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HOUSE BILL NO. 1699

Offered January 12, 2011

Prefiled January 10, 2011

A BILL to amend and reenact §§ 18.2-308.1:1, 18.2-308.1:2, and 18.2-308.1:3 of the Code of Virginia, relating to restoration of firearm rights.

Patron—Athey

Referred to Committee on Militia, Police and Public Safety

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.1:1, 18.2-308.1:2, and 18.2-308.1:3 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-308.1:1. Purchase, 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 the city or county in which he resides for a permit to restore his right to purchase, possess or ~~carry~~ 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 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 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 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.

C. The court shall make or cause to be made a tape or other audio recording of any hearing held pursuant to this section, with no more than one hearing recorded per tape, and shall submit the recording to the clerk of the court in the locality in which the hearing is held. Such tape or other recording shall be retained in a confidential file for at least three years from the date of the hearing. The person who was the subject of the hearing shall be entitled, upon request, to obtain a copy of the tape or other recording of such hearing.

D. As used in this section, "treatment records" shall include true and certified copies of health records detailing the applicant'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.

§ 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 10 (§ 37.2-1000 et seq.) of Title 37.2 and whose competency or capacity has not been restored pursuant to ~~former § 37.1-134.1 or § 37.2-1012,~~ subsection B to purchase, possess, or transport any firearm. A violation of this section shall be punishable as a Class 1 misdemeanor.

B. Any person so adjudicated may 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 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

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59 conduct a hearing if requested by either party. If the court determines that the circumstances regarding
60 the disability referred to in subsection A and the person's criminal history, treatment record, and
61 reputation are such that the person will not be likely to act in a manner dangerous to public safety and
62 that the granting of the relief would not be contrary to the public interest, the court shall grant the
63 petition. Any person denied relief by the general district court may petition the circuit court for a de
64 novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order
65 granting the petition, in which event the provisions of subsection A do not apply. The clerk of court
66 shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by
67 the Exchange, a copy of any such order.

68 C. The court shall make or cause to be made a tape or other audio recording of any hearing held
69 pursuant to this section, with no more than one hearing recorded per tape, and shall submit the
70 recording to the clerk of the court in the locality in which the hearing is held. Such tape or other
71 recording shall be retained in a confidential file for at least three years from the date of the hearing.
72 The person who was the subject of the hearing shall be entitled, upon request, to obtain a copy of the
73 tape or other recording of such hearing.

74 D. As used in this section, "treatment records" shall include true and certified copies of health
75 records detailing the applicant's psychiatric history, which shall include the records pertaining to the
76 commitment or adjudication that is the subject of the request for relief pursuant to this section.

77 § 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily admitted or
78 ordered to outpatient treatment; penalty.

79 A. It shall be unlawful for any person involuntarily admitted to a facility or ordered to mandatory
80 outpatient treatment pursuant to § 19.2-169.2, involuntarily admitted to a facility or ordered to
81 mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814
82 et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to
83 § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 to purchase, possess
84 or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

85 B. Any person prohibited from purchasing, possessing or transporting firearms under this section
86 may, at any time following his release from involuntary admission to a facility, his release from an
87 order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805
88 following the issuance of a temporary detention order, petition the general district court in the city or
89 county in which he resides to restore his right to purchase, possess or transport a firearm. A copy of the
90 petition shall be mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the
91 petition was filed who shall be entitled to respond and represent the interests of the Commonwealth. The
92 court shall conduct a hearing if requested by either party. If the court determines that the circumstances
93 regarding the disabilities referred to in subsection A and the person's criminal history, treatment record,
94 and reputation are such that the person will not likely act in a manner dangerous to public safety and
95 that granting the relief would not be contrary to the public interest, the court shall grant the petition.
96 Any person denied relief by the general district court may petition the circuit court for a de novo review
97 of the denial. Upon a grant of relief in any court, the court shall enter a written order granting the
98 petition, in which event the provisions of subsection A shall no longer apply. The clerk of court shall
99 certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by the
100 Exchange, a copy of any such order.

101 C. The court shall make or cause to be made a tape or other audio recording of any hearing held
102 pursuant to this section, with no more than one hearing recorded per tape, and shall submit the
103 recording to the clerk of the court in the locality in which the hearing is held. Such tape or other
104 recording shall be retained in a confidential file for at least three years from the date of the hearing.
105 The person who was the subject of the hearing shall be entitled, upon request, to obtain a copy of the
106 tape or other recording of such hearing.

107 D. As used in this section, "treatment records" shall include true and certified copies of health
108 records detailing the applicant's psychiatric history, which shall include the records pertaining to the
109 commitment or adjudication that is the subject of the request for relief pursuant to this section.