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## HOUSE BILL NO. 4020

Offered July 9, 2019

Prefiled July 8, 2019

*A BILL to amend and reenact §§ 18.2-308.1:3 and 18.2-308.1:4 of the Code of Virginia, relating to purchase, possession, or transportation of firearms by prohibited persons; surrender or transfer of firearms; penalties.*

\_\_\_\_\_  
Patron—Stolle

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Referred to Committee on Militia, Police and Public Safety

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 18.2-308.1:3 and 18.2-308.1:4 of the Code of Virginia are amended and reenacted as follows:**

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

A. It ~~shall be~~ *is* unlawful for any person (i) involuntarily admitted to a facility or ordered to mandatory outpatient treatment pursuant to § 19.2-169.2, (ii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as the result of a commitment hearing pursuant to Article 5 (§ 37.2-814 et seq.) of Chapter 8 of Title 37.2, (iii) involuntarily admitted to a facility or ordered to mandatory outpatient treatment as a minor 14 years of age or older as the result of a commitment hearing pursuant to Article 16 (§ 16.1-335 et seq.) of Chapter 11 of Title 16.1, (iv) who was the subject of a temporary detention order pursuant to § 37.2-809 and subsequently agreed to voluntary admission pursuant to § 37.2-805 or (v) who, as a minor 14 years of age or older, was the subject of a temporary detention order pursuant to § 16.1-340.1 and subsequently agreed to voluntary admission pursuant to § 16.1-338 to purchase, possess, or transport a firearm. A violation of this subsection ~~shall be~~ *is* punishable as a Class 1 misdemeanor.

B. *Any person prohibited from purchasing, possessing, or transporting a firearm pursuant to subsection A shall, as soon as such person is capable, certify in writing that any firearm possessed by such person has been sold or transferred and file such certification within 48 hours of making such certification with the clerk of the court that ordered such person be admitted to treatment. A violation of this subsection is a Class 1 misdemeanor.*

C. Any person prohibited from purchasing, possessing or transporting firearms under this section may, at any time following his release from involuntary admission to a facility, his release from an order of mandatory outpatient treatment, or his release from voluntary admission pursuant to § 37.2-805 following the issuance of a temporary detention order, 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 disabilities 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 likely act in a manner dangerous to public safety and that granting 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. D.~~ *As used in this section, "treatment record" shall include includes copies of health records detailing the petitioner's psychiatric history, which shall include includes the records pertaining to the commitment or adjudication that is the subject of the request for relief pursuant to this section.*

**§ 18.2-308.1:4. Purchase or transportation of firearm by persons subject to protective orders; penalties.**

A. It is unlawful for any person who is subject to (i) a protective order entered pursuant to § 16.1-253.1, 16.1-253.4, 16.1-278.2, 16.1-279.1, 19.2-152.8, 19.2-152.9, or 19.2-152.10; (ii) an order issued pursuant to subsection B of § 20-103; (iii) an order entered pursuant to subsection D of

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59 § 18.2-60.3; (iv) a preliminary protective order entered pursuant to subsection F of § 16.1-253 where a  
60 petition alleging abuse or neglect has been filed; or (v) an order issued by a tribunal of another state,  
61 the United States or any of its territories, possessions, or commonwealths, or the District of Columbia  
62 pursuant to a statute that is substantially similar to those cited in clauses (i), (ii), (iii), or (iv) to purchase  
63 or transport any firearm while the order is in effect. Any *such* person with a concealed handgun permit  
64 shall be prohibited from carrying any concealed firearm; and shall surrender his permit to the court  
65 entering the order, for the duration of any protective order referred to herein. A violation of this  
66 subsection is a Class 1 misdemeanor.

67 B. In addition to the prohibition set forth in subsection A, it is unlawful for any person who is  
68 subject to (i) a protective order entered pursuant to § 16.1-279.1, (ii) *a protective order entered pursuant*  
69 *to § 19.2-152.10*, or (iii) an order issued by a tribunal of another state, the United States or any of its  
70 territories, possessions, or commonwealths, or the District of Columbia pursuant to a statute that is  
71 substantially similar to § 16.1-279.1 *or 19.2-152.10* to knowingly possess any firearm while the order is  
72 in effect, ~~provided~~ *except* that for a period of 24 hours after being served with a protective order in  
73 accordance with subsection C of § 16.1-279.1 *or subsection C of § 19.2-152.10* such person may  
74 continue to possess and, notwithstanding the provisions of subsection A, transport any firearm possessed  
75 by such person at the time of service for the purposes of selling or transferring any such firearm to any  
76 person who is not otherwise prohibited by law from possessing such firearm. A violation of this  
77 subsection is a Class 6 felony.

78 C. *Any person subject to a protective order entered on or after the effective date of this act pursuant*  
79 *to § 16.1-279.1 or 19.2-152.10, or to an order issued on or after the effective date of this act by a*  
80 *tribunal or another state, the United States, or any of its territories, possessions, or commonwealths, or*  
81 *the District of Columbia pursuant to a statute that is substantially similar to § 16.1-279.1 or*  
82 *19.2-152.10, shall certify in writing that any firearm possessed by such person has been sold or*  
83 *transferred and file such certification, within 48 hours after being served with the protective order, with*  
84 *the clerk of the court that entered the protective order. A violation of this subsection is a Class 1*  
85 *misdemeanor.*

86 **2. That when codifying this act, the Virginia Code Commission shall replace the phrase "the**  
87 **effective date of this act" in the first enactment of this act with the actual effective date of this act.**

88 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**  
89 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
90 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
91 **correctional facilities; therefore, Chapter 854 of the Acts of Assembly of 2019 requires the Virginia**  
92 **Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to**  
93 **§ 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be**  
94 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**