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SENATE BILL NO. 1377

Senate Amendments in [] — February 15, 2013

A *BILL to amend and reenact §§ 18.2-85 and 18.2-308.1 of the Code of Virginia, relating to possession of explosive devices or firearms with intent to commit violent felony; penalties.*

Patron Prior to Engrossment—Senator Stuart

Introduced at the request of Governor

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-85 and 18.2-308.1 of the Code of Virginia are amended and reenacted as follows:****§ 18.2-85. Manufacture, possession, use, etc., of fire bombs or explosive materials or devices; penalties.**

A. For the purpose of this section:

"Device" means any instrument, apparatus or contrivance, including its component parts, that is capable of producing or intended to produce an explosion but shall not include fireworks as defined in § 27-95.

"Explosive material" means any chemical compound, mechanical mixture or device that is commonly used or can be used for the purpose of producing an explosion and which contains any oxidizing and combustive agents or other ingredients in such proportions, quantities or packaging that an ignition by fire, friction, concussion, percussion, detonation or by any part of the compound or mixture may cause a sudden generation of highly heated gases. These materials include, but are not limited to, gunpowder, powders for blasting, high explosives, blasting materials, fuses (other than electric circuit breakers), detonators, and other detonating agents and smokeless powder.

"Fire bomb" means any container of a flammable material such as gasoline, kerosene, fuel oil, or other chemical compound, having a wick composed of any material or a device or other substance which, if set or ignited, is capable of igniting such flammable material or chemical compound but does not include a similar device commercially manufactured and used solely for the purpose of illumination or cooking.

"Hoax explosive device" means any device which by its design, construction, content or characteristics appears to be or to contain a bomb or other destructive device or explosive but which is an imitation of any such device or explosive.

B. Any person who (i) possesses materials with which fire bombs or explosive materials or devices can be made with the intent to manufacture fire bombs or explosive materials or devices or, (ii) manufactures, transports, distributes, possesses or uses a fire bomb or explosive materials or devices shall be guilty of a Class 5 felony. Any person who constructs, uses, places, sends, or causes to be sent any hoax explosive device so as to intentionally cause another person to believe that such device is a bomb or explosive shall be guilty of a Class 6 felony.

C. Any person who possesses any fire bomb or explosive device within a public, private, or religious elementary, middle, or high school, or within any building on the campus of any private or state institution of higher education, and intends to commit upon the premises thereof any violent felony offense listed in subsection A of § 19.2-297.1 is guilty of a Class [3 2] felony and any sentence imposed shall be served consecutively with any other sentence.

D. Nothing in this section shall prohibit the authorized manufacture, transportation, distribution, use or possession of any material, substance, or device by a member of the armed forces of the United States, fire fighters or law-enforcement officers, nor shall it prohibit the manufacture, transportation, distribution, use or possession of any material, substance or device to be used solely for scientific research, educational purposes or for any lawful purpose, subject to the provisions of §§ 27-97 and 27-97.2.

§ 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 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

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60 or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

61 B. If any person possesses any firearm designed or intended to expel a projectile by action of an
62 explosion of a combustible material while such person is upon (i) any public, private or religious
63 elementary, middle or high school, including buildings and grounds; (ii) that portion of any property
64 open to the public and then exclusively used for school-sponsored functions or extracurricular activities
65 while such functions or activities are taking place; or (iii) any school bus owned or operated by any
66 such school, he shall be guilty of a Class 6 felony.

67 C. If any person possesses any firearm designed or intended to expel a projectile by action of an
68 explosion of a combustible material within a public, private or religious elementary, middle or high
69 school building and intends to use, or attempts to use, such firearm, or displays such weapon in a
70 threatening manner, such person shall be guilty of a Class 6 felony and sentenced to a mandatory
71 minimum term of imprisonment of five years to be served consecutively with any other sentence.

72 *D. If any person possesses any firearm designed or intended to expel a projectile by action of an*
73 *explosion of a combustible material within a public, private, or religious elementary, middle, or high*
74 *school, or within any building on the campus of any private or state institution of higher education, and*
75 *intends to commit upon the premises thereof any violent felony offense listed in subsection A of*
76 *§ 19.2-297.1, such person is guilty of a Class [3 2] felony and any sentence imposed shall be served*
77 *consecutively with any other sentence.*

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

91 F. As used in this section:

92 "Stun weapon" means any device that emits a momentary or pulsed output, which is electrical,
93 audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

94 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
95 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
96 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
97 **3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing**
98 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
99 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
100 **custody of the Department of Juvenile Justice.**