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HOUSE BILL NO. 1699

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on February 21, 2011)

(Patron Prior to Substitute—Delegate Athey)

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.

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~~ subsection 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, after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection A and, the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, 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 petitioner shall make or cause to be made an audio recording of any hearing held pursuant to this section and shall submit the recording to the clerk of the general district court in which the hearing is held. Such 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 make a copy of the recording of such hearing.

D. As used in this section, "treatment record" shall include 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, to purchase, possess, or transport any firearm. A violation of this ~~section~~ subsection shall be punishable as a Class 1 misdemeanor.

B. Any person whose competency or capacity has been restored pursuant to former § 37.1-134.1 or § 37.2-1012 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 conduct a hearing if requested by either party. If the court determines, after receiving and considering evidence concerning the circumstances regarding the disability referred to in subsection A, the person's criminal history,

60 treatment record, and reputation as developed through character witness statements, testimony, or other
61 character evidence, are such that the person will not be likely to act in a manner dangerous to public
62 safety and that the granting of the relief would not be contrary to the public interest, the court shall
63 grant the petition. Any person denied relief by the general district court may petition the circuit court
64 for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter a written
65 order granting the petition, in which event the provisions of subsection A do not apply. The clerk of
66 court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided
67 by the Exchange, a copy of any such order.

68 C. The petitioner shall make or cause to be made an audio recording of any hearing held pursuant
69 to this section and shall submit the recording to the clerk of the general district court in which the
70 hearing is held. Such recording shall be retained in a confidential file for at least three years from the
71 date of the hearing. The person who was the subject of the hearing shall be entitled, upon request, to
72 make a copy of the recording of such hearing.

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

76 § 18.2-308.1:3. Purchase, possession or transportation of firearm by persons involuntarily admitted or
77 ordered to outpatient treatment; penalty.

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

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

101 C. The petitioner shall make or cause to be made an audio recording of any hearing held pursuant
102 to this section and shall submit the recording to the clerk of the general district court in which the
103 hearing is held. Such recording shall be retained in a confidential file for at least three years from the
104 date of the hearing. The person who was the subject of the hearing shall be entitled, upon request, to
105 make a copy of the recording of such hearing.

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