Notwithstanding § 15.2-915, a county or city may enact an ordinance which requires any applicant for a
83 concealed handgun permit to submit to fingerprinting for the purpose of obtaining the applicant's state or
84 national criminal history record. The application shall be made under oath before a notary or other
85 person qualified to take oaths and shall be made only on a form prescribed by the Department of State
86 Police, in consultation with the Supreme Court, requiring only that information necessary to determine
87 eligibility for the permit. The court shall consult with the law-enforcement authorities of the county or
88 city and receive a report from the Central Criminal Records Exchange. As a condition for issuance of a
89 concealed handgun permit, the applicant shall submit to fingerprinting if required by local ordinance in
90 the county or city where the applicant resides and provide personal descriptive information to be
91 forwarded with the fingerprints through the Central Criminal Records Exchange to the Federal Bureau of
92 Investigation for the purpose of obtaining criminal history record information regarding the applicant,
93 and obtaining fingerprint identification information from federal records pursuant to criminal
94 investigations by state and local law-enforcement agencies. Upon completion of the criminal history
95 records check, the State Police shall return the fingerprint cards to the submitting local agency. The
96 local agency shall then promptly notify the person that he has twenty-one days from the date of the
97 notice to request return of the fingerprint cards. All fingerprint cards not claimed by the applicant within
98 twenty-one days of notification by the local agency shall be destroyed. Fingerprints taken for the
99 purposes described in this section shall not be copied, held or used for any other purposes. The court
100 shall issue the permit within forty-five days of receipt of the completed application unless it is
101 determined that the applicant is disqualified. An application is deemed complete when all information
102 required to be furnished by the applicant is delivered to the clerk of court. If the applicant is later found
103 by the court to be disqualified, the permit shall be revoked.

104 E. The following persons shall be deemed disqualified from obtaining a permit:

105 1. An individual who is ineligible to possess a firearm pursuant to §§ 18.2-308.1:1, 18.2-308.1:2 or
106 § 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

107 2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was
108 discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before
109 the date of his application for a concealed handgun permit.

110 3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose
111 competency or capacity was restored pursuant to former § 37.1-134.1 or § 37.1-134.16 less than five
112 years before the date of his application for a concealed handgun permit.

113 4. An individual who was ineligible to *purchase, possess or transport* a firearm under § 18.2-308.1:3
114 and *either has not had his rights to purchase, possess or transport a firearm restored by a circuit court*
115 *pursuant to § 18.2-308.1:3(c) or who was released from commitment or voluntary admittance* less than
116 five years before the date of this application for a concealed handgun permit.

117 5. An individual who is subject to a restraining order, or to a protective order and prohibited by
118 § 18.2-308.1:4 from purchasing or transporting a firearm.

119 6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except
120 that a permit may be obtained in accordance with subsection C of that section.

121 7. An individual who has been convicted of two or more misdemeanors within the five-year period

immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions or reckless driving shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance or of public drunkenness within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the Armed Forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who it is alleged, in a sworn written statement submitted to the court by the sheriff, chief of police or attorney for the Commonwealth in the opinion of such sheriff, chief of police or attorney for the Commonwealth, is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police or the attorney for the Commonwealth shall be based upon personal knowledge or upon the sworn written statement of a competent person having personal knowledge.

14. An individual who has been convicted of any assault, assault and battery, sexual battery, discharging of a firearm in violation of § 18.2-280 or § 18.2-286.1 or brandishing of a firearm in violation of § 18.2-282 within the three-year period immediately preceding the application.

15. An individual who has been convicted of stalking.

16. An individual whose previous convictions or adjudications of delinquency were based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories. For purposes of this disqualifier, only convictions occurring within sixteen years following the later of the date of (i) the conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or adjudication shall be deemed to be "previous convictions."

17. An individual who has a felony charge pending or a charge pending for an offense listed in subdivision 14 or 15.

18. An individual who has received mental health treatment or substance abuse treatment in a residential setting within five years prior to the date of his application for a concealed handgun permit.

19. An individual not otherwise ineligible pursuant to this section, who, within the three-year period immediately preceding the application for the permit, was found guilty of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or of a criminal offense of illegal possession or distribution of marijuana or any controlled substance, under the laws of any state, the District of Columbia, or the United States or its territories.

20. An individual, not otherwise ineligible pursuant to this section, with respect to whom, within the three-year period immediately preceding the application, upon a charge of any criminal offense set forth in Article 1 (§ 18.2-247 et seq.) of Chapter 7 of this title or upon a charge of illegal possession or distribution of marijuana or any controlled substance under the laws of any state, the District of Columbia, or the United States or its territories, the trial court found that the facts of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the substantially similar law of any other state, the District of Columbia, or the United States or its territories.

F. The making of a materially false statement in an application under this section shall constitute perjury, punishable as provided in § 18.2-434.

G. The court may further require proof that the applicant has demonstrated competence with a handgun and the applicant may demonstrate such competence by one of the following:

1. Completing any hunter education or hunter safety course approved by the Department of Game and Inland Fisheries or a similar agency of another state;

2. Completing any National Rifle Association firearms safety or training course;

3. Completing any firearms safety or training course or class available to the general public offered by a law-enforcement agency, junior college, college, or private or public institution or organization or firearms training school utilizing instructors certified by the National Rifle Association or the Department of Criminal Justice Services;

4. Completing any law-enforcement firearms safety or training course or class offered for security guards, investigators, special deputies, or any division or subdivision of law enforcement or security enforcement;

5. Presenting evidence of equivalent experience with a firearm through participation in organized shooting competition or current military service or proof of an honorable discharge from any branch of the armed services;

183 6. Obtaining or previously having held a license to carry a firearm in this Commonwealth or a
184 locality thereof, unless such license has been revoked for cause;

185 7. Completing any firearms training or safety course or class conducted by a state-certified or
186 National Rifle Association-certified firearms instructor; or

187 8. Completing any other firearms training which the court deems adequate.

188 A photocopy of a certificate of completion of any of the courses or classes; an affidavit from the
189 instructor, school, club, organization, or group that conducted or taught such course or class attesting to
190 the completion of the course or class by the applicant; or a copy of any document which shows
191 completion of the course or class or evidences participation in firearms competition shall constitute
192 evidence of qualification under this subsection.

193 H. The permit to carry a concealed handgun shall specify only the following information: name,
194 address, date of birth, gender, height, weight, color of hair, color of eyes, and signature of the permittee;
195 the signature of the judge issuing the permit, or of the clerk of court who has been authorized to sign
196 such permits by the issuing judge; the date of issuance; and the expiration date. The person issued the
197 permit shall have such permit on his person at all times during which he is carrying a concealed
198 handgun and must display the permit and a photo-identification issued by a government agency of the
199 Commonwealth or by the United States Department of Defense or United States State Department
200 (passport) upon demand by a law-enforcement officer.

201 I. Persons who previously have held a concealed handgun permit shall be issued, upon application as
202 provided in subsection D, a new five-year permit unless there is good cause shown for refusing to
203 reissue a permit. If the circuit court denies the permit, the specific reasons for the denial shall be stated
204 in the order of the court denying the permit. Upon denial of the application, the clerk shall provide the
205 person with notice, in writing, of his right to an ore tenus hearing. Upon request of the applicant made
206 within twenty-one days, the court shall place the matter on the docket for an ore tenus hearing. The
207 applicant may be represented by counsel, but counsel shall not be appointed, and the rules of evidence
208 shall apply. The final order of the court shall include the court's findings of fact and conclusions of law.

209 J. Any person convicted of an offense that would disqualify that person from obtaining a permit
210 under subsection E or who violates subsection F shall forfeit his permit for a concealed handgun to the
211 court. Upon receipt by the Central Criminal Records Exchange of a record of the arrest, conviction or
212 occurrence of any other event which would disqualify a person from obtaining a concealed handgun
213 permit under subsection E, the Central Criminal Records Exchange shall notify the court having issued
214 the permit of such disqualifying arrest, conviction or other event.

215 J1. Any person permitted to carry a concealed handgun, who is under the influence of alcohol or
216 illegal drugs while carrying such handgun in a public place, shall be guilty of a Class 1 misdemeanor.
217 Conviction of any of the following offenses shall be prima facie evidence, subject to rebuttal, that the
218 person is "under the influence" for purposes of this section: manslaughter in violation of § 18.2-36.1,
219 maiming in violation of § 18.2-51.4, driving while intoxicated in violation of § 18.2-266, public
220 intoxication in violation of § 18.2-388, or driving while intoxicated in violation of § 46.2-341.24. Upon
221 such conviction that court shall revoke the person's permit for a concealed handgun and promptly notify
222 the issuing circuit court. A person convicted of a violation of this subsection shall be ineligible to apply
223 for a concealed handgun permit for a period of five years.

224 J2. An individual who has a felony charge pending or a charge pending for an offense listed in
225 subdivision E 14 or E 15, holding a permit for a concealed handgun, may have the permit suspended by
226 the court before which such charge is pending or by the court which issued the permit.

227 J3. No person shall carry a concealed handgun onto the premises of any restaurant or club as defined
228 in § 4.1-100 for which a license to sell and serve alcoholic beverages for on-premises consumption has
229 been granted by the Virginia Alcoholic Beverage Control Board under Title 4.1 of the Code of Virginia;
230 however, nothing herein shall prohibit any sworn law-enforcement officer from carrying a concealed
231 handgun on the premises of such restaurant or club or any owner or event sponsor or his employees
232 from carrying a concealed handgun while on duty at such restaurant or club if such person has a
233 concealed handgun permit.

234 J4. Any individual for whom it would be unlawful to purchase, possess or transport a firearm under
235 § 18.2-308.1:2 or § 18.2-308.1:3, who holds a concealed handgun permit, may have the permit
236 suspended by the court which issued the permit during the period of incompetency, incapacity or
237 disability.

238 K. No fee shall be charged for the issuance of such permit to a person who has retired from service
239 (i) as a magistrate in the Commonwealth; (ii) as a law-enforcement officer with the Department of State
240 Police or with a sheriff or police department, bureau or force of any political subdivision of the
241 Commonwealth of Virginia, after completing twenty years' service or after reaching age fifty-five; or
242 (iii) to any person who has retired after completing twenty years' service or after reaching age fifty-five
243 from service as a law-enforcement officer with the United States Federal Bureau of Investigation,
244 Bureau of Alcohol, Tobacco and Firearms, Secret Service Agency, Drug Enforcement Administration,

Immigration and Naturalization Service, Customs Service, Department of State Diplomatic Security Service or Naval Criminal Investigative Service. The clerk shall charge a fee of ten dollars for the processing of an application or issuing of a permit, including his costs associated with the consultation with law-enforcement agencies. The local law-enforcement agency conducting the background investigation may charge a fee not to exceed thirty-five dollars to cover the cost of conducting an investigation pursuant to this section. The thirty-five-dollar fee shall include any amount assessed by the Federal Bureau of Investigation for providing criminal history record information, and the local law-enforcement agency shall forward the amount assessed by the Federal Bureau of Investigation to the State Police with the fingerprints taken from the applicant. The State Police may charge a fee not to exceed five dollars to cover their costs associated with processing the application. The total amount assessed for processing an application for a permit shall not exceed fifty dollars, with such fees to be paid in one sum to the person who accepts the application. Payment may be made by any method accepted by that court for payment of other fees or penalties. No payment shall be required until the application is accepted by the court as a complete application. The order issuing such permit shall be provided to the State Police and the law-enforcement agencies of the county or city. The State Police shall enter the permittee's name and description in the Virginia Criminal Information Network so that the permit's existence and current status will be made known to law-enforcement personnel accessing the Network for investigative purposes.

L. Any person denied a permit to carry a concealed handgun under the provisions of this section may present a petition for review to the Court of Appeals. The petition for review shall be filed within sixty days of the expiration of the time for requesting an ore tenus hearing pursuant to subsection I, or if an ore tenus hearing is requested, within sixty days of the entry of the final order of the circuit court following the hearing. The petition shall be accompanied by a copy of the original papers filed in the circuit court, including a copy of the order of the circuit court denying the permit. Subject to the provisions of § 17.1-410 B, the decision of the Court of Appeals or judge shall be final. Notwithstanding any other provision of law, if the decision to deny the permit is reversed upon appeal, taxable costs incurred by the person shall be paid by the Commonwealth.

M. For purposes of this section:

"Handgun" means any pistol or revolver or other firearm, except a machine gun, originally designed, made and intended to fire a projectile by means of an explosion from one or more barrels when held in one hand.

"Lawfully admitted for permanent residence" means the status of having been lawfully accorded the privilege of residing permanently in the United States as an immigrant in accordance with the immigration laws, such status not having changed.

N. As used in this article:

"Spring stick" means a spring-loaded metal stick activated by pushing a button which rapidly and forcefully telescopes the weapon to several times its original length.

"Ballistic knife" means any knife with a detachable blade that is propelled by a spring-operated mechanism.

O. The granting of a concealed handgun permit shall not thereby authorize the possession of any handgun or other weapon on property or in places where such possession is otherwise prohibited by law or is prohibited by the owner of private property.

P. A valid concealed handgun permit or license issued by another state shall be valid in the Commonwealth, provided (i) the issuing authority provides the means for instantaneous verification of the validity of all such permits or licenses issued within that state, accessible twenty-four hours a day, (ii) the requirements and qualifications of that state's law are substantially similar to or exceed the provisions of this section, and (iii) a state meeting the requirements and qualifications of this section grants the same privilege to residents of the Commonwealth who have valid concealed handgun permits in their possession while carrying concealed weapons in that state. The Superintendent of State Police shall (a) in consultation with the Office of the Attorney General determine which states meet the requirements and qualifications of this section, (b) maintain a registry of such states on the Virginia Criminal Information Network (VCIN), and (c) make the registry available to law-enforcement officers for investigative purposes.

Q. The provisions of this statute or the application thereof to any person or circumstances which are held invalid shall not affect the validity of other provisions or applications of this statute which can be given effect without the invalid provisions or applications. This subsection is to reiterate § 1-17.1 and is not meant to add to or delete from that provision.

§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily committed or voluntarily admitted; penalty.

A. It shall be unlawful for any person involuntarily committed pursuant to § 37.1-67.3 or voluntarily admitted to a public mental health facility pursuant to § 37.1-65, or to a private mental health facility,

306 to purchase, possess or transport a firearm during the period of such person's commitment *and thereafter*
307 *until such rights have been restored pursuant to subsection C of this section.* A violation of this
308 subsection shall be punishable as a Class 1 misdemeanor.

309 B. Any firearm possessed or transported in violation of this section shall be forfeited to the
310 Commonwealth and disposed of as provided in § 18.2-310.

311 C. Any person prohibited from purchasing, possessing or transporting firearms under this subsection
312 may, at any time following his release from commitment, petition the circuit court in the city or county
313 in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its
314 discretion and for good cause shown, grant the petition. The clerk shall certify and forward forthwith to
315 the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.