

VIRGINIA ACTS OF ASSEMBLY -- 2007 SESSION

CHAPTER 519

An Act to amend and reenact §§ 18.2-57.02, 18.2-283.1, 18.2-287.01, 18.2-308.1, 18.2-308.2, 19.2-386.28, and 19.2-386.29 of the Code of Virginia, relating to stun weapons; definition.

[H 2853]

Approved March 19, 2007

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-57.02, 18.2-283.1, 18.2-287.01, 18.2-308.1, 18.2-308.2, 19.2-386.28, and 19.2-386.29 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-57.02. Disarming a law-enforcement or correctional officer; penalty.

Any person who knows or has reason to know a person is a law-enforcement officer as defined in § 18.2-57, a correctional officer as defined in § 53.1-1, or a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, who is engaged in the performance of his duties as such and, with the intent to impede or prevent any such person from performing his official duties, knowingly and without the person's permission removes a chemical irritant weapon or impact weapon from the possession of the officer or deprives the officer of the use of the weapon is guilty of a Class 1 misdemeanor. However, if the weapon removed or deprived in violation of this section is the officer's firearm or stun weapon *as defined in § 18.2-308.1*, he shall be guilty of a Class 6 felony. A violation of this section shall constitute a separate and distinct offense.

§ 18.2-283.1. Carrying weapon into courthouse.

It shall be unlawful for any person to possess in or transport into any courthouse in this Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon and (iii) any other dangerous weapon, including explosives, ~~tasers~~, stun weapons *as defined in § 18.2-308.1*, and those weapons specified in subsection A of § 18.2-308. Any such weapon shall be subject to seizure by a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor.

The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or official, game warden, conservator of the peace, magistrate, court officer, or judge while in the conduct of such person's official duties.

§ 18.2-287.01. Carrying weapon in air carrier airport terminal.

It shall be unlawful for any person to possess or transport into any air carrier airport terminal in the Commonwealth any (i) gun or other weapon designed or intended to propel a missile or projectile of any kind, (ii) frame, receiver, muffler, silencer, missile, projectile or ammunition designed for use with a dangerous weapon, and (iii) any other dangerous weapon, including explosives, ~~tasers~~, stun weapons *as defined in § 18.2-308.1*, and those weapons specified in subsection A of § 18.2-308. Any such weapon shall be subject to seizure by a law-enforcement officer. A violation of this section is punishable as a Class 1 misdemeanor. Any weapon possessed or transported in violation of this section shall be forfeited to the Commonwealth and disposed of as provided in subsection A of § 18.2-308.

The provisions of this section shall not apply to any police officer, sheriff, law-enforcement agent or official, or game warden, or conservator of the peace employed by the air carrier airport, nor shall the provisions of this section apply to any passenger of an airline who, to the extent otherwise permitted by law, transports a lawful firearm, weapon, or ammunition into or out of an air carrier airport terminal for the sole purposes, respectively, of (i) presenting such firearm, weapon, or ammunition to U.S. Customs agents in advance of an international flight, in order to comply with federal law, (ii) checking such firearm, weapon, or ammunition with his luggage, or (iii) retrieving such firearm, weapon, or ammunition from the baggage claim area.

Any other statute, rule, regulation, or ordinance specifically addressing the possession or transportation of weapons in any airport in the Commonwealth shall be invalid, and this section shall control.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.

A. If any person possesses any (i) stun weapon ~~or taser~~ as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like kind, designated in subsection A of § 18.2-308, other than a firearm; upon (a) the property of any public, private or religious elementary, middle or high school, including buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

B. If any person possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) any public, private or religious elementary, middle or high school, including buildings and grounds; (ii) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (iii) any school bus owned or operated by any such school, he shall be guilty of a Class 6 felony; however, if the person possesses any firearm within a public, private or religious elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall be sentenced to a mandatory minimum term of imprisonment of five years to be served consecutively with any other sentence.

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer; (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; or (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp 60 hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person; *any device that emits a momentary or pulsed output, which is electrical, audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.*

§ 18.2-308.2. Possession or transportation of firearms, stun weapons, explosives or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person adjudicated delinquent, on or after July 1, 2005, as a juvenile 14 years of age or older at the time of the offense of murder in violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of a delinquent act which would be a felony if committed by an adult, other than those felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof, to knowingly and intentionally possess or transport any firearm or stun weapon, ~~taser~~ as defined by § 18.2-308.1 or any explosive material, or to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in subsection A of § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon ~~or taser~~ as defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony. However, any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this section by knowingly and intentionally possessing or transporting any firearm and who was previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for violations of this section shall be served consecutively with any other sentence.

B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm, explosive material or other weapon while carrying out his duties as a member of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the document granting the pardon or removing the person's political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

C. Any person prohibited from possessing, transporting or carrying a firearm, *or* stun weapon ~~or taser~~ under subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm; *or* stun weapon ~~or taser~~; however, no person who has been

convicted of a felony shall be qualified to petition for such a permit unless his civil rights have been restored by the Governor or other appropriate authority. The court may, in its discretion and for good cause shown, grant such petition and issue a permit. The provisions of this section relating to firearms, *and* stun weapons, ~~and tasers~~ shall not apply to any person who has been granted a permit pursuant to this subsection.

C1. Any person who was prohibited from possessing, transporting or carrying explosive material under subsection A may possess, transport or carry such explosive material if his right to possess, transport or carry explosive material has been restored pursuant to federal law.

D. For the purpose of this section, "explosive material" means any chemical compound mixture, or device, the primary or common purpose of which is to function by explosion; the term includes, but is not limited to, dynamite and other high explosives, black powder, pellet powder, smokeless gun powder, detonators, blasting caps and detonating cord but shall not include fireworks or permissible fireworks as defined in § 27-95.

§ 19.2-386.28. Forfeiture of weapons that are concealed, possessed, transported or carried in violation of law.

Any firearm, stun weapon ~~or taser~~ as defined by § 18.2-308.1, or any weapon concealed, possessed, transported or carried in violation of §§ 18.2-283.1, 18.2-287.4, 18.2-308.1:2, 18.2-308.1:3, 18.2-308.1:4, 18.2-308.2, 18.2-308.2:01, 18.2-308.2:1, 18.2-308.4, 18.2-308.5, 18.2-308.7, or § 18.2-308.8 shall be forfeited to the Commonwealth and disposed of as provided in § 19.2-386.29.

§ 19.2-386.29. Forfeiture of certain weapons used in commission of criminal offense.

All pistols, shotguns, rifles, dirks, bowie knives, switchblade knives, ballistic knives, razors, slingshots, brass or metal knucks, blackjacks, stun weapons ~~and tasers~~, and other weapons used by any person in the commission of a criminal offense, shall, upon conviction of such person, be forfeited to the Commonwealth by order of the court trying the case. The court shall dispose of such weapons as it deems proper by entry of an order of record. Such disposition may include the destruction of the weapons or, subject to any registration requirements of federal law, sale of the firearms to a licensed dealer in such firearms in accordance with the provisions of Chapter 22 (§ 19.2-369 et seq.) of this title regarding sale of property forfeited to the Commonwealth.

The proceeds of any sale of such weapon shall be paid in accordance with the provisions of Article VIII, Section 8 of the Constitution of Virginia. In addition, the court may authorize the seizing law-enforcement agency to use the weapon for a period of time as specified in the order. When the seizing agency ceases to so use the weapon, it shall be disposed of as otherwise provided in this section.

However, upon petition to the court and notice to the attorney for the Commonwealth, the court, upon good cause shown, shall return any such weapon to its lawful owner after conclusion of all relevant proceedings if such owner (i) did not know and had no reason to know of the conduct giving rise to the forfeiture and (ii) is not otherwise prohibited by law from possessing the weapon. The owner shall acknowledge in a sworn affidavit to be filed with the record in the case or cases that he has retaken possession of the weapon involved.