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HOUSE BILL NO. 2690

Offered January 17, 2001

A BILL to amend and reenact §§ 18.2-57 and 22.1-280.1 of the Code of Virginia, and to amend the Code of Virginia by adding a section numbered 8.01-220.1:5, relating to certain acts of violence against public and private school employees, reportable offenses, and immunity under certain circumstances.

Patrons—Welch, Black, Councill, Landes, Marshall, McDonnell and Parrish; Senator: Mims

Referred to Committee on Militia and Police

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-57 and 22.1-280.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 8.01-220.1:5 as follows:

8.01-220.1:5. Civil immunity for school board and private school employees under certain circumstances. A. Any person employed full time or part time by a local school board or the governing board of a private school in the Commonwealth, or employed full time or part time in a school operated by the Commonwealth, shall not be liable for any civil damages for any acts or omissions resulting from (i) the use of incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) the use of reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance for threatening physical injury to persons or damage to property; (iii) the use of reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) the use of reasonable and necessary force for self-defense or the defense of others; or (v) the use of reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are upon the person of the student or within his control.

B. In determining whether a school board or private school employee was acting within the expectations provided in this section, due deference shall be given to reasonable judgments that were made by the employee at the time of the event.

C. This section shall not be construed to limit, withdraw or overturn any defense or immunity already existing in statutory or common law or to affect any claim occurring prior to the effective date of this law.

§ 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 -employee 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

59 which shall not be suspended in whole or in part. However, if the offense is committed by use of a
60 firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a
61 mandatory, minimum sentence of confinement of six months which shall not be suspended in whole or
62 in part.

63 E. As used in this section, a "law-enforcement officer" means any full-time or part-time employee of
64 a police department or sheriff's office which is part of or administered by the Commonwealth or any
65 political subdivision thereof, who is responsible for the prevention or detection of crime and the
66 enforcement of the penal, traffic or highway laws of this Commonwealth, and any conservation officer
67 of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and game
68 wardens appointed pursuant to § 29.1-200, and such officer also includes jail officers in local
69 correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or
70 local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731
71 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

72 F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
73 ~~teacher, employee of a public or private elementary or secondary school~~ in the course and scope of his
74 acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or
75 other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a
76 disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons
77 or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical
78 harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v)
79 reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled
80 substances or associated paraphernalia that are upon the person of the student or within his control.

81 In determining whether a person was acting within the exceptions provided in this subsection, due
82 deference shall be given to reasonable judgments *that were made by an employee of a public or private*
83 *elementary or secondary school* at the time of the event ~~that were made by a teacher~~.

84 § 22.1-280.1. Reports of certain acts to school authorities.

85 A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault,
86 assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on
87 *school property*, a school bus, ~~on school property~~, or at a school-sponsored activity; (ii) any conduct
88 involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic
89 steroid on *school property*, a school bus, ~~on school property~~, or at a school-sponsored activity; (iii) any
90 threats against a school ~~personnel~~ employee while on *school property*, a school bus, ~~on school property~~
91 or at a school-sponsored activity; (iv) the illegal carrying of a firearm onto school property; (v) any
92 illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as
93 defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs,
94 as described in § 18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or
95 (vi) any threats or false threats to bomb, as described in § 18.2-83, made against school ~~personnel~~
96 *employees* or involving school property or school buses.

97 B. Notwithstanding the provisions of Article 12 (§ 16.1-299 et seq.) of Chapter 11 of Title 16.1,
98 local law-enforcement authorities may report, and the principal or his designee may receive such reports,
99 on offenses, wherever committed, by students enrolled at the school if the offense would be a felony if
100 committed by an adult or would be a violation of the Drug Control Act (§ 54.1-3400 et seq.) and
101 occurred on *school property*, a school bus, ~~on school property~~, or at a school-sponsored activity, or
102 would be an adult misdemeanor involving any incidents described in clauses (i) through (v) of
103 subsection A.

104 C. The principal or his designee shall submit a report of all incidents required or authorized to be
105 reported pursuant to this section to the superintendent of the school division. The division superintendent
106 shall annually report all such incidents to the Department of Education for the purpose of recording the
107 frequency of such incidents on forms ~~which~~ *that* shall be provided by the Department and shall make
108 such information available to the public. A division superintendent who knowingly fails to comply or
109 secure compliance with the reporting requirements of this subsection shall be subject to the sanctions
110 authorized in § 22.1-65. A principal who knowingly fails to comply or secure compliance with the
111 reporting requirements of this section shall be subject to sanctions prescribed by the local school board,
112 which may include but need not be limited to demotion or dismissal.

113 The principal or his designee shall also notify the parent of any student involved in an incident
114 required by subsection A or authorized by subsection B to be reported, regardless of whether
115 disciplinary action is taken against such student or the nature of the disciplinary action. Such notice shall
116 relate to only the relevant student's involvement and shall not include information concerning other
117 students.

118 Whenever any student commits any reportable incident as set forth in this section, such student shall
119 be required to participate in such prevention and intervention activities as deemed appropriate by the
120 superintendent or his designee. Prevention and intervention activities shall be identified in the local

121 school division's drug and violence prevention plans developed pursuant to the federal Improving
122 America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

123 D. The principal shall immediately report to the local law-enforcement agency any act enumerated in
124 subsection A which may constitute a criminal offense.

125 E. All school boards shall develop, in cooperation with the local law-enforcement agencies, juvenile
126 and domestic relations court judges and personnel, parents, and the community at large, programs to
127 prevent violence and crime on school property and at school-sponsored events. Activities designed to
128 prevent the recurrence of violence and crime may include such interventions as school crime lines, peer
129 mediation, conflict resolution, community service requirements, and any program focused on
130 demonstrating the consequences of violence and crime.

131 F. A statement providing a procedure and the purpose for the requirements of this section shall be
132 included in the policy manual of all school divisions.

133 The Board of Education shall promulgate regulations to implement this section, including, but not
134 limited to, establishing reporting dates and report formats.

135 G. School boards are encouraged to develop and use a network of volunteer services in implementing
136 the prevention activities required by subsection E.

137 H. For the purposes of this section, "parent" or "parents" means any parent, guardian or other person
138 having control or charge of a child.

139 I. This section shall not be construed to diminish the authority of the Board of Education or the
140 Governor concerning decisions on whether, or the extent to which, Virginia shall participate in the
141 federal Improving America's Schools Act of 1994, or to diminish the Governor's authority to coordinate
142 and provide policy direction on official communications between the Commonwealth and the United
143 States government.