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**HOUSE BILL NO. 1449**

Offered January 11, 1995

Prefiled January 9, 1995

*A BILL to amend and reenact § 18.2-308.4 of the Code of Virginia, relating to possession of weapons while in possession of certain drugs; penalty.*

Patrons—Councill, Barlow, Nelms and Reynolds; Senators: Holland, R.J. and Lucas

Referred to Committee for Courts of Justice

**Be it enacted by the General Assembly of Virginia:**

**1. That § 18.2-308.4 of the Code of Virginia is amended and reenacted as follows:**

§ 18.2-308.4. Possession of weapons while in possession of certain drugs.

A. ~~Any person unlawfully in possession of a controlled substance classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 who simultaneously with knowledge and intent possesses any firearm, shall be guilty of a Class 6 felony.~~ *Any person who (i) unlawfully manufactures, sells, transports, distributes or possesses with intent to manufacture, sell, or distribute a Schedule I or II controlled substance or marijuana and (II) carries on or about his person or has on or in any vehicle which he may be using to aid in such purpose or has in his possession, actual or constructive, at or within 100 yards of any place where such controlled substance or marijuana is being unlawfully manufactured, sold, transported, distributed or possessed, any dangerous weapon as described in § 18.2-308 shall be guilty of a Class 6 felony.*

B. It shall be unlawful for any person to ~~possess~~, 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 the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana. Violation of this subsection shall constitute a separate and distinct felony and any person convicted thereof shall be sentenced to a term of imprisonment of three years for a first conviction and for a term of five years for a second or subsequent conviction under this subsection. Notwithstanding any other provision of law, the sentence prescribed for a violation of this subsection shall not be suspended in whole or in part, nor shall anyone convicted hereunder be placed on probation or parole for this offense. 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.

C. Any firearm *or other weapon* possessed *or used* in violation of this section shall be forfeited to the Commonwealth pursuant to the provisions of § 18.2-310.

**2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$ 250,000.**

INTRODUCED

HB1449