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SENATE BILL NO. 173

Offered January 12, 2000

A BILL to amend and reenact §§ 8.01-42.1, 18.2-57, 18.2-121 and 52-8.5 of the Code of Virginia, relating to hate crimes; penalty.

Patrons—Ticer, Byrne, Couric and Edwards

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, 18.2-121 and 52-8.5 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 actual or perceived race, color, national origin, gender, sexual orientation, or religious conviction.

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 *actual or perceived* race, gender, 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~~ be a mandatory, minimum term.

B. However, if a person intentionally selects the person against whom *a simple assault or* an assault and battery resulting in bodily injury is committed because of his *actual or perceived* race, gender, 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~~ be a mandatory, minimum term.

C. In addition, if any person commits ~~an~~ *a simple* 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

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60 enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer
61 of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and such
62 officer also includes auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and
63 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

64 § 18.2-121. Entering property of another for purpose of damaging it, etc.

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

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

75 § 52-8.5. Reporting terroristic acts.

76 A. The Superintendent shall establish and maintain within the Department of State Police a central
77 repository for the collection and analysis of information regarding terroristic acts and groups and
78 individuals carrying out such acts.

79 B. State, county and municipal law-enforcement agencies shall report to the Department all terroristic
80 acts occurring in their jurisdictions in a form, time and manner prescribed by the Superintendent. Such
81 reports shall not be open to public inspection except insofar as the Superintendent shall permit.

82 C. For purposes of this section, "terroristic act" means (i) a criminal act committed against a person
83 or his property with the specific intent of instilling fear or intimidation in the individual against whom
84 the act is perpetrated because of *actual or perceived* race, ~~religion or ethnic~~ color, *gender, sexual*
85 *orientation, religious conviction or national* origin or which is committed for the purpose of restraining
86 that person from exercising his rights under the Constitution or laws of this Commonwealth or of the
87 United States, (ii) any illegal act directed against any persons or their property because of those persons'
88 *actual or perceived* race, ~~religion~~ color, *gender, sexual orientation, religious conviction*, or national
89 origin, and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate
90 or harass any individual or group because of *actual or perceived* race, ~~religion~~ color, *gender, sexual*
91 *orientation, religious conviction* or national origin.

92 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
93 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
94 **is**