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SENATE BILL NO. 912

Offered January 14, 2015

Prefiled January 8, 2015

A BILL to amend and reenact §§ 18.2-308.09 and 18.2-308.013 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 18.2-308.1:6 and 37.2-808.1, relating to emergency custody orders; temporary firearms restriction orders.

Patrons—Wexton and Ebbin; Delegates: Krupicka and Simon

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-308.09 and 18.2-308.013 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 18.2-308.1:6 and 37.2-808.1 as follows:

§ 18.2-308.09. Disqualifications for a concealed handgun permit.

The following persons shall be deemed disqualified from obtaining a permit:

1. An individual who is ineligible to possess a firearm pursuant to § 18.2-308.1:1, 18.2-308.1:2, or 18.2-308.1:3 or the substantially similar law of any other state or of the United States.

2. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:1 and who was discharged from the custody of the Commissioner pursuant to § 19.2-182.7 less than five years before the date of his application for a concealed handgun permit.

3. An individual who was ineligible to possess a firearm pursuant to § 18.2-308.1:2 and whose competency or capacity was restored pursuant to § 64.2-2012 less than five years before the date of his application for a concealed handgun permit.

4. An individual who was ineligible to possess a firearm under § 18.2-308.1:3 and who was released from commitment less than five years before the date of this application for a concealed handgun permit.

5. An individual who is subject to a restraining order, or to a protective order and prohibited by § 18.2-308.1:4 from purchasing or transporting a firearm.

6. An individual who is prohibited by § 18.2-308.2 from possessing or transporting a firearm, except that a permit may be obtained in accordance with subsection C of that section.

7. An individual who has been convicted of two or more misdemeanors within the five-year period immediately preceding the application, if one of the misdemeanors was a Class 1 misdemeanor, but the judge shall have the discretion to deny a permit for two or more misdemeanors that are not Class 1. Traffic infractions and misdemeanors set forth in Title 46.2 shall not be considered for purposes of this disqualification.

8. An individual who is addicted to, or is an unlawful user or distributor of, marijuana, synthetic cannabinoids, or any controlled substance.

9. An individual who has been convicted of a violation of § 18.2-266 or a substantially similar local ordinance, or of public drunkenness, or of a substantially similar offense under the laws of any other state, the District of Columbia, the United States, or its territories within the three-year period immediately preceding the application, or who is a habitual drunkard as determined pursuant to § 4.1-333.

10. An alien other than an alien lawfully admitted for permanent residence in the United States.

11. An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

12. An individual who is a fugitive from justice.

13. An individual who the court finds, by a preponderance of the evidence, based on specific acts by the applicant, is likely to use a weapon unlawfully or negligently to endanger others. The sheriff, chief of police, or attorney for the Commonwealth may submit to the court a sworn, written statement indicating that, in the opinion of such sheriff, chief of police, or attorney for the Commonwealth, based upon a disqualifying conviction or upon the specific acts set forth in the statement, the applicant is likely to use a weapon unlawfully or negligently to endanger others. The statement of the sheriff, chief of police, or the attorney for the Commonwealth shall be based upon personal knowledge of such individual or of a deputy sheriff, police officer, or assistant attorney for the Commonwealth of the specific acts, or upon a written statement made under oath before a notary public of a competent person having personal knowledge of the specific acts.

14. An individual who has been convicted of any assault, assault and battery, sexual battery,

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59 discharging of a firearm in violation of § 18.2-280 or 18.2-286.1 or brandishing of a firearm in
60 violation of § 18.2-282 within the three-year period immediately preceding the application.

61 15. An individual who has been convicted of stalking.

62 16. An individual whose previous convictions or adjudications of delinquency were based on an
63 offense that would have been at the time of conviction a felony if committed by an adult under the laws
64 of any state, the District of Columbia, the United States or its territories. For purposes of this
65 disqualifier, only convictions occurring within 16 years following the later of the date of (i) the
66 conviction or adjudication or (ii) release from any incarceration imposed upon such conviction or
67 adjudication shall be deemed to be "previous convictions."

68 17. An individual who has a felony charge pending or a charge pending for an offense listed in
69 subdivision 14 or 15.

70 18. An individual who has received mental health treatment or substance abuse treatment in a
71 residential setting within five years prior to the date of his application for a concealed handgun permit.

72 19. An individual not otherwise ineligible pursuant to this article, who, within the three-year period
73 immediately preceding the application for the permit, was found guilty of any criminal offense set forth
74 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or of a criminal offense of illegal possession
75 or distribution of marijuana, synthetic cannabinoids, or any controlled substance, under the laws of any
76 state, the District of Columbia, or the United States or its territories.

77 20. *An individual who is subject to a temporary firearms restriction order issued pursuant to*
78 *§ 37.2-808.1 and prohibited by § 18.2-308.1:6 from purchasing, possessing, or transporting a firearm.*

79 21. An individual, not otherwise ineligible pursuant to this article, with respect to whom, within the
80 three-year period immediately preceding the application, upon a charge of any criminal offense set forth
81 in Article 1 (§ 18.2-247 et seq.) or former § 18.2-248.1:1 or upon a charge of illegal possession or
82 distribution of marijuana, synthetic cannabinoids, or any controlled substance under the laws of any
83 state, the District of Columbia, or the United States or its territories, the trial court found that the facts
84 of the case were sufficient for a finding of guilt and disposed of the case pursuant to § 18.2-251 or the
85 substantially similar law of any other state, the District of Columbia, or the United States or its
86 territories.

87 **§ 18.2-308.013. Suspension or revocation of permit.**

88 A. Any person convicted of an offense that would disqualify that person from obtaining a permit
89 under § 18.2-308.09 or who violates subsection C of § 18.2-308.02 shall forfeit his permit for a
90 concealed handgun and surrender it to the court. Upon receipt by the Central Criminal Records
91 Exchange of a record of the arrest, conviction, or occurrence of any other event that would disqualify a
92 person from obtaining a concealed handgun permit under § 18.2-308.09, the Central Criminal Records
93 Exchange shall notify the court having issued the permit of such disqualifying arrest, conviction, or
94 other event. Upon receipt of such notice of a conviction, the court shall revoke the permit of a person
95 disqualified pursuant to this subsection, and shall promptly notify the State Police and the person whose
96 permit was revoked of the revocation.

97 B. An individual who has a felony charge pending or a charge pending for an offense listed in
98 subdivision 14 or 15 of § 18.2-308.09, holding a permit for a concealed handgun, may have the permit
99 suspended by the court before which such charge is pending or by the court that issued the permit.

100 C. The court shall revoke the permit of any individual for whom it would be unlawful to purchase,
101 possess, or transport a firearm under § 18.2-308.1:2 or 18.2-308.1:3, and shall promptly notify the State
102 Police and the person whose permit was revoked of the revocation.

103 D. *The court shall suspend the permit of any individual who is subject to a temporary firearms*
104 *restriction order issued pursuant to § 37.2-808.1 for the duration of such order and shall promptly*
105 *notify the State Police and the person whose permit was suspended of the suspension.*

106 **§ 18.2-308.1:6. Purchase, possession, or transportation of firearm by persons subject to temporary**
107 **firearms restriction order; penalty.**

108 A. No person who is subject to a temporary firearms restriction order entered pursuant to
109 § 37.2-808.1 shall purchase, possess, or transport any firearm while such order is in effect. A violation
110 of this section is a Class 1 misdemeanor.

111 B. Any person who is subject to a temporary firearms restriction order, at any time prior to the
112 expiration of such order, may petition the general district court in the city or county in which he resides
113 to restore his right to purchase, possess, or transport a firearm. A copy of the petition shall be mailed
114 or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was filed, who
115 shall be entitled to respond and represent the interests of the Commonwealth. The court shall conduct a
116 hearing if requested by either party. If the court determines, after receiving and considering evidence
117 concerning the circumstances regarding the disability referred to in subsection A and the person's
118 criminal history, treatment record, and reputation as developed through character witness statements,
119 testimony, or other character evidence, that the person will not be likely to act in a manner dangerous
120 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, 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. As used in this section, "treatment record" includes copies of health records detailing the petitioner'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.

§ 37.2-808.1. Temporary firearms restriction order for persons under an emergency custody order.

Upon the issuance of an emergency custody order pursuant to § 37.2-808, the issuing magistrate shall also issue a temporary firearms restriction order that shall temporarily prohibit the purchase, possession, or transportation of any firearm by the person taken into custody pursuant to the emergency custody order. The order shall expire 90 days from the date of issuance. The issuing magistrate shall provide a copy of the order to the person taken into emergency custody, and shall promptly notify the State Police of the order.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and \$0 for periods of commitment to the custody of the Department of Juvenile Justice.