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HOUSE BILL NO. 2429

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on February 3, 2017)

(Patron Prior to Substitute—Delegate O'Quinn)

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 purchase, possession, or transportation of firearms; petition to restore right.

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.

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 clause (i), (ii), or (iii), to knowingly and intentionally purchase, possess, or transport any firearm. A violation of this 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 or, if the person is not a resident of the Commonwealth, the general district court of the city or county in which the most recent of the proceedings described in subsection A occurred 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 and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, 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, 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" shall include 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.

§ 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 20 (§ 64.2-2000 et seq.) of Title 64.2 to purchase, possess, or transport any firearm. A violation of this 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, former § 37.2-1012, or § 64.2-2012 may petition the general district court in the city or county in which he resides or, if the person is not a resident of the Commonwealth, the general district court of the city or county in which the most recent of the proceedings described in subsection A occurred 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 and the person's criminal history, treatment record, and reputation as developed through character witness statements, testimony, or other character evidence, 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

60 petition. Any person denied relief by the general district court may petition the circuit court for a de
61 novo review of the denial. Upon a grant of relief in any court, the court shall enter a written order
62 granting the petition, in which event the provisions of subsection A do not apply. The clerk of court
63 shall certify and forward forthwith to the Central Criminal Records Exchange, on a form provided by
64 the Exchange, a copy of any such order.

65 C. As used in this section, "treatment record" shall include copies of health records detailing the
66 petitioner's psychiatric history, which shall include the records pertaining to the commitment or
67 adjudication that is the subject of the request for relief pursuant to this section.

68 **§ 18.2-308.1:3. Purchase, possession, or transportation of firearm by persons involuntarily**
69 **admitted or ordered to outpatient treatment; penalty.**

70 A. It shall be unlawful for any person involuntarily admitted to a facility or ordered to mandatory
71 outpatient treatment pursuant to § 19.2-169.2, involuntarily admitted to a facility or ordered to
72 mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814
73 et seq.) of Chapter 8 of Title 37.2, or who was the subject of a temporary detention order pursuant to
74 § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 to purchase, possess,
75 or transport a firearm. A violation of this subsection shall be punishable as a Class 1 misdemeanor.

76 B. Any person prohibited from purchasing, possessing or transporting firearms under this section
77 may, at any time following his release from involuntary admission to a facility, his release from an
78 order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805
79 following the issuance of a temporary detention order, petition the general district court in the city or
80 county in which he resides *or, if the person is not a resident of the Commonwealth, the general district*
81 *court of the city or county in which the most recent of the proceedings described in subsection A*
82 *occurred* to restore his right to purchase, possess or transport a firearm. A copy of the petition shall be
83 mailed or delivered to the attorney for the Commonwealth for the jurisdiction where the petition was
84 filed who shall be entitled to respond and represent the interests of the Commonwealth. The court shall
85 conduct a hearing if requested by either party. If the court determines, after receiving and considering
86 evidence concerning the circumstances regarding the disabilities referred to in subsection A and the
87 person's criminal history, treatment record, and reputation as developed through character witness
88 statements, testimony, or other character evidence, that the person will not likely act in a manner
89 dangerous to public safety and that granting the relief would not be contrary to the public interest, the
90 court shall grant the petition. Any person denied relief by the general district court may petition the
91 circuit court for a de novo review of the denial. Upon a grant of relief in any court, the court shall enter
92 a written order granting the petition, in which event the provisions of subsection A do not apply. The
93 clerk of court shall certify and forward forthwith to the Central Criminal Records Exchange, on a form
94 provided by the Exchange, a copy of any such order.

95 C. As used in this section, "treatment record" shall include copies of health records detailing the
96 petitioner's psychiatric history, which shall include the records pertaining to the commitment or
97 adjudication that is the subject of the request for relief pursuant to this section.