

2017 SESSION

LEGISLATION NOT PREPARED BY DLS
INTRODUCED

17104501D

HOUSE BILL NO. 2429

Offered January 19, 2017

A *BILL to amend and reenact § 18.2-308.1:1 of the Code of Virginia, relating to the purchase, possession or transportation of firearms by persons acquitted by reason of insanity, to amend and reenact § 18.2-308.1:2 of the Code of Virginia, relating to the purchase, possession or transportation of by persons adjudicated legally incompetent or mentally incapacitated, and to amend and reenact § 18.2-308.1:3 of the Code of Virginia, relating to the purchase, possession or transportation of firearms by persons involuntarily admitted or ordered to outpatient treatment.*

Patrons—O'Quinn and Kilgore

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-308.1:1 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.1:1. Purchase, possession or transportation of firearms by persons acquitted by reason of insanity; penalty.

A. It shall be unlawful for any person acquitted by reason of insanity and committed to the custody of the Commissioner of Behavioral Health and Developmental 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 purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person so acquitted may, upon discharge from the custody of the Commissioner, petition the general district court in the city or county in which he resides *or, if the person is not a resident of the Commonwealth, the general district court of any county or city where such person was last committed pursuant to subsection A*, 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 disability 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 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.

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.

2. That § 18.2-308.1:2 of the Code of Virginia is amended and reenacted as follows:

§ 18.2-308.1:2. Purchase, possession or transportation of firearm by persons adjudicated legally incompetent or mentally incapacitated; penalty.

A. It shall be unlawful for any person who has been adjudicated (i) legally incompetent pursuant to former § 37.1-128.02 or former § 37.1-134, (ii) mentally incapacitated pursuant to former § 37.1-128.1 or former § 37.1-132 or (iii) incapacitated pursuant to Chapter 20 (§ 64.2-2000 et seq.) of Title 64.2 to purchase, possess, or transport any firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

B. Any person whose competency or capacity has been restored pursuant to former § 37.1-134.1, former § 37.2-1012, or § 64.2-2012 may petition the general district court in the city or county in which he resides *or, if the person is not a resident of the Commonwealth, the general district court of any county or city where such person was last adjudicated legally incompetent or incapacitated pursuant to subsection A*, 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

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59 filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall
60 conduct a hearing if requested by either party. If the court determines, after receiving and considering
61 evidence concerning the circumstances regarding the disability referred to in subsection A and the
62 person's criminal history, treatment record, and reputation as developed through character witness
63 statements, testimony, or other character evidence, that the person will not be likely to act in a manner
64 dangerous to public safety and that the granting of the relief would not be contrary to the public
65 interest, the court shall grant the petition. Any person denied relief by the general district court may
66 petition the circuit court for a de novo review of the denial. Upon a grant of relief in any court, the
67 court shall enter a written order granting the petition, in which event the provisions of subsection A do
68 not apply. The clerk of court shall certify and forward forthwith to the Central Criminal Records
69 Exchange, on a form provided by the Exchange, a copy of any such order.

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

73 **3. That § 18.2-308.1:3 of the Code of Virginia is amended and reenacted as follows:**

74 **§ 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily**
75 **admitted or ordered to outpatient treatment; penalty.**

76 A. It shall be unlawful for any person involuntarily admitted to a facility or ordered to mandatory
77 outpatient treatment pursuant to § 19.2-169.2, involuntarily admitted to a facility or ordered to
78 mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814
79 et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to
80 § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 to purchase, possess
81 or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

82 B. Any person prohibited from purchasing, possessing or transporting firearms under this section
83 may, at any time following his release from involuntary admission to a facility, his release from an
84 order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805
85 following the issuance of a temporary detention order, petition the general district court in the city or
86 county in which he resides *or, if the person is not a resident of the Commonwealth, the general district*
87 *court of any county or city where such person was last ordered to mandatory outpatient treatment,*
88 *involuntarily admitted, or was the subject of a temporary detention order pursuant to subsection A,* to
89 restore his right to purchase, possess or transport a firearm. A copy of the petition shall be mailed or
90 delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed who
91 shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a
92 hearing if requested by either party. If the court determines, after receiving and considering evidence
93 concerning the circumstances regarding the disabilities referred to in subsection A and the person's
94 criminal history, treatment record, and reputation as developed through character witness statements,
95 testimony, or other character evidence, that the person will not likely act in a manner dangerous to
96 public safety and that granting the relief would not be contrary to the public interest, the court shall
97 grant the petition. Any person denied relief by the general district court may petition the circuit court for
98 a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order
99 granting the petition, in which event the provisions of subsection A do not apply. The clerk of court
100 shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by
101 the Exchange, a copy of any such order.

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