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HOUSE BILL NO. 815

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 28, 2008)

(Patrons Prior to Substitute—Delegates Albo, Caputo [HB 741], Eisenberg [HBs 1168 and 1475], Griffith [HB 657], Marsden [HB 1517]), Mathieson [HB 535], Moran [HB 835] and Scott, J.M. [HB 1054])

*A BILL to amend and reenact §§ 18.2-308.1:1, 18.2-308.1:3, 19.2-169.1, 19.2-390, and 37.2-819 of the Code of Virginia, relating to involuntary mental health treatment; purchase of firearms; reporting to Central Criminal Records Exchange.***Be it enacted by the General Assembly of Virginia:****1. That §§ 18.2-308.1:1, 18.2-308.1:3, 19.2-169.1, 19.2-390, 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 or found incompetent to stand trial; 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. *It shall also be unlawful for any person found incompetent to stand trial pursuant to § 19.2-169.1 to knowingly and intentionally possess or transport a firearm.* A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted *or found incompetent to stand trial* may, upon release from treatment or 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 disabilities 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 the 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 Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2 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~~ an involuntary admission to a facility or mandatory outpatient treatment, 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, grant~~ *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 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, 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.

§ 19.2-169.1. Raising question of competency to stand trial or plead; evaluation and determination of competency.

A. Raising competency issue; appointment of evaluators. - If, at any time after the attorney for the defendant has been retained or appointed and before the end of trial, the court finds, upon hearing

60 evidence or representations of counsel for the defendant or the attorney for the Commonwealth, that
61 there is probable cause to believe that the defendant, whether a juvenile transferred pursuant to
62 § 16.1-269.1 or adult, lacks substantial capacity to understand the proceedings against him or to assist
63 his attorney in his own defense, the court shall order that a competency evaluation be performed by at
64 least one psychiatrist or clinical psychologist who is qualified by training and experience in forensic
65 evaluation.

66 B. Location of evaluation. - The evaluation shall be performed on an outpatient basis at a mental
67 health facility or in jail unless the court specifically finds that outpatient evaluation services are
68 unavailable or unless the results of outpatient evaluation indicate that hospitalization of the defendant for
69 evaluation on competency is necessary. If the court finds that hospitalization is necessary, the court,
70 under authority of this subsection, may order the defendant sent to a hospital designated by the
71 Commissioner of Mental Health, Mental Retardation and Substance Abuse Services as appropriate for
72 evaluations of persons under criminal charge. The defendant shall be hospitalized for such time as the
73 director of the hospital deems necessary to perform an adequate evaluation of the defendant's
74 competency, but not to exceed 30 days from the date of admission to the hospital.

75 C. Provision of information to evaluators. - The court shall require the attorney for the
76 Commonwealth to provide to the evaluators appointed under subsection A any information relevant to
77 the evaluation, including, but not limited to (i) a copy of the warrant or indictment; (ii) the names and
78 addresses of the attorney for the Commonwealth, the attorney for the defendant, and the judge ordering
79 the evaluation; (iii) information about the alleged crime; and (iv) a summary of the reasons for the
80 evaluation request. The court shall require the attorney for the defendant to provide any available
81 psychiatric records and other information that is deemed relevant. The court shall require that
82 information be provided to the evaluator within 96 hours of the issuance of the court order pursuant to
83 this section.

84 D. The competency report. - Upon completion of the evaluation, the evaluators shall promptly submit
85 a report in writing to the court and the attorneys of record concerning (i) the defendant's capacity to
86 understand the proceedings against him; (ii) his ability to assist his attorney; and (iii) his need for
87 treatment in the event he is found incompetent but restorable, or incompetent for the foreseeable future.
88 No statements of the defendant relating to the time period of the alleged offense shall be included in the
89 report.

90 E. The competency determination. - After receiving the report described in subsection D, the court
91 shall promptly determine whether the defendant is competent to stand trial. A hearing on the defendant's
92 competency is not required unless one is requested by the attorney for the Commonwealth or the
93 attorney for the defendant, or unless the court has reasonable cause to believe the defendant will be
94 hospitalized under § 19.2-169.2. If a hearing is held, the party alleging that the defendant is incompetent
95 shall bear the burden of proving by a preponderance of the evidence the defendant's incompetency. The
96 defendant shall have the right to notice of the hearing, the right to counsel at the hearing and the right
97 to personally participate in and introduce evidence at the hearing. *If the defendant is determined*
98 *incompetent to stand trial pursuant to this section, the clerk of court shall certify and forward forthwith*
99 *to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such*
100 *order.*

101 The fact that the defendant claims to be unable to remember the time period surrounding the alleged
102 offense shall not, by itself, bar a finding of competency if the defendant otherwise understands the
103 charges against him and can assist in his defense. Nor shall the fact that the defendant is under the
104 influence of medication bar a finding of competency if the defendant is able to understand the charges
105 against him and assist in his defense while medicated.

106 § 19.2-390. Reports to be made by local law-enforcement officers, conservators of the peace, clerks
107 of court, Secretary of the Commonwealth and Corrections officials to State Police; material submitted by
108 other agencies.

109 A. 1. Every state official or agency having the power to arrest, the sheriffs of counties, the police
110 officials of cities and towns, and any other local law-enforcement officer or conservator of the peace
111 having the power to arrest for a felony shall make a report to the Central Criminal Records Exchange,
112 on forms provided by it, of any arrest, including those arrests involving the taking into custody of, or
113 service of process upon, any person on charges resulting from an indictment, presentment or
114 information, the arrest on capias or warrant for failure to appear, and the service of a warrant for
115 another jurisdiction, on any of the following charges:

116 a. Treason;

117 b. Any felony;

118 c. Any offense punishable as a misdemeanor under Title 54.1; or

119 d. Any misdemeanor punishable by confinement in jail (i) under Title 18.2 or 19.2, except an arrest
120 for a violation of § 18.2-119, Article 2 (§ 18.2-415 et seq.) of Chapter 9 of Title 18.2, or any similar
121 ordinance of any county, city or town, or (ii) under § 20-61.

The reports shall contain such information as is required by the Exchange and shall be accompanied by fingerprints of the individual arrested. Effective January 1, 2006, the corresponding photograph of the individual arrested shall accompany the report. Fingerprint cards prepared by a law-enforcement agency for inclusion in a national criminal justice file shall be forwarded to the Exchange for transmittal to the appropriate bureau. Nothing in this section shall preclude each local law-enforcement agency from maintaining its own separate photographic database.

2. For persons arrested and released on summonses in accordance with § 19.2-74, such report shall not be required until (i) a conviction is entered and no appeal is noted or if an appeal is noted, the conviction is upheld upon appeal or the person convicted withdraws his appeal; (ii) the court dismisses the proceeding pursuant to § 18.2-251; or (iii) an acquittal by reason of insanity pursuant to § 19.2-182.2 is entered. Upon such conviction or acquittal, the court shall remand the individual to the custody of the office of the chief law-enforcement officer of the county or city. It shall be the duty of the chief law-enforcement officer, or his designee who may be the arresting officer, to ensure that such report is completed after a determination of guilt or acquittal by reason of insanity. The court shall require the officer to complete the report immediately following the person's conviction or acquittal, and the individual shall be discharged from custody forthwith, unless the court has imposed a jail sentence to be served by him or ordered him committed to the custody of the Commissioner of the Department of Mental Health, Mental Retardation and Substance Abuse Services.

B. Within 72 hours following the receipt of (i) a warrant or *capias* for the arrest of any person on a charge of a felony or (ii) a Governor's warrant of arrest of a person issued pursuant to § 19.2-92, the law-enforcement agency which received the warrant shall enter the person's name and other appropriate information required by the Department of State Police into the "information systems" known as the Virginia Criminal Information Network (VCIN), established and maintained by the Department pursuant to Chapter 2 (§ 52-12 et seq.) of Title 52 and the National Crime Information Center (NCIC), maintained by the Federal Bureau of Investigation. The report shall include the person's name, date of birth, social security number and such other known information which the State Police or Federal Bureau of Investigation may require. Where feasible and practical, the magistrate or court issuing the warrant or *capias* may transfer information electronically into VCIN. When the information is electronically transferred to VCIN, the court or magistrate shall forthwith forward the warrant or *capias* to the local police department or sheriff's office. When criminal process has been ordered destroyed pursuant to § 19.2-76.1, the law-enforcement agency destroying such process shall ensure the removal of any information relating to the destroyed criminal process from the VCIN and NCIC systems.

C. The clerk of each circuit court and district court shall make a report to the Central Criminal Records Exchange *within 10 days of entry of an order* of (i) ~~any~~ dismissal, indefinite postponement or continuance, charge still pending due to mental incompetency or incapacity, *nolle prosequi*, acquittal, *finding of not guilty by reason of insanity*, or conviction of, including any sentence imposed, or failure of a grand jury to return a true bill as to, any person charged with an offense listed in subsection A, including any action which may have resulted from an indictment, presentment or information, and (ii) ~~any~~ adjudication of delinquency based upon an act which, if committed by an adult, would require fingerprints to be filed pursuant to subsection A. In the case of offenses not required to be reported to the Exchange by subsection A, the reports of any of the foregoing dispositions shall be filed by the law-enforcement agency making the arrest with the arrest record required to be maintained by § 15.2-1722. Upon conviction of any person, including juveniles tried and convicted in the circuit courts pursuant to § 16.1-269.1, whether sentenced as adults or juveniles, for an offense for which registration is required as defined in § 9.1-902, the clerk shall within seven days of sentencing submit a report to the Sex Offender and Crimes Against Minors Registry. The report to the Registry shall include the name of the person convicted and all aliases which he is known to have used, the date and locality of the conviction for which registration is required, his date of birth, social security number, last known address, and specific reference to the offense for which he was convicted. No report of conviction or adjudication in a district court shall be filed unless the period allowed for an appeal has elapsed and no appeal has been perfected. In the event that the records in the office of any clerk show that any conviction or adjudication has been nullified in any manner, he shall also make a report of that fact to the Exchange and, if appropriate, to the Registry. In addition, each clerk of a circuit court, upon receipt of certification thereof from the Supreme Court, shall report to the Exchange or the Registry, or to the law-enforcement agency making the arrest in the case of offenses not required to be reported to the Exchange, on forms provided by the Exchange or Registry, as the case may be, any reversal or other amendment to a prior sentence or disposition previously reported. When criminal process is ordered destroyed pursuant to § 19.2-76.1, the clerk shall report such action to the law-enforcement agency that entered the warrant or *capias* into the VCIN system.

D. In addition to those offenses enumerated in subsection A of this section, the Central Criminal Records Exchange may receive, classify and file any other fingerprints, photographs, and records of

183 arrest or confinement submitted to it by any law-enforcement agency or any correctional institution.

184 E. Corrections officials, sheriffs, and jail superintendents of regional jails, responsible for maintaining
185 correctional status information, as required by the regulations of the Department of Criminal Justice
186 Services, with respect to individuals about whom reports have been made under the provisions of this
187 chapter shall make reports of changes in correctional status information to the Central Criminal Records
188 Exchange. The reports to the Exchange shall include any commitment to or release or escape from a
189 state or local correctional facility, including commitment to or release from a parole or probation
190 agency.

191 F. Any pardon, reprieve or executive commutation of sentence by the Governor shall be reported to
192 the Exchange by the office of the Secretary of the Commonwealth.

193 G. Officials responsible for reporting disposition of charges, and correctional changes of status of
194 individuals under this section, including those reports made to the Registry, shall adopt procedures
195 reasonably designed at a minimum (i) to ensure that such reports are accurately made as soon as feasible
196 by the most expeditious means and in no instance later than 30 days after occurrence of the disposition
197 or correctional change of status; and (ii) to report promptly any correction, deletion, or revision of the
198 information.

199 H. Upon receiving a correction, deletion, or revision of information, the Central Criminal Records
200 Exchange shall notify all criminal justice agencies known to have previously received the information.

201 As used in this section, the term "chief law-enforcement officer" means the chief of police of cities
202 and towns and sheriffs of counties, unless a political subdivision has otherwise designated its chief
203 law-enforcement officer by appropriate resolution or ordinance, in which case the local designation shall
204 be controlling.

205 § 37.2-819. Order of involuntary admission or mandatory outpatient treatment forwarded to CCRE;
206 firearm background check.

207 ~~The~~ *Immediately upon receipt of any order issued pursuant to this chapter for involuntary admission*
208 *to a facility or an order for mandatory outpatient treatment, the clerk of court shall certify and forward*
209 ~~forthwith~~ *to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of*
210 ~~any the order for involuntary admission to a facility.~~ *The copy of the form and the order shall be kept*
211 *confidential in a separate file and used only to determine a person's eligibility to possess, purchase, or*
212 *transfer a firearm.*