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HOUSE BILL NO. 1608

Offered January 10, 2001

Prefiled November 20, 2000

A BILL to amend and reenact §§ 18.2-51.1 and 18.2-57 of the Code of Virginia, relating to assault and battery of an Attorney for the Commonwealth; penalty.

Patron—Weatherholtz

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That §§ 18.2-51.1 and 18.2-57 of the Code of Virginia are amended and reenacted as follows:**

§ 18.2-51.1. Malicious bodily injury to law-enforcement officers or firefighters; penalty; lesser included offense.

If any person maliciously causes bodily injury to another by any means including the means set out in § 18.2-52, with intent to maim, disfigure, disable or kill, and knowing or having reason to know that such other person is a law-enforcement officer, as defined hereinafter, or firefighter, as defined in § 65.2-102, engaged in the performance of his public duties as a law-enforcement officer or firefighter, such person shall be guilty of a felony punishable by imprisonment for a period of not less than five years nor more than thirty years and, subject to subdivision (g) of § 18.2-10, a fine of not more than \$100,000. Upon conviction, the sentence of such person shall include a mandatory, minimum term of imprisonment of two years.

If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to another by any means, knowing or having reason to know such other person is a law-enforcement officer as defined hereinafter, or firefighter, as defined in § 65.2-102, engaged in the performance of his public duties as a law-enforcement officer or firefighter, he shall be guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory, minimum term of imprisonment of one year.

Nothing in this section 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.

As used in this section the term "mandatory, minimum" means that the sentence it describes shall be served with no suspension of sentence in whole or in part.

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; any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115; and auxiliary police officers appointed or provided for pursuant to §§ 15.1-159.2 and 15.1-159.4 and auxiliary deputy sheriffs appointed pursuant to § 15.1-48; and any attorney for the Commonwealth or assistant attorney for the Commonwealth, whether full- or part-time.

The provisions of § 18.2-51 shall be deemed to provide a lesser included offense hereof.

§ 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

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59 include a mandatory, minimum term of confinement for six months which mandatory, minimum term
60 shall not be suspended, in whole or in part.

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

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

72 E. As used in this section, a "law-enforcement officer" means any full-time or part-time employee of
73 a police department or sheriff's office which is part of or administered by the Commonwealth or any
74 political subdivision thereof, who is responsible for the prevention or detection of crime and the
75 enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer
76 of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and game
77 wardens appointed pursuant to § 29.1-200, and such officer also includes jail officers in local
78 correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or
79 local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731
80 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, *and any attorney for the*
81 *Commonwealth or assistant attorney for the Commonwealth, whether full- or part-time.*

82 F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
83 teacher, in the course and scope of his acting official capacity, any of the following: (i) incidental,
84 minor or reasonable physical contact or other actions designed to maintain order and control; (ii)
85 reasonable and necessary force to quell a disturbance or remove a student from the scene of a
86 disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and
87 necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and
88 necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain
89 possession of weapons or other dangerous objects or controlled substances or associated paraphernalia
90 that are upon the person of the student or within his control.

91 In determining whether a person was acting within the exceptions provided in this subsection, due
92 deference shall be given to reasonable judgments at the time of the event that were made by a teacher.

93 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
94 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
95 **cannot be determined.**