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HOUSE BILL NO. 70

Offered January 11, 2006

Prefiled December 16, 2005

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery; school bus drivers; penalty.

Patrons—Orrock, Athey, Byron, Crockett-Stark, Gear, Hugo, Kilgore, Landes, Lingamfelter, Lohr, Marshall, D.W., May, Rapp, Rust, Suit, Wittman and Wright

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:**1. That § 18.2-57 of the Code of Virginia is 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 term of confinement of at least six months, 30 days of which shall 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, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months, 30 days of which shall be a mandatory minimum term of confinement.

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, a firefighter as defined in § 65.2-102, or a volunteer firefighter or lifesaving or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or members as employees, 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 of six months.

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, or school bus driver 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 sentence of 15 days in jail, two days of which shall be a mandatory minimum term of confinement. 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.

E. 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, 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 and regional 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.

"School security officer" means an individual who is employed by the local school board for the purpose of maintaining order and discipline, preventing crime, investigating violations of school board policies and detaining persons violating the law or school board policies on school property, a school bus or at a school-sponsored activity and who is responsible solely for ensuring the safety, security and

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58 welfare of all students, faculty and staff in the assigned school.

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

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