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HOUSE BILL NO. 2227

Offered January 8, 2003

Prefiled January 8, 2003

A BILL to amend and reenact §§ 18.2-51.1 and 18.2-57 of the Code of Virginia, relating to assaults on law-enforcement officers; penalty.

Patrons—Cline, Rapp and Saxman

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, firefighters, search and rescue personnel, or emergency medical service providers; 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 (i) a law-enforcement officer, as defined ~~hereinafter~~ *in this section*, firefighter, as defined in § 65.2-102, search and rescue personnel as defined ~~hereinafter~~ *in this section*, or emergency medical services personnel, as defined in § 32.1-111.1, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, or (ii) a law-enforcement officer who has retired from active duty, and the action resulting in injury to such retired officer is related to that officer's past performance of his public duties, such person shall be guilty of a felony punishable by imprisonment for a period of not less than ~~five~~ 5 years nor more than ~~thirty~~ 30 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~~ 2 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 (i) a law-enforcement officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, or emergency medical services personnel, or (ii) a law-enforcement officer who has retired from active duty, and the action resulting in injury to such retired officer is related to that officer's past performance of his public duties, 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~~ 1 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 "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.

As used in this section, "search and rescue personnel" means any employee or member of a search and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing body of any county, city or town of the Commonwealth.

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~~ 6 months, ~~thirty~~ 30 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

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59 person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a mandatory,
60 minimum term of confinement of at least ~~six~~6 months, ~~thirty~~30 days of which shall not be suspended, in
61 whole or in part.

62 C. In addition, if any person commits an assault or an assault and battery against another knowing or
63 having reason to know that such other person is (i) a law-enforcement officer as defined ~~hereinafter in~~
64 *this section*, a correctional officer as defined in § 53.1-1, a person employed by the Department of
65 Corrections directly involved in the care, treatment or supervision of inmates in the custody of the
66 Department or a firefighter as defined in § 65.2-102, engaged in the performance of his public duties as
67 such, or (ii) *a law-enforcement officer who has retired from active duty, and the assault on such retired*
68 *officer is related to that officer's past performance of his public duties*, such person shall be guilty of a
69 Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory, minimum
70 term of confinement for ~~six~~6 months which mandatory, minimum term shall not be suspended, in whole
71 or in part.

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

75 D. In addition, if any person commits a battery against another knowing or having reason to know
76 that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance
77 counselor of any public or private elementary or secondary school and is engaged in the performance of
78 his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon
79 conviction shall include a mandatory, minimum sentence of ~~fifteen~~15 days in jail, ~~two~~2 days of which
80 shall not be suspended in whole or in part. However, if the offense is committed by use of a firearm or
81 other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a
82 mandatory, minimum sentence of confinement of ~~six~~6 months which shall not be suspended in whole or
83 in part.

84 E. As used in this section:

85 "Law-enforcement officer" means any full-time or part-time employee of a police department or
86 sheriff's office which is part of or administered by the Commonwealth or any political subdivision
87 thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal,
88 traffic or highway laws of this Commonwealth, and any conservation officer of the Department of
89 Conservation and Recreation commissioned pursuant to § 10.1-115, and game wardens appointed
90 pursuant to § 29.1-200, and such officer also includes jail officers in local and regional correctional
91 facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail
92 responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and
93 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

94 "School security officer" means an individual who is employed by the local school board for the
95 purpose of maintaining order and discipline, preventing crime, investigating violations of school board
96 policies and detaining persons violating the law or school board policies on school property, a school
97 bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and
98 welfare of all students, faculty and staff in the assigned school.

99 F. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
100 teacher, principal, assistant principal, guidance counselor, or school security officer, in the course and
101 scope of his acting official capacity, any of the following: (i) incidental, minor or reasonable physical
102 contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to
103 quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to
104 persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting
105 physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others;
106 or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or
107 controlled substances or associated paraphernalia that are upon the person of the student or within his
108 control.

109 In determining whether a person was acting within the exceptions provided in this subsection, due
110 deference shall be given to reasonable judgments that were made by a teacher, principal, assistant
111 principal, guidance counselor, or school security officer at the time of the event.

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