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HOUSE BILL NO. 610

Offered January 9, 2008

Prefiled January 8, 2008

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; homeless persons; penalty.

Patrons—Eisenberg and Bouchard

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 or animosity due to a person's status as a homeless person.

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.

D. For purposes of this section, homeless person has the same definition as provided in § 18.2-57.

§ 18.2-57. Assault and battery.

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, religious conviction, color or, national origin, or status as a homeless person, 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, or status as a homeless person, the person shall be is 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 judge, 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, such person is 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 of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he shall be is 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:

"Judge" means any justice or judge of a court of record of the Commonwealth including a judge

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59 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore
 60 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'
 61 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute
 62 judge of such district court.

63 "*Homeless person*" means an individual who lacks a fixed, regular, and adequate nighttime residence
 64 and includes individuals who:

65 1. Are living in emergency, congregate, temporary, or transitional shelters;

66 2. Are living in an institution that provides a temporary residence for the mentally ill or individuals
 67 intended to be institutionalized;

68 3. Have a primary nighttime residence that is a public or private place not designed for, or
 69 ordinarily used as, a regular sleeping accommodation for human beings; or

70 4. Are living in parked cars, parks, public spaces, abandoned buildings, substandard housing, bus or
 71 train stations, or similar settings.

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

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

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

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

100 § 18.2-121. Entering property of another for purpose of damaging it, etc.

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

105 Any person violating the provisions of this section shall be is guilty of a Class 1 misdemeanor.
 106 However, if a person intentionally selects the property entered because of the race, religious conviction,
 107 color or, national origin, or status as a homeless person, as defined in § 18.2-57, of the owner, user or
 108 occupant of the property, the person shall be is guilty of a Class 6 felony, and the penalty upon
 109 conviction shall include a term of confinement of at least six months, 30 days of which shall be a
 110 mandatory minimum term of confinement.

111 § 52-8.5. Reporting hate crimes.

112 A. The Superintendent shall establish and maintain within the Department of State Police a central
 113 repository for the collection and analysis of information regarding hate crimes and groups and
 114 individuals carrying out such acts.

115 B. State, county and municipal law-enforcement agencies shall report to the Department all hate
 116 crimes occurring in their jurisdictions in a form, time and manner prescribed by the Superintendent.
 117 Such reports shall not be open to public inspection except insofar as the Superintendent shall permit.

118 C. For purposes of this section, "hate crime" means (i) a criminal act committed against a person or
 119 his property with the specific intent of instilling fear or intimidation in the individual against whom the
 120 act is perpetrated because of race, religion or, ethnic origin, or status as a homeless person, or that is

121 committed for the purpose of restraining that person from exercising his rights under the Constitution or
122 laws of this Commonwealth or of the United States, (ii) any illegal act directed against any persons or
123 their property because of those persons' race, religion ø, national origin, *or status as a homeless person*,
124 and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate or
125 harass any individual or group because of race, religion ø, national origin, *or status as a homeless*
126 *person*.

127 *D. For purposes of this section, homeless person has the same definition as provided in § 18.2-57.*

128 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
129 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
130 **be determined for periods of imprisonment in state adult correctional facilities and cannot be**
131 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**

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