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SENATE BILL NO. 903

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 26, 2011)

(Patron Prior to Substitute—Senator Deeds)

A BILL to amend and reenact §§ 17.1-805 and 18.2-308.1 of the Code of Virginia, relating to definition of violent felony; possession of firearm on school property; penalty.

Be it enacted by the General Assembly of Virginia:**1. That §§ 17.1-805 and 18.2-308.1 of the Code of Virginia are amended and reenacted as follows:**

§ 17.1-805. Adoption of initial discretionary sentencing guideline midpoints.

A. The Commission shall adopt an initial set of discretionary felony sentencing guidelines which shall become effective on January 1, 1995. The initial recommended sentencing range for each felony offense shall be determined first, by computing the actual time-served distribution for similarly situated offenders, in terms of their conviction offense and prior criminal history, released from incarceration during the base period of calendar years 1988 through 1992, increased by 13.4 percent, and second, by eliminating from this range the upper and lower quartiles. The midpoint of each initial recommended sentencing range shall be the median time served for the middle two quartiles and subject to the following additional enhancements:

1. The midpoint of the initial recommended sentencing range for first degree murder, second degree murder, rape in violation of § 18.2-61, forcible sodomy, object sexual penetration, and aggravated sexual battery, shall be further increased by (i) 125 percent in cases in which the defendant has no previous conviction of a violent felony offense; (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years; or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of 40 years or more, except that the recommended sentence for a defendant convicted of first degree murder who has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more shall be imprisonment for life;

2. The midpoint of the initial recommended sentencing range for voluntary manslaughter, robbery, aggravated malicious wounding, malicious wounding, and any burglary of a dwelling house or statutory burglary of a dwelling house or any burglary committed while armed with a deadly weapon or any statutory burglary committed while armed with a deadly weapon shall be further increased by (i) 100 percent in cases in which the defendant has no previous conviction of a violent felony offense, (ii) 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of less than 40 years, or (iii) 500 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more;

3. The midpoint of the initial recommended sentencing range for manufacturing, selling, giving or distributing, or possessing with the intent to manufacture, sell, give or distribute a Schedule I or II controlled substance shall be increased by (i) 200 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years or (ii) 400 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more; and

4. The midpoint of the initial recommended sentencing range for felony offenses not specified in subdivision 1, 2 or 3 shall be increased by 100 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum punishment of less than 40 years, and by 300 percent in cases in which the defendant has previously been convicted of a violent felony offense punishable by a maximum term of imprisonment of 40 years or more.

B. For purposes of this chapter, previous convictions shall include prior adult convictions and juvenile convictions and adjudications of delinquency based on an offense which would have been at the time of conviction a felony if committed by an adult under the laws of any state, the District of Columbia, the United States or its territories.

C. For purposes of this chapter, violent felony offenses shall include solicitation to commit murder under § 18.2-29; any violation of § 18.2-31, 18.2-32, 18.2-32.1, 18.2-33, or 18.2-35; any violation of subsection B of § 18.2-36.1; any violation of § 18.2-40, 18.2-41, 18.2-46.5, 18.2-46.6, or 18.2-46.7; any Class 5 felony violation of § 18.2-47; any felony violation of § 18.2-48, 18.2-48.1 or 18.2-49; any violation of § 18.2-51, 18.2-51.1, 18.2-51.2, 18.2-51.3, 18.2-51.4, 18.2-52, 18.2-52.1, 18.2-53, 18.2-53.1, 18.2-54.1, 18.2-54.2 or 18.2-55; any felony violation of § 18.2-57.2; any violation of § 18.2-58 or 18.2-58.1; any felony violation of § 18.2-60.1 or 18.2-60.3; any violation of § 18.2-61, 18.2-64.1,

60 18.2-67.1, 18.2-67.2, former § 18.2-67.2:1, 18.2-67.3, 18.2-67.5, or 18.2-67.5:1 involving a third
61 conviction of either sexual battery in violation of § 18.2-67.4 or attempted sexual battery in violation of
62 subsection C of § 18.2-67.5; any Class 4 felony violation of § 18.2-63; any violation of subsection A of
63 § 18.2-77; any Class 3 felony violation of § 18.2-79; any Class 3 felony violation of § 18.2-80; any
64 violation of § 18.2-89, 18.2-90, 18.2-91, 18.2-92 or 18.2-93; any felony violation of § 18.2-152.7; any
65 Class 4 felony violation of § 18.2-153; any Class 4 felony violation of § 18.2-154; any Class 4 felony
66 violation of § 18.2-155; any felony violation of § 18.2-162; any violation of § 18.2-279 involving an
67 occupied dwelling; any violation of subsection B of § 18.2-280; any violation of § 18.2-281, 18.2-286.1,
68 18.2-289 or 18.2-290; any felony violation of subsection A of § 18.2-282; any violation of subsection A
69 of § 18.2-300; any felony violation of *subsection C of § 18.2-308.1 and or 18.2-308.2*; any violation
70 of § 18.2-308.2:1, or subsection M or N of § 18.2-308.2:2; any violation of § 18.2-308.3 or 18.2-312;
71 any violation of subdivision (2) or (3) of § 18.2-355; any violation of former § 18.2-358; any violation
72 of subsection B of § 18.2-361; any violation of subsection B of § 18.2-366; any violation of § 18.2-368,
73 18.2-370 or 18.2-370.1; any violation of subsection A of § 18.2-371.1; any felony violation of
74 § 18.2-369 resulting in serious bodily injury or disease; any violation of § 18.2-374.1; any felony
75 violation of § 18.2-374.1:1; any violation of § 18.2-374.3; any second or subsequent offense under
76 §§ 18.2-379 and 18.2-381; any felony violation of § 18.2-405 or 18.2-406; any violation of § 18.2-408,
77 18.2-413, 18.2-414 or 18.2-433.2; any felony violation of § 18.2-460, 18.2-474.1 or 18.2-477.1; any
78 violation of § 18.2-477, 18.2-478, 18.2-480 or 18.2-485; any violation of § 53.1-203; or any conspiracy
79 or attempt to commit any offense specified in this subsection, and any substantially similar offense
80 under the laws of any state, the District of Columbia, the United States or its territories.

81 § 18.2-308.1. Possession of firearm, stun weapon, or other weapon on school property prohibited.

82 A. If any person possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket
83 knife having a folding metal blade of less than three inches; or (iii) weapon, including a weapon of like
84 kind, designated in subsection A of § 18.2-308, other than a firearm; upon (a) the property of any
85 public, private or religious elementary, middle or high school, including buildings and grounds; (b) that
86 portion of any property open to the public and then exclusively used for school-sponsored functions or
87 extracurricular activities while such functions or activities are taking place; or (c) any school bus owned
88 or operated by any such school, he shall be guilty of a Class 1 misdemeanor.

89 B. If any person possesses any firearm designed or intended to expel a projectile by action of an
90 explosion of a combustible material while such person is upon (i) any public, private or religious
91 elementary, middle or high school, including buildings and grounds; (ii) that portion of any property
92 open to the public and then exclusively used for school-sponsored functions or extracurricular activities
93 while such functions or activities are taking place; or (iii) any school bus owned or operated by any
94 such school, he shall be guilty of a Class 6 felony; ~~however, if the~~ .

95 C. *If any person possesses any firearm designed or intended to expel a projectile by action of an*
96 *explosion of a combustible material* within a public, private or religious elementary, middle or high
97 school building and intends to use, or attempts to use, such firearm, or displays such weapon in a
98 threatening manner, such person shall be *guilty of a Class 6 felony and* sentenced to a mandatory
99 minimum term of imprisonment of five years to be served consecutively with any other sentence.

100 The exemptions set out in § 18.2-308 shall apply, mutatis mutandis, to the provisions of this section.
101 The provisions of this section shall not apply to (i) persons who possess such weapon or weapons as a
102 part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food
103 preparation or service and using it for such purpose; (iii) persons who possess such weapon or weapons
104 as a part of any program sponsored or facilitated by either the school or any organization authorized by
105 the school to conduct its programs either on or off the school premises; (iv) any law-enforcement
106 officer; (v) any person who possesses a knife or blade which he uses customarily in his trade; (vi) a
107 person who possesses an unloaded firearm that is in a closed container, or a knife having a metal blade,
108 in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor
109 vehicle; or (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun
110 while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to
111 the school. For the purposes of this paragraph, "weapon" includes a knife having a metal blade of three
112 inches or longer and "closed container" includes a locked vehicle trunk.

113 As used in this section:

114 "Stun weapon" means any device that emits a momentary or pulsed output, which is electrical,
115 audible, optical or electromagnetic in nature and which is designed to temporarily incapacitate a person.

116 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
117 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0**
118 **for periods of imprisonment in state adult correctional facilities and cannot be determined for**
119 **periods of commitment to the custody of the Department of Juvenile Justice.**