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HOUSE BILL NO. 2286

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Governor
on March 27, 2015)

(Patron Prior to Substitute—Delegate Webert)

A *BILL to amend and reenact § 18.2-308.2 of the Code of Virginia, relating to possession of firearms, etc., by convicted felons or following certain criminal convictions; restoration of rights.*

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.2 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons, explosives or concealed weapons by convicted felons or following certain criminal convictions; 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 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 ammunition for a firearm, any stun weapon 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 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, ammunition for 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, or (iv) *any person whose right to possess firearms or ammunition has been restored under the law of another state subject to conditions placed upon the reinstatement of the person's right to ship, transport, possess, or receive firearms by such state.*

C. Any person prohibited from possessing, transporting or carrying a firearm or stun weapon ~~under subsection A~~, may (i) petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a firearm or stun weapon *if prohibited under subsection A; however, except that* 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, or (ii) *petition, no earlier than five years from the date of conviction, the circuit court of the jurisdiction in which he resides or was last convicted for a permit to possess or carry a firearm if prohibited under subsection E.* 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. 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, ammunition for a firearm, and stun weapons 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:

60 "Ammunition for a firearm" means the combination of a cartridge, projectile, primer, or propellant
61 designed for use in a firearm other than an antique firearm as defined in § 18.2-308.2:2.

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

66 *E. Any person who knowingly and intentionally possesses, transports, or carries any firearm*
67 *following a misdemeanor conviction for an offense that occurred on or after July 1, 2015, for the*
68 *offenses of (i) stalking in violation of § 18.2-60.3 when the victim was a family or household member,*
69 *(ii) sexual battery in violation of § 18.2-67.4 when the victim was a family or household member, (iii)*
70 *assault and battery of a family or household member, or (iv) any offense substantially similar to clause*
71 *(i), (ii), or (iii) in the laws of any other state or political subdivision thereof is guilty of a Class 1*
72 *misdemeanor.*

73 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
74 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
75 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
76 **2 of the Acts of Assembly of 2014, Special Session I, requires the Virginia Criminal Sentencing**
77 **Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated**
78 **amount of the necessary appropriation cannot be determined for periods of commitment to the**
79 **custody of the Department of Juvenile Justice.**