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HOUSE BILL NO. 244

Offered January 12, 2000

A BILL to amend and reenact §§ 8.01-42.1, 18.2-57 and 18.2-121 of the Code of Virginia, relating to "hate crimes"; penalty.

Patrons—Almand, Baskerville, Brink, Christian, Crittenden, Darner, Hull, Jones, D.C., Melvin, Moran, Plum, Robinson, Van Landingham, Van Yahres, Watts and Woodrum; Senators: Ticer and Whipple

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-42.1, 18.2-57 and 18.2-121 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-42.1. Civil action for racial, religious, or ethnic harassment, violence or vandalism.

A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment or (ii) violence directed against his person; or (iii) vandalism directed against his real or personal property, where such acts are motivated by ~~racial, religious, or ethnic animosity~~ *based on race, sexual orientation, religious conviction, color or national origin*.

B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

C. The provisions of this section shall not apply to any actions between an employee and his employer, or between or among employees of the same employer, for damages arising out of incidents occurring in the workplace or arising out of the employee-employer relationship.

§ 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery shall be guilty of a Class 1 misdemeanor, and if the person intentionally selects the person against whom a simple assault is committed because of his race, *sexual orientation*, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

B. However, if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his race, *sexual orientation*, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

C. In addition, if any person commits an assault or an assault and battery against another knowing or having reason to know that such other person is a law-enforcement officer as defined hereinafter, a correctional officer as defined in § 53.1-1, a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department or a firefighter as defined in § 65.2-102, engaged in the performance of his public duties as such, such person shall be guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory, minimum term of confinement for six months which mandatory, minimum term shall not be suspended, in whole or in part.

Nothing in this subsection shall be construed to affect the right of any person charged with a violation of this section from asserting and presenting evidence in support of any defenses to the charge that may be available under common law.

D. In addition, if any person commits a battery against another knowing or having reason to know that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon conviction shall include a mandatory, minimum sentence of fifteen days in jail, two days of which shall not be suspended in whole or in part. However, if the offense is committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory, minimum sentence of confinement of six months which shall not be suspended in whole or in part.

E. As used in this section, a "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office which is part of or administered by the Commonwealth or any political subdivision thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and such

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60 officer also includes auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and
61 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

62 § 18.2-121. Entering property of another for purpose of damaging it, etc.

63 It ~~shall be~~ *is* unlawful for any person to enter the land, dwelling, outhouse or any other building of
64 another for the purpose of damaging such property or any of the contents thereof or in any manner to
65 interfere with the rights of the owner, user or the occupant thereof to use such property free from
66 interference.

67 Any person violating the provisions of this section is guilty of a Class 1 misdemeanor. However, if a
68 person intentionally selects the property entered because of the race, *sexual orientation*, religious
69 conviction, color or national origin of the owner, user or occupant of the property, the person is guilty
70 of a Class 6 felony, and the penalty upon conviction shall include a mandatory, minimum term of
71 confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

72 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
73 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
74 **is \$0 in FY 2010.**