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HOUSE BILL NO. 2393

Offered January 14, 2009

Prefiled January 14, 2009

A BILL to amend and reenact §§ 18.2-51.1, 18.2-57, and 18.2-460 of the Code of Virginia, relating to inclusion of animal control officers in class equal to law-enforcement officer for purposes of enhanced penalties.

 Patron—Bell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-51.1, 18.2-57, and 18.2-460 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 a law-enforcement officer, as defined hereinafter, firefighter, as defined in § 65.2-102, *an animal control officer employed pursuant to § 3.2-6555*, search and rescue personnel as defined hereinafter, 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, *animal control officer*, search and rescue personnel, or emergency medical services personnel, such person shall be guilty of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years and, subject to subsection (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 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 a law-enforcement officer, firefighter, as defined in § 65.2-102, *an animal control officer employed pursuant to § 3.2-6555*, search and rescue personnel, or emergency medical services personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter, *animal control officer*, search and rescue personnel, or emergency medical services personnel, 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 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, "law-enforcement officer" means any full-time or part-time employee of a police department or sheriff's office that 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; any conservation police officer appointed pursuant to § 29.1-200 and 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.

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 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.

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59 C. In addition, if any person commits an assault or an assault and battery against another knowing or
60 having reason to know that such other person is a judge, a law-enforcement officer as defined
61 hereinafter, a correctional officer as defined in § 53.1-1, a person employed by the Department of
62 Corrections directly involved in the care, treatment or supervision of inmates in the custody of the
63 Department, a firefighter as defined in § 65.2-102, *an animal control officer employed pursuant to*
64 *§ 3.2-6555*, or a volunteer firefighter or lifesaving or rescue squad member who is a member of a bona
65 fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a
66 resolution has been adopted by the governing body of a political subdivision recognizing such
67 firefighters or members as employees, engaged in the performance of his public duties, such person is
68 guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory
69 minimum term of confinement of six months.

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

73 D. In addition, if any person commits a battery against another knowing or having reason to know
74 that such other person is a full-time or part-time teacher, principal, assistant principal, or guidance
75 counselor of any public or private elementary or secondary school and is engaged in the performance of
76 his duties as such, he shall be guilty of a Class 1 misdemeanor and the sentence of such person upon
77 conviction shall include a sentence of 15 days in jail, two days of which shall be a mandatory minimum
78 term of confinement. However, if the offense is committed by use of a firearm or other weapon
79 prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory minimum
80 sentence of confinement of six months.

81 E. As used in this section:

82 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge
83 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore
84 under § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers'
85 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute
86 judge of such district court.

87 "Law-enforcement officer" means any full-time or part-time employee of a police department or
88 sheriff's office which is part of or administered by the Commonwealth or any political subdivision
89 thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal,
90 traffic or highway laws of this Commonwealth, any conservation officer of the Department of
91 Conservation and Recreation commissioned pursuant to § 10.1-115, conservation police officers
92 appointed pursuant to § 29.1-200, and full-time sworn members of the enforcement division of the
93 Department of Motor Vehicles appointed pursuant to § 46.2-217, and such officer also includes jail
94 officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to
95 law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or
96 provided for pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to
97 § 15.2-1603.

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

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

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

117 § 18.2-460. Obstructing justice; penalty.

118 A. If any person without just cause knowingly obstructs a judge, magistrate, justice, juror, attorney
119 for the Commonwealth, witness or, any law-enforcement officer, *or an animal control officer employed*
120 *pursuant to § 3.2-6555* in the performance of his duties as such or fails or refuses without just cause to

121 cease such obstruction when requested to do so by such judge, magistrate, justice, juror, attorney for the
122 Commonwealth, witness, or law-enforcement officer, he shall be guilty of a Class 1 misdemeanor.

123 B. Except as provided in subsection C, any person who, by threats or force, knowingly attempts to
124 intimidate or impede a judge, magistrate, justice, juror, attorney for the Commonwealth, witness, ~~or~~ any
125 law-enforcement officer, *or an animal control officer employed pursuant to § 3.2-6555* lawfully engaged
126 in his duties as such, or to obstruct or impede the administration of justice in any court, is guilty of a
127 Class 1 misdemeanor.

128 C. If any person by threats of bodily harm or force knowingly attempts to intimidate or impede a
129 judge, magistrate, justice, juror, attorney for the Commonwealth, witness, ~~or~~ any law-enforcement
130 officer, *or an animal control officer employed pursuant to § 3.2-6555* lawfully engaged in the discharge
131 of his duty, or to obstruct or impede the administration of justice in any court relating to a violation of
132 or conspiracy to violate § 18.2-248 or subdivision (a) (3), (b) or (c) of § 18.2-248.1, or § 18.2-46.2 or
133 § 18.2-46.3, or relating to the violation of or conspiracy to violate any violent felony offense listed in
134 subsection C of § 17.1-805, he shall be guilty of a Class 5 felony.

135 D. Any person who knowingly and willfully makes any materially false statement or representation
136 to a law-enforcement officer who is in the course of conducting an investigation of a crime by another
137 is guilty of a Class 1 misdemeanor.

138 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
139 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
140 **\$151,875 for periods of imprisonment in state adult correctional facilities and cannot be**
141 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**