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SENATE BILL NO. 128

Offered January 9, 2002

Prefiled January 7, 2002

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 and Howell; Delegates: Darner, Moran, Plum, Van Landingham and Watts

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 race, color, national origin, sexual orientation, gender, physical disability 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; penalty.

A. Any person who commits a simple assault or assault and battery ~~shall be~~ is 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, *sexual orientation, gender, physical disability*, 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 of confinement.

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, *sexual orientation, gender, physical disability*, religious conviction, color or national origin, the person ~~shall be~~ is 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 of confinement.

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

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59 political subdivision thereof, who is responsible for the prevention or detection of crime and the
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 game
62 wardens appointed pursuant to § 29.1-200, and such officer also includes jail officers in local and
63 regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court
64 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to
65 §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

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

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

77 § 18.2-121. Entering property of another for purpose of damaging it, etc.; penalty.

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

82 Any person violating the provisions of this section ~~shall be~~ is guilty of a Class 1 misdemeanor.
83 However, if a person intentionally selects the property entered because of the race, *sexual orientation*,
84 *gender*, *physical disability*, religious conviction, color or national origin of the owner, user or occupant
85 of the property, the person ~~shall be~~ is guilty of a Class 6 felony, and the penalty upon conviction shall
86 include a ~~mandatory, minimum~~ term of confinement of at least six months, thirty days of which shall
87 ~~not be suspended, in whole or in part be a mandatory, minimum term of confinement.~~

88 § 52-8.5. Reporting terroristic acts.

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

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

95 C. For purposes of this section, "terroristic act" means (i) a criminal act committed against a person
96 or his property with the specific intent of instilling fear or intimidation in the individual against whom
97 the act is perpetrated because of race, ~~religion or ethnic origin~~ *color, national origin, sexual orientation*,
98 *gender, physical disability or religious conviction* or which is committed for the purpose of restraining
99 that person from exercising his rights under the Constitution or laws of this Commonwealth or of the
100 United States, (ii) any illegal act directed against any persons or their property because of those persons'
101 race, ~~religion or national origin~~ *color, national origin, sexual orientation, gender, physical disability or*
102 *religious conviction*; and (iii) all other incidents, as determined by law-enforcement authorities, intended
103 to intimidate or harass any individual or group because of race, ~~religion or national origin~~ *color,*
104 *national origin, sexual orientation, gender, physical disability or religious conviction.*

105 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
106 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
107 **be determined for periods of imprisonment in state adult correctional facilities and is \$0 for**
108 **periods of commitment to the custody of the Department of Juvenile Justice.**