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HOUSE BILL NO. 1691

Offered January 13, 1999

A BILL to amend and reenact §§ 18.2-308.1, 18.2-308.2, 18.2-308.4 and 19.2-120 of the Code of Virginia, relating to unlawful possession of firearms; penalty.

Patrons—Baker, Albo, Barlow, Bennett, Black, Blevins, Bloxom, Brink, Byron, Cantor, Clement, Councill, Cox, Croshaw, Darner, Davies, Deeds, Diamonstein, Dickinson, Dudley, Grayson, Griffith, Guest, Hall, Hamilton, Hargrove, Harris, Howell, Hull, Ingram, Katzen, Keating, Kilgore, Landes, Marshall, McDonnell, McQuigg, Moran, Moss, Murphy, Nixon, Parrish, Phillips, Plum, Purkey, Putney, Reid, Rust, Scott, Stump, Tata, Van Landingham, Van Yahres, Wagner, Wardrup, Watts, Weatherholtz, Wilkins and Williams; Senators: Barry, Forbes, Hawkins, Martin, Trumbo, Wampler and Williams

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1, 18.2-308.2, 18.2-308.4 and 19.2-120 of the Code of Virginia are amended and reenacted as follows:

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

A. If any person ~~has in his possession~~ possesses any (i) stun weapon or taser as defined in this section or (ii) weapon, other than a firearm, designated in subsection A of § 18.2-308 upon (i) the property of any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public 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 shall be guilty of a Class 1 misdemeanor.

B. If any person ~~has in his possession~~ possesses any firearm designed or intended to propel a missile of any kind while such person is upon (i) any public, private or parochial elementary, middle or high school, including buildings and grounds, (ii) that portion of any property open to the public 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 shall be guilty of a Class 6 felony; *however, if the person possesses any firearm within a public, private or parochial elementary, middle or high school building and intends to use, or attempts to use, such firearm, or displays such weapon in a threatening manner, such person shall not be eligible for probation and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which shall not be suspended in whole or in part and which shall be served consecutively with any other sentence.*

The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to persons who possess such weapon or weapons as a part of the curriculum or other programs sponsored by the school or any organization permitted by the school to use its premises or to any law-enforcement officer while engaged in his duties as such. In addition, this section shall not apply to possession of an unloaded firearm which is in a closed container in or upon a motor vehicle or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle.

As used in this section:

"Stun weapon" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge that exceeds the equivalency of a five milliamp sixty hertz shock and (ii) used for the purpose of temporarily incapacitating a person; and

"Taser" means any mechanism that is (i) designed to emit an electronic, magnetic, or other type of charge or shock through the use of a projectile and (ii) used for the purpose of temporarily incapacitating a person.

§ 18.2-308.2. Possession or transportation of firearms or concealed weapons by convicted felons; penalties; petition for permit; when issued.

A. It shall be unlawful for (i) any person who has been convicted of a felony or (ii) any person under the age of twenty-nine who was found guilty as a juvenile fourteen 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, whether such conviction or adjudication occurred under the laws of this 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 to knowingly and intentionally carry about his person, hidden from common observation, any weapon described in § 18.2-308 A. ~~A violation of this section shall be punishable as a~~ Any person who violates this section shall be guilty of a Class 6 felony, ~~shall not be eligible for~~

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60 *probation, and shall be sentenced to a minimum, mandatory term of imprisonment of five years, which*
61 *shall not be suspended in whole or in part and which shall be served consecutively with any other*
62 *sentence.* Any firearm or any concealed weapon possessed, transported or carried in violation of this
63 section shall be forfeited to the Commonwealth and disposed of as provided in § 18.2-310.

64 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm or
65 other weapon while carrying out his duties as a member of the armed forces of the United States or of
66 the National Guard of Virginia or of any other state, (ii) any law-enforcement officer in the performance
67 of his duties, or (iii) any person who has been pardoned or whose political disabilities have been
68 removed pursuant to Article V, Section 12 of the Constitution of Virginia provided the Governor, in the
69 document granting the pardon or removing the person's political disabilities, may expressly place
70 conditions upon the reinstatement of the person's right to ship, transport, possess or receive firearms.

71 C. Any person prohibited from possessing, transporting or carrying a firearm under subsection A,
72 may petition the circuit court of the jurisdiction in which he resides for a permit to possess or carry a
73 firearm; however, no person who has been convicted of a felony shall be qualified to petition for such a
74 permit unless his civil rights have been restored by the Governor or other appropriate authority. The
75 court may, in its discretion and for good cause shown, grant such petition and issue a permit. The
76 provisions of this section shall not apply to any person who has been granted a permit pursuant to this
77 subsection.

78 § 18.2-308.4. Possession of firearms while in possession of certain controlled substances.

79 A. ~~Any~~ *It shall be unlawful for any person unlawfully in possession of a controlled substance*
80 *classified in Schedule I or II of the Drug Control Act (§ 54.1-3400 et seq.) of Title 54.1 who to*
81 *simultaneously with knowledge and intent possesses* ~~possess~~ *any firearm, shall be guilty of a Class 6*
82 *felony.*

83 B. It shall be unlawful for any person to possess, use, or attempt to use any pistol, shotgun, rifle, or
84 other firearm or display such weapon in a threatening manner while committing or attempting to commit
85 the illegal manufacture, sale, distribution, or the possession with the intent to manufacture, sell, or
86 distribute a controlled substance classified in Schedule I or Schedule II of the Drug Control Act
87 (§ 54.1-3400 et seq.) of Title 54.1 or more than one pound of marijuana.

88 Violation of this ~~subsection~~ *section* shall constitute a separate and distinct felony and any person
89 convicted thereof ~~shall be guilty of a Class 6 felony, shall not be eligible for probation, and shall be~~
90 ~~sentenced to a minimum, mandatory term of imprisonment of three years for a first conviction and for a~~
91 ~~term of five years for a second or subsequent conviction under this subsection, which shall not be~~
92 ~~suspended in whole or in part. Notwithstanding any other provision of law, the sentence prescribed for~~
93 ~~a violation of this subsection shall not be suspended in whole or in part, nor shall anyone convicted~~
94 ~~hereunder be placed on probation or parole for this offense.~~ Such punishment shall be separate and apart
95 from, and shall be made to run consecutively with, any punishment received for the commission of the
96 primary felony.

97 C. Any firearm possessed in violation of this section shall be forfeited to the Commonwealth
98 pursuant to the provisions of § 18.2-310.

99 § 19.2-120. Right to bail; use of bond to satisfy fines and costs.

100 An accused, or juvenile taken into custody pursuant to § 16.1-246 who is held in custody pending
101 trial or hearing for an offense, civil or criminal contempt, or otherwise shall be admitted to bail by a
102 judicial officer as defined in § 19.2-119, unless there is probable cause to believe that:

103 1. He will not appear for trial or hearing or at such other time and place as may be directed, or

104 2. His liberty will constitute an unreasonable danger to himself or the public.

105 If the judicial officer finds by clear and convincing evidence that (i) within the preceding sixteen
106 years, the accused or juvenile was convicted of an offense listed in §§ 18.2-248, 18.2-248.01, 18.2-255,
107 or § 18.2-255.2 that involves a Schedule I or II controlled substance, was previously convicted as a
108 "drug kingpin" as defined in § 18.2-248, or was previously convicted of an act of violence as defined in
109 § 19.2-297.1 and finds probable cause to believe that the accused or juvenile who is currently charged
110 with one of these offenses committed the offense charged, or (ii) the accused or juvenile had previously
111 been convicted of an offense listed in subsection B of § 18.2-67.5:2 and finds probable cause to believe
112 that the accused or juvenile who is currently charged with one of these offenses committed the offense
113 charged, then the judicial officer shall presume, subject to rebuttal, that no condition or combination of
114 conditions will reasonably assure the appearance of the person or the safety of the public.

115 *The judicial officer shall presume, subject to rebuttal, that no condition or combination of conditions*
116 *will reasonably assure the appearance of the person or the safety of the public if the person is currently*
117 *charged with a violation of §§ 18.2-308.1, 18.2-308.2 or § 18.2-308.4.*

118 The judicial officer shall inform the accused or juvenile of his right to appeal from the order denying
119 bail or fixing terms of bond or recognizance consistent with § 19.2-124.

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

122 is \$ 23,049,750.