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HOUSE BILL NO. 1142

Offered January 13, 2010

Prefiled January 13, 2010

A *BILL to amend and reenact §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 of the Code of Virginia, relating to hate crimes; sexual orientation; penalty.*

Patrons—Scott, J.M., Ebbin, Hope, Kory and Plum; Senators: Barker and Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-42.1, 8.01-49.1, 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, sexual orientation, 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, *sexual orientation*, or ethnic animosity.

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.

§ 8.01-49.1. Liability for defamatory material on the Internet.

A. No provider or user of an interactive computer service on the Internet shall be treated as the publisher or speaker of any information provided to it by another information content provider. No provider or user of an interactive computer service shall be liable for (i) any action voluntarily taken by it in good faith to restrict access to, or availability of, material that the provider or user considers to be obscene, lewd, lascivious, excessively violent, harassing, or intended to incite hatred on the basis of race, religious conviction, color, *sexual orientation*, or national origin, whether or not such material is constitutionally protected, or (ii) any action taken to enable, or make available to information content providers or others, the technical means to restrict access to information provided by another information content provider.

B. Definitions. As used in this section:

"Information content provider" means any person or entity that is responsible, in whole or in part, for the creation or development of information provided through the Internet or any other interactive computer service.

"Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.

"Internet" means the international computer network of interoperable packet-switched data networks.

§ 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, *sexual orientation*, 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 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

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59 Department, a firefighter as defined in § 65.2-102, or a volunteer firefighter or lifesaving or rescue squad
60 member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency
61 medical squad regardless of whether a resolution has been adopted by the governing body of a political
62 subdivision recognizing such firefighters or members as employees, engaged in the performance of his
63 public duties, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such
64 person shall include a mandatory minimum term of confinement of six months.

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

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

76 E. As used in this section:

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

82 "Law-enforcement officer" means any full-time or part-time employee of a police department or
83 sheriff's office which is part of or administered by the Commonwealth or any political subdivision
84 thereof, who is responsible for the prevention or detection of crime and the enforcement of the penal,
85 traffic or highway laws of this Commonwealth, any conservation officer of the Department of
86 Conservation and Recreation commissioned pursuant to § 10.1-115, conservation police officers
87 appointed pursuant to § 29.1-200, and full-time sworn members of the enforcement division of the
88 Department of Motor Vehicles appointed pursuant to § 46.2-217, and such officer also includes jail
89 officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to
90 law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or
91 provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to
92 § 15.2-1603, and police officers of the Metropolitan Washington Airports Authority pursuant to
93 § 5.1-158.

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, teacher aide, principal, assistant principal, guidance counselor, school security officer, school
101 bus driver or school bus aide, while acting in the course and scope of his official capacity, any of the
102 following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain
103 order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from
104 the scene of a disturbance that threatens physical injury to persons or damage to property; (iii)
105 reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv)
106 reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary
107 force to obtain possession of weapons or other dangerous objects or controlled substances or associated
108 paraphernalia that are upon the person of the student or within his 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, teacher aide, principal,
111 assistant principal, guidance counselor, school security officer, school bus driver, or school bus aide at
112 the time of the event.

113 § 18.2-121. Entering property of another for purpose of damaging it, etc.

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

118 Any person violating the provisions of this section shall be guilty of a Class 1 misdemeanor.
119 However, if a person intentionally selects the property entered because of the race, religious conviction,
120 color, *sexual orientation*, or national origin of the owner, user or occupant of the property, 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.

§ 52-8.5. Reporting hate crimes.

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

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

C. For purposes of this section, "hate crime" means (i) a criminal act committed against a person or his property with the specific intent of instilling fear or intimidation in the individual against whom the act is perpetrated because of race, religion, *sexual orientation*, or ethnic origin or that is committed for the purpose of restraining that person from exercising his rights under the Constitution or laws of this Commonwealth or of the United States;; (ii) any illegal act directed against any persons or their property because of those persons' race, religion, *sexual orientation*, or national origin;; and (iii) all other incidents, as determined by law-enforcement authorities, intended to intimidate or harass any individual or group because of race, religion, *sexual orientation*, or national origin.

2. That the provisions of this act may result in a net increase in periods of imprisonment or commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.