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SENATE BILL NO. 156

Offered January 13, 2016

Prefiled December 29, 2015

A BILL to amend and reenact § 18.2-308.09 of the Code of Virginia, relating to disqualifications for a concealed handgun permit; statement to court.

Patrons—Favola, Howell and Locke; Delegates: Kory, Levine, Murphy, Simon and Sullivan

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.09 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth, or family member of the individual who resides with the individual may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, or family member, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth, or family member shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts. If the individual is denied issuance of a concealed handgun permit, the order states that the denial is based on this subdivision, and such denial is upheld on appeal, if any, the individual may not reapply for a permit until five years have passed from the date all appeals are exhausted. An individual who reapplies after having been denied a permit pursuant to

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59 *this subdivision shall include with his application documentation as to why he is no longer likely to use*
60 *a weapon unlawfully or negligently to endanger others.*

61 14. An individual who has been convicted of any assault, assault and battery, sexual battery,
62 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in
63 violation of § 18.2-282 within the three-year period immediately preceding the application.

64 15. An individual who has been convicted of stalking.

65 16. An individual whose previous convictions or adjudications of delinquency were based on an
66 offense that would have been at the time of conviction a felony if committed by an adult under the laws
67 of any state, the District of Columbia, the United States or its territories. For purposes of this
68 disqualifier, only convictions occurring within 16 years following the later of the date of (me) the
69 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
70 adjudication shall be deemed to be "previous convictions."

71 17. An individual who has a felony charge pending or a charge pending for an offense listed in
72 subdivision 14 or 15.

73 18. An individual who has received mental health treatment or substance abuse treatment in a
74 residential setting within five years prior to the date of his application for a concealed handgun permit.

75 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
76 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
77 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession
78 or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any
79 state, the District of Columbia, or the United States or its territories.

80 20. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the
81 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
82 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or
83 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any
84 state, the District of Columbia, or the United States or its territories, the trial court found that the facts
85 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the
86 substantially similar law of any other state, the District of Columbia, or the United States or its
87 territories.

88 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
89 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
90 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
91 **665 of the Acts of Assembly of 2015 requires the Virginia Criminal Sentencing Commission to**
92 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
93 **necessary appropriation is \$0 for periods of commitment to the custody of the Department of**
94 **Juvenile Justice.**