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HOUSE BILL NO. 298

Offered January 8, 2014

Prefiled December 31, 2013

A BILL to amend and reenact §§ 18.2-308.1:3 and 37.2-821 of the Code of Virginia, relating to mental health as disqualifier for firearm possession.

Patron—Loupassi

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1:3 and 37.2-821 of the Code of Virginia are amended and reenacted as follows:

§ 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 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 *notwithstanding the outcome of any appeal taken pursuant to § 37.2-821*, 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. 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 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 general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, 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 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.

C. As used in this section, "treatment record" shall include copies of health records detailing the petitioner's psychiatric history, which shall include the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.

§ 37.2-821. Appeal of involuntary admission or certification order.

A. Any person involuntarily admitted to an inpatient facility or ordered to mandatory outpatient treatment pursuant to §§ 37.2-814 through 37.2-819 or certified as eligible for admission pursuant to § 37.2-806 shall have the right to appeal the order to the circuit court in the jurisdiction where he was involuntarily admitted or ordered to mandatory outpatient treatment or certified or where the facility to which he was admitted is located. Choice of venue shall rest with such person. The court may transfer the case upon a finding that the other forum is more convenient. An appeal shall be filed within 10 days from the date of the order and shall be given priority over all other pending matters before the court and heard as soon as possible, notwithstanding § 19.2-241 regarding the time within which the court shall set criminal cases for trial. A petition for or the pendency of an appeal shall not suspend any order unless so ordered by a judge or special justice; however, a person may be released after a petition for or during the pendency of an appeal pursuant to § 37.2-837 or 37.2-838. The clerk of the court from which an appeal is taken shall immediately transmit the record to the clerk of the appellate court. The clerk of the circuit court shall provide written notification of the appeal to the petitioner in the case in accordance with procedures set forth in § 16.1-112. No appeal bond or writ tax shall be required, and the appeal shall proceed without the payment of costs or other fees. Costs may be recovered as provided for in § 37.2-804.

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59 B. The appeal shall be heard de novo in accordance with the provisions set forth in §§ 37.2-802,
60 37.2-804, 37.2-804.1, 37.2-804.2, and 37.2-805, and (i) § 37.2-806 or (ii) §§ 37.2-814 through 37.2-819,
61 except that the court in its discretion may rely upon the evaluation report in the commitment hearing
62 from which the appeal is taken instead of requiring a new evaluation pursuant to § 37.2-815. Any order
63 of the circuit court shall not extend the period of involuntary admission or mandatory outpatient
64 treatment set forth in the order appealed from. An order continuing the involuntary admission shall be
65 entered only if the criteria in § 37.2-817 are met at the time the appeal is heard. *Upon a finding by the*
66 *court that the appellant no longer meets the criteria for involuntary admission or mandatory outpatient*
67 *treatment, the court shall not dismiss the Commonwealth's petition but shall reverse the order of the*
68 *district court.* The person so admitted or certified shall be entitled to trial by jury. Seven persons from a
69 panel of 13 shall constitute a jury.

70 C. If the person is not represented by counsel, the judge shall appoint an attorney to represent him.
71 Counsel so appointed shall be paid a fee of \$75 and his necessary expenses. The order of the court from
72 which the appeal is taken shall be defended by the attorney for the Commonwealth.