

VIRGINIA ACTS OF ASSEMBLY -- 2008 SESSION

CHAPTER 788

An Act to amend and reenact §§ 18.2-308.1:1, 18.2-308.1:3, 19.2-169.2, 37.2-814, and 37.2-819 of the Code of Virginia, relating to temporary detention orders; voluntary and mandatory mental health treatment; purchase of firearms; reporting to Central Criminal Records Exchange.

[H 815]

Approved April 2, 2008

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1:1, 18.2-308.1:3, 19.2-169.2, 37.2-814, and 37.2-819 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.1:1. Possession or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services, pursuant to Chapter 11.1 (§ 19.2-182.2 et seq.) of Title 19.2, on a charge of treason, any felony or any offense punishable as a misdemeanor under Title 54.1 or a Class 1 or Class 2 misdemeanor under this title, except those misdemeanor violations of (i) Article 2 (§ 18.2-266 et seq.) of Chapter 7 of this title, (ii) Article 2 (§ 18.2-415 et seq.) of Chapter 9 of this title, or (iii) § 18.2-119, or (iv) an ordinance of any county, city, or town similar to the offenses specified in (i), (ii), or (iii), to knowingly and intentionally possess or transport any firearm. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the ~~circuit~~ *general district court* in which he resides for a permit to possess or carry a firearm. ~~The court may, in its discretion and for good cause shown, grant~~ *If the court determines that the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation are such that the person will not be likely to act in a manner dangerous to public safety and that the granting of the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition and issue a permit, in which event the provisions of subsection A do not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.*

§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily admitted or ordered to outpatient treatment; penalty.

A. It shall be unlawful for any person involuntarily ~~committed~~ *admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2, involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 to purchase, possess or transport a firearm during the period of such person's commitment.* A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from ~~commitment~~ *involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, petition the circuit* ~~general district court~~ *in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. The court may, in its discretion and for good cause shown, If the court determines that the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation are such that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any person denied relief by the general district court may petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the petition, in which event the provisions of subsection A shall no longer apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such order.*

§ 19.2-169.2. Disposition when defendant found incompetent.

A. Upon finding pursuant to subsection E of § 19.2-169.1 that the defendant, including a juvenile transferred pursuant to § 16.1-269.1, is incompetent, the court shall order that the defendant receive treatment to restore his competency on an outpatient basis or, if the court specifically finds that the

defendant requires inpatient hospital treatment, at a hospital designated by the Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for treatment of persons under criminal charge. Any reports submitted pursuant to subsection D of § 19.2-169.1 shall be made available to the director of the community services board or behavioral health authority or his designee or to the director of the treating inpatient facility or his designee.

B. If, at any time after the defendant is ordered to undergo treatment under subsection A of this section, the director of the community services board or behavioral health authority or his designee or the director of the treating inpatient facility or his designee believes the defendant's competency is restored, the director or his designee shall immediately send a report to the court as prescribed in subsection D of § 19.2-169.1. The court shall make a ruling on the defendant's competency according to the procedures specified in subsection E of § 19.2-169.1.

C. The clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of an order for treatment issued pursuant to subsection A.

§ 37.2-814. Commitment hearing for involuntary admission; written explanation; right to counsel; rights of petitioner.

A. The commitment hearing for involuntary admission shall be held within 48 hours of the execution of the temporary detention order as provided for in § 37.2-809; however, if the 48-hour period herein specified terminates on a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed, the person may be detained, as herein provided, until the next day that is not a Saturday, Sunday, legal holiday, or day on which the court is lawfully closed.

B. At the commencement of the commitment hearing, the district court judge or special justice shall inform the person whose involuntary admission is being sought of his right to apply for voluntary admission and treatment as provided for in § 37.2-805 and shall afford the person an opportunity for voluntary admission. *The district court judge or special justice shall advise the person whose involuntary admission is being sought that if the person chooses to be voluntarily admitted pursuant to § 37.2-805, such person will be prohibited from possessing or purchasing a firearm pursuant to § 18.2-308.1:3.* The judge or special justice shall ascertain if the person is then willing and capable of seeking voluntary admission and treatment. If the judge or special justice finds that the person is capable and willingly accepts voluntary admission and treatment, the judge or special justice shall require him to accept voluntary admission for a minimum period of treatment not to exceed 72 hours. After such minimum period of treatment, the person shall give the hospital 48 hours' notice prior to leaving the hospital. During this notice period, the person shall not be discharged except as provided in § 37.2-837, 37.2-838, or 37.2-840. The person shall be subject to the transportation provisions as provided in § 37.2-829 and the requirement for preadmission screening by a community services board or behavioral health authority as provided in § 37.2-805.

C. If a person is incapable of accepting or unwilling to accept voluntary admission and treatment, the judge or special justice shall inform the person of his right to a commitment hearing and right to counsel. The judge or special justice shall ascertain if the person whose admission is sought is represented by counsel, and, if he is not represented by counsel, the judge or special justice shall appoint an attorney to represent him. However, if the person requests an opportunity to employ counsel, the judge or special justice shall give him a reasonable opportunity to employ counsel at his own expense.

D. A written explanation of the involuntary admission process and the statutory protections associated with the process shall be given to the person, and its contents shall be explained by an attorney prior to the commitment hearing. The written explanation shall describe, at a minimum, the person's rights to (i) retain private counsel or be represented by a court-appointed attorney, (ii) present any defenses including independent evaluation and expert testimony or the testimony of other witnesses, (iii) be present during the hearing and testify, (iv) appeal any order for involuntary admission to the circuit court, and (v) have a jury trial on appeal. The judge or special justice shall ascertain whether the person whose involuntary admission is sought has been given the written explanation required herein.

E. To the extent possible, during or before the commitment hearing, the attorney for the person whose involuntary admission is sought shall interview his client, the petitioner, the examiner described in § 37.2-815, the community services board or behavioral health authority staff, and any other material witnesses. He also shall examine all relevant diagnostic and other reports, present evidence and witnesses, if any, on his client's behalf, and otherwise actively represent his client in the proceedings. A health care provider shall disclose or make available all such reports, treatment information, and records concerning his client to the attorney, upon request. The role of the attorney shall be to represent the wishes of his client, to the extent possible.

F. The petitioner shall be given adequate notice of the place, date, and time of the commitment hearing. The petitioner shall be entitled to retain counsel at his own expense, to be present during the hearing, and to testify and present evidence. The petitioner shall be encouraged but shall not be required to testify at the hearing, and the person whose involuntary admission is sought shall not be released solely on the basis of the petitioner's failure to attend or testify during the hearing.

§ 37.2-819. Order of involuntary admission or involuntary outpatient treatment forwarded to CCRE;

certain voluntary admissions forwarded to CCRE; firearm background check.

~~The~~ A. Upon receipt of any order from a commitment hearing issued pursuant to this chapter for involuntary admission to a facility or for mandatory outpatient treatment, the clerk of court shall, prior to the close of that business day, certify and forward ~~forthwith~~ to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of ~~any the~~ order for involuntary admission to a facility. The copy of the form and the order shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm.

B. The clerk of court shall also, prior to the close of that business day, forward upon receipt to the Central Criminal Records Exchange, on a form provided by the Exchange, certification of any person who has been the subject of a temporary detention order pursuant to § 37.2-809, and who, after being advised by the judge or special justice that he will be prohibited from possessing a firearm pursuant to § 18.2-308.1:3, subsequently agreed to voluntary admission pursuant to § 37.2-805.

C. The copy of the forms and orders sent to the Central Criminal Records Exchange pursuant to subsection A, and the forms and certifications sent to the Central Criminal Records Exchange regarding voluntary admission pursuant to subsection B, shall be kept confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or transfer a firearm. No medical records shall be forwarded to the Central Criminal Records Exchange with any form, order, or certification required by subsection A or B. The Department of State Police shall forward only a person's eligibility to possess, purchase, or transfer a firearm to the National Instant Criminal Background Check System.