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## HOUSE BILL NO. 791

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Public Safety

on January 26, 2024)

(Patron Prior to Substitute—Delegate Henson)

A *BILL to amend and reenact § 18.2-308.1 of the Code of Virginia, relating to pneumatic guns; penalties.*

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

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

**§ 18.2-308.1. Possession of firearm, pneumatic gun, stun weapon, or other weapon on school property prohibited; penalties.**

A. If any person knowingly possesses any (i) stun weapon as defined in this section; (ii) knife, except a pocket knife having a folding metal blade of less than three inches; ~~or~~ (iii) weapon, including a weapon of like kind; *as designated in subsection A of § 18.2-308, other than a firearm; or* (iv) *pneumatic gun* upon (a) the property of any child day center or public, private, or religious preschool; *or elementary, middle, or high school, including buildings and grounds; (b) that portion of any property open to the public and then exclusively used for school-sponsored functions or extracurricular activities while such functions or activities are taking place; or (c) any school bus owned or operated by any such school, he is guilty of a Class 1 misdemeanor. Any person who commits a second or subsequent violation of clause (iv) is guilty of a Class 6 felony.*

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

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

D. The child day center and private or religious preschool provisions of this section (i) shall apply only during the operating hours of such child day center or private or religious preschool and (ii) shall not apply to any person (a) whose residence is on the property of a child day center or a private or religious preschool and (b) who possesses a firearm or other weapon prohibited under this section while in his residence.

E. The exemptions set out in §§ 18.2-308 and 18.2-308.016 shall apply, mutatis mutandis, to the provisions of this section. The provisions of this section shall not apply to (i) ~~persons~~ *a person* who ~~possess~~ *possesses* such weapon or weapons as a part of the school's curriculum or activities; (ii) a person possessing a knife customarily used for food preparation or service and using it for such purpose; (iii) ~~persons~~ *a person* who ~~possess~~ *possesses* such weapon or weapons as a part of any program sponsored or facilitated by either the school or any organization authorized by the school to conduct its programs either on or off the school premises; (iv) any law-enforcement officer, or retired law-enforcement officer qualified pursuant to subsection C of § 18.2-308.016; (v) any person who possesses a knife or blade ~~which~~ *that* he uses customarily in his trade; (vi) a person who possesses an unloaded firearm, *a pneumatic gun*, or a stun weapon that is in a closed container, or a knife having a metal blade, in or upon a motor vehicle, or an unloaded shotgun or rifle in a firearms rack in or upon a motor vehicle; (vii) a person who has a valid concealed handgun permit and possesses a concealed handgun, *a pneumatic gun*, or a stun weapon while in a motor vehicle in a parking lot, traffic circle, or other means of vehicular ingress or egress to the school; (viii) a school security officer authorized to carry a firearm pursuant to § 22.1-280.2:1; or (ix) an armed security officer, licensed pursuant to Article 4 (§ 9.1-138 et seq.) of Chapter 1 of Title 9.1, hired by a child day center or a private or religious school for the protection of students and employees as authorized by such school. For the purposes of this subsection, "weapon" includes a knife having a metal blade of three inches or longer and "closed container" includes a locked vehicle trunk.

F. Nothing in subsection E or any other provision of law shall be construed as providing an exemption to the provisions of this section for a special conservator of the peace appointed pursuant to § 19.2-13, other than the specifically enumerated exemptions that apply to the general population as

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60 provided in subsection E.

61 G. As used in this section:

62 "Child day center" means a child day center, as defined in § 22.1-289.02, that is licensed in  
63 accordance with the provisions of Chapter 14.1 (§ 22.1-289.02 et seq.) of Title 22.1 and is not operated  
64 at the residence of the provider or of any of the children.

65 *"Pneumatic gun" means the same as that term is defined in § 15.2-915.4.*

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

68 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**  
69 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**  
70 **necessary appropriation cannot be determined for periods of imprisonment in state adult**  
71 **correctional facilities; therefore, Chapter 1 of the Acts of Assembly of 2023, Special Session I,**  
72 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**  
73 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**  
74 **appropriation cannot be determined for periods of commitment to the custody of the Department**  
75 **of Juvenile Justice.**