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HOUSE BILL NO. 329**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 11, 2000)

(Patrons Prior to Substitute—Delegates Callahan and Joannou [HB242])

*A BILL to amend and reenact § 18.2-57 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 18.2-57.01, relating to disarming a law-enforcement officer; penalty.***Be it enacted by the General Assembly of Virginia:****1. That § 18.2-57 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 18.2-57.01 as follows:**

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

F. Whenever any person is charged with a violation of § 18.2-57.01 and a violation of subsection C of this section, arising out of the same act or acts and is convicted of one of these charges, the court shall dismiss the remaining charge.

§ 18.2-57.01. Disarming a law-enforcement or correctional officer.

Any person who knows or has reason to know a person is a law-enforcement officer as defined in § 18.2-57, a correctional officer as defined in § 53.1-1, or a person employed by the Department of Corrections directly involved in the care, treatment or supervision of inmates in the custody of the Department, who is engaged in the performance of his duties as such and, with the intent to impede or prevent any such person from performing his official duties, knowingly and without the person's permission removes, whether by an assault or otherwise, a chemical irritant weapon or impact weapon from the possession of the officer or deprives the officer of the use of the weapon is guilty of a Class 1 misdemeanor. However, if the weapon removed or deprived in violation of this section is the officer's

60 *firearm or stun weapon, he shall be guilty of a Class 6 felony.*

61 *Whenever any person is charged with a violation of subsection C of § 18.2-57 and a violation of this*
62 *section arising out of the same act or acts and is convicted of one of these charges, the court shall*
63 *dismiss the remaining charge.*

64 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
65 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
66 **is \$0 in FY 2001.**