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HOUSE BILL NO. 2690

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Militia and Police

on February 3, 2001)

(Patron Prior to Substitute—Delegate Welch)

A BILL to amend and reenact §§ 18.2-57 and 22.1-280.1 of the Code of Virginia, relating to certain acts of violence against public and private school employees.

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 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, *school resource officer, or school safety specialist* 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 game wardens appointed pursuant to § 29.1-200, and such officer also includes jail officers in local correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, 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. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any ~~teacher,~~ *employee of a public or private elementary or secondary school* in the course and scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

In determining whether a person was acting within the exceptions provided in this subsection, due

60 deference shall be given to reasonable judgments *that were made by an employee of a public or private*
61 *elementary or secondary school* at the time of the event ~~that were made by a teacher.~~

62 § 22.1-280.1. Reports of certain acts to school authorities.

63 A. Reports shall be made to the principal or his designee on all incidents involving (i) the assault,
64 assault and battery, sexual assault, death, shooting, stabbing, cutting, or wounding of any person on
65 *school property*, a school bus, ~~on school property~~, or at a school-sponsored activity; (ii) any conduct
66 involving alcohol, marijuana, a controlled substance, imitation controlled substance, or an anabolic
67 steroid on *school property*, a school bus, ~~on school property~~, or at a school-sponsored activity; (iii) any
68 threats against a school ~~personnel~~ employee while on *school property*, a school bus, ~~on school property~~
69 or at a school-sponsored activity; (iv) the illegal carrying of a firearm onto school property; (v) any
70 illegal conduct involving firebombs, explosive materials or devices, or hoax explosive devices, as
71 defined in § 18.2-85, or explosive or incendiary devices, as defined in § 18.2-433.1, or chemical bombs,
72 as described in § 18.2-87.1, on a school bus, on school property, or at a school-sponsored activity; or
73 (vi) any threats or false threats to bomb, as described in § 18.2-83, made against school ~~personnel~~
74 *employees* or involving school property or school buses.

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

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

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

96 Whenever any student commits any reportable incident as set forth in this section, such student shall
97 be required to participate in such prevention and intervention activities as deemed appropriate by the
98 superintendent or his designee. Prevention and intervention activities shall be identified in the local
99 school division's drug and violence prevention plans developed pursuant to the federal Improving
100 America's Schools Act of 1994 (Title IV - Safe and Drug-Free Schools and Communities Act).

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

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

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

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

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

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

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