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SENATE BILL NO. 331

Offered January 13, 2010

Prefiled January 12, 2010

A *BILL to amend and reenact §§ 18.2-308.1:1, 18.2-308.1:3, and 18.2-308.2 of the Code of Virginia, relating to petition for restoration of right to possess, etc., firearm; notice to attorney for the Commonwealth.*

Patron—Stuart

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1:1, 18.2-308.1:3, and 18.2-308.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.1:1. Possession or transportation of firearms by persons acquitted by reason of insanity; penalty; permit.

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 section 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 which he resides for a permit to possess or carry a firearm. *A copy of the petition shall be served on the attorney for the Commonwealth for the city or county in which the petition is filed and the Commonwealth shall be made a party defendant to the proceeding. The attorney for the Commonwealth may file an objection or answer to the petition within 21 days after it is served on him.* If the court determines that the circumstances regarding the disability referred to in subsection A and the person's criminal history, treatment record, and reputation are such 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 party aggrieved~~ by the general district court may petition the circuit court for a de novo review of the ~~denial decision~~. Upon a grant of relief in any court, the court shall enter a written order granting the petition and issue a permit, 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.

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

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

B. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, petition the general district court in the city or county in which he resides to restore his right to purchase, possess or transport a firearm. *A copy of the petition shall be served on the attorney for the Commonwealth for the city or county in which the petition is filed and the Commonwealth shall be made a party defendant to the proceeding. The attorney for the Commonwealth may file an objection or answer to the petition within 21 days after it is served on him.* If the court determines that the circumstances regarding the disabilities referred to in subsection A and the person's criminal history, treatment record, and reputation are such that the person will not likely act in a manner dangerous to public safety and that granting the relief would not be contrary to the public interest, the court shall grant the petition. Any ~~person denied relief party aggrieved~~ by the

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59 general district court may petition the circuit court for a de novo review of the ~~denial~~ *decision*. Upon a
60 grant of relief in any court, the court shall enter a written order granting the petition, in which event the
61 provisions of subsection A shall no longer apply. The clerk of court shall certify and forward forthwith
62 to the Central Criminal Records Exchange, on a form provided by the Exchange, a copy of any such
63 order.

64 § 18.2-308.2. Possession or transportation of firearms, firearms ammunition, stun weapons, explosives
65 or concealed weapons by convicted felons; penalties; petition for permit; when issued.

66 A. It shall be unlawful for (i) any person who has been convicted of a felony; (ii) any person
67 adjudicated delinquent as a juvenile 14 years of age or older at the time of the offense of murder in
68 violation of § 18.2-31 or 18.2-32, kidnapping in violation of § 18.2-47, robbery by the threat or
69 presentation of firearms in violation of § 18.2-58, or rape in violation of § 18.2-61; or (iii) any person
70 under the age of 29 who was adjudicated delinquent as a juvenile 14 years of age or older at the time of
71 the offense of a delinquent act which would be a felony if committed by an adult, other than those
72 felonies set forth in clause (ii), whether such conviction or adjudication occurred under the laws of the
73 Commonwealth, or any other state, the District of Columbia, the United States or any territory thereof,
74 to knowingly and intentionally possess or transport any firearm or ammunition for a firearm, any stun
75 weapon as defined by § 18.2-308.1, or any explosive material, or to knowingly and intentionally carry
76 about his person, hidden from common observation, any weapon described in subsection A of
77 § 18.2-308. However, such person may possess in his residence or the curtilage thereof a stun weapon as
78 defined by § 18.2-308.1. Any person who violates this section shall be guilty of a Class 6 felony.
79 However, any person who violates this section by knowingly and intentionally possessing or transporting
80 any firearm and who was previously convicted of a violent felony as defined in § 17.1-805 shall be
81 sentenced to a mandatory minimum term of imprisonment of five years. Any person who violates this
82 section by knowingly and intentionally possessing or transporting any firearm and who was previously
83 convicted of any other felony within the prior 10 years shall be sentenced to a mandatory minimum
84 term of imprisonment of two years. The mandatory minimum terms of imprisonment prescribed for
85 violations of this section shall be served consecutively with any other sentence.

86 B. The prohibitions of subsection A shall not apply to (i) any person who possesses a firearm,
87 ammunition for a firearm, explosive material or other weapon while carrying out his duties as a member
88 of the Armed Forces of the United States or of the National Guard of Virginia or of any other state, (ii)
89 any law-enforcement officer in the performance of his duties, or (iii) any person who has been pardoned
90 or whose political disabilities have been removed pursuant to Article V, Section 12 of the Constitution
91 of Virginia provided the Governor, in the document granting the pardon or removing the person's
92 political disabilities, may expressly place conditions upon the reinstatement of the person's right to ship,
93 transport, possess or receive firearms.

94 C. Any person prohibited from possessing, transporting or carrying a firearm or stun weapon under
95 subsection A, may petition the circuit court of the jurisdiction in which he resides for a permit to
96 possess or carry a firearm or stun weapon; however, no person who has been convicted of a felony shall
97 be qualified to petition for such a permit unless his civil rights have been restored by the Governor or
98 other appropriate authority. *A copy of the petition shall be served on the attorney for the Commonwealth*
99 *for the city or county in which the petition is filed and the Commonwealth shall be made a party*
100 *defendant to the proceeding. The attorney for the Commonwealth may file an objection or answer to the*
101 *petition within 21 days after it is served on him.* The court may, in its discretion and for good cause
102 shown, grant such petition and issue a permit. The provisions of this section relating to firearms,
103 ammunition for a firearm, and stun weapons shall not apply to any person who has been granted a
104 permit pursuant to this subsection.

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

108 D. For the purpose of this section:

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

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