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SENATE BILL NO. 1353

Offered January 11, 2023

Prefiled January 11, 2023

A BILL to amend and reenact §§ 18.2-53.1, 18.2-308.1, and 18.2-308.2 of the Code of Virginia, relating to firearms-related offenses; mandatory minimum sentences; penalty.

Patrons—Norment, Reeves and Ruff

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-53.1, 18.2-308.1, and 18.2-308.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-53.1. Use or display of firearm in committing felony.

It shall be unlawful for any person to use or attempt to use any pistol, shotgun, rifle, or other firearm or display such weapon in a threatening manner while committing or attempting to commit murder, rape, forcible sodomy, inanimate or animate object sexual penetration as defined in § 18.2-67.2, robbery, carjacking, burglary, malicious wounding as defined in § 18.2-51, malicious bodily injury to a law-enforcement officer as defined in § 18.2-51.1, aggravated malicious wounding as defined in § 18.2-51.2, malicious wounding by mob as defined in § 18.2-41 or abduction. Violation of this section shall constitute a separate and distinct felony and any person found guilty thereof shall be sentenced to a mandatory minimum term of imprisonment of ~~three~~ five years for a first conviction, and to a mandatory minimum term of ~~five~~ 10 years for a second or subsequent conviction under the provisions of this section. Such punishment shall be separate and apart from, and shall be made to run consecutively with, any punishment received for the commission of the primary felony.

§ 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited; penalty.

A. If any person knowingly 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 child day center or public, private, or religious preschool, 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 or operated by any such school, he is guilty of a Class 1 misdemeanor.

B. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material while such person is upon (i) the property of any child day center or public, private, or religious preschool, elementary, middle, or high school, including buildings and grounds; (ii) 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 (iii) any school bus owned or operated by any such school, he is guilty of a Class 6 felony.

C. If any person knowingly possesses any firearm designed or intended to expel a projectile by action of an explosion of a combustible material within the building of a child day center or public, private, or religious preschool, elementary, middle, or high school and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person is guilty of a Class 6 5 felony and sentenced to a mandatory minimum term of imprisonment of ~~five~~ 10 years to be served consecutively with any other sentence.

D. The child day center and private or religious preschool provisions of this section (i) shall apply only during the operating hours of such child day center or private or religious preschool and (ii) shall not apply to any person (a) whose residence is on the property of a child day center or a private or religious preschool and (b) who possesses a firearm or other weapon prohibited under this section while in his residence.

E. The exemptions set out in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer, or retired law-enforcement officer qualified pursuant to subsection C of

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59 § 18.2-308.016; (v) any person who possesses a knife or blade which he uses customarily in his trade;  
60 (vi) a person who possesses an unloaded firearm or a stun weapon that is in a closed container, or a  
61 knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms  
62 rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses  
63 a concealed handgun or a stun weapon while in a motor vehicle in a parking lot, traffic circle, or other  
64 means of vehicular ingress or egress to the school; (viii) a school security officer authorized to carry a  
65 firearm pursuant to § 22.1-280.2:1; or (ix) an armed security officer, licensed pursuant to Article 4  
66 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, hired by a child day center or a private or religious school  
67 for the protection of students and employees as authorized by such school. For the purposes of this  
68 subsection, "weapon" includes a knife having a metal blade of three inches or longer and "closed  
69 container" includes a locked vehicle trunk.

70 F. Nothing in subsection E or any other provision of law shall be construed as providing an  
71 exemption to the provisions of this section for a special conservator of the peace appointed pursuant to  
72 § 19.2-13, other than the specifically enumerated exemptions that apply to the general population as  
73 provided in subsection E.

74 G. As used in this section:

75 "Child day center" means a child day center, as defined in § 22.1-289.02, that is licensed in  
76 accordance with the provisions of Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1 and is not operated  
77 at the residence of the provider or of any of the children.

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

80 **§ 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons,**  
81 **explosives or concealed weapons by convicted felons; penalties; petition for restoration order;**  
82 **when issued.**

83 A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person  
84 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in  
85 violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or  
86 presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person  
87 under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of  
88 the offense of a delinquent act which would be a felony if committed by an adult, other than those  
89 felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the  
90 Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof,  
91 to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun  
92 weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry  
93 about his person, hidden from common observation, any weapon described in subsection A of  
94 § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as  
95 defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 5 felony.  
96 However, any person who violates this section by knowingly and intentionally possessing or transporting  
97 any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be  
98 sentenced to a mandatory minimum term of imprisonment of ~~five~~ 10 years. Any person who violates  
99 this section by knowingly and intentionally possessing or transporting any firearm and who was  
100 previously convicted of any other felony within the prior 10 years shall be sentenced to a mandatory  
101 minimum term of imprisonment of ~~two~~ five years. The mandatory minimum terms of imprisonment  
102 prescribed for violations of this section shall be served consecutively with any other sentence.

103 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,  
104 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member  
105 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)  
106 any law-enforcement officer in the performance of his duties, (iii) any person who has been pardoned or  
107 whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution of  
108 Virginia provided the Governor, in the document granting the pardon or removing the person's political  
109 disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,  
110 transport, possess or receive firearms, (iv) any person whose right to possess firearms or ammunition has  
111 been restored under the law of another state subject to conditions placed upon the reinstatement of the  
112 person's right to ship, transport, possess, or receive firearms by such state, or (v) any person adjudicated  
113 delinquent as a juvenile who has completed a term of service of no less than two years in the Armed  
114 Forces of the United States and, if such person has been discharged from the Armed Forces of the  
115 United States, received an honorable discharge and who is not otherwise prohibited under clause (i) or  
116 (ii) of subsection A.

117 C. Any person prohibited from possessing, transporting, or carrying a firearm, ammunition for a  
118 firearm, or a stun weapon under subsection A may petition the circuit court of the jurisdiction in which  
119 he resides or, if the person is not a resident of the Commonwealth, the circuit court of any county or  
120 city where such person was last convicted of a felony or adjudicated delinquent of a disqualifying

121 offense pursuant to subsection A, for a restoration order that unconditionally authorizes possessing,  
 122 transporting, or carrying a firearm, ammunition for a firearm, or a stun weapon; however, no person  
 123 who has been convicted of a felony shall be qualified to petition for such an order unless his civil rights  
 124 have been restored by the Governor or other appropriate authority. A copy of the petition shall be  
 125 mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was  
 126 filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall  
 127 conduct a hearing if requested by either party. The court may, in its discretion and for good cause  
 128 shown, grant such petition and issue a restoration order. Such order shall contain the petitioner's name  
 129 and date of birth. The clerk shall certify and forward forthwith to the Central Criminal Records  
 130 Exchange (CCRE), on a form provided by the CCRE, a copy of the order to be accompanied by a  
 131 complete set of the petitioner's fingerprints. The Department of State Police shall forthwith enter the  
 132 petitioner's name and description in the CCRE so that the order's existence will be made known to  
 133 law-enforcement personnel accessing the computerized criminal history records for investigative  
 134 purposes. The provisions of this section relating to firearms, ammunition for a firearm, and stun  
 135 weapons shall not apply to any person who has been issued a restoration order pursuant to this  
 136 subsection.

137 C1. Any person who was prohibited from possessing, transporting or carrying explosive material  
 138 under subsection A may possess, transport or carry such explosive material if his right to possess,  
 139 transport or carry explosive material has been restored pursuant to federal law.

140 C2. The prohibitions of subsection A shall not prohibit any person other than a person convicted of  
 141 an act of violence as defined in § 19.2-297.1 or a violent felony as defined in subsection C of  
 142 § 17.1-805 from possessing, transporting, or carrying (i) antique firearms or (ii) black powder in a  
 143 quantity not exceeding five pounds if it is intended to be used solely for sporting, recreational, or  
 144 cultural purposes in antique firearms. For the purposes of this subsection, "antique firearms" means any  
 145 firearm described in subdivision 3 of the definition of "antique firearm" in subsection F of  
 146 § 18.2-308.2:2.

147 D. For the purpose of this section:

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

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

154 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
 155 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
 156 **necessary appropriation is \$53,987,160 for periods of imprisonment in state adult correctional**  
 157 **facilities and cannot be determined for periods of commitment to the custody of the Department of**  
 158 **Juvenile Justice.**