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SENATE BILL NO. 588

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice
on January 25, 2010)

(Patron Prior to Substitute—Senator Marsden)

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery against a mass transit operator; penalty.

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 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 an assault or an assault and battery against another knowing or having reason to know that such other person is a mass transit operator engaged in the performance of his duties as a mass transit operator, 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.

DE. 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 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.

EF. As used in this section:

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

"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, conservation police officers

60 appointed pursuant to § 29.1-200, and full-time sworn members of the enforcement division of the
61 Department of Motor Vehicles appointed pursuant to § 46.2-217, and such officer also includes jail
62 officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to
63 law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or
64 provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to
65 § 15.2-1603, and police officers of the Metropolitan Washington Airports Authority pursuant to
66 § 5.1-158.

67 *"Mass transit operator" means a person operating a mass transit vehicle.*

68 *"Mass transit vehicle" means any publicly or privately owned or operated commercial vehicle,*
69 *including any train, bus, trolley or van, which is designed to carry six or more passengers.*

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

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

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

89 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
90 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
91 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
92 **781 of the Acts of Assembly of 2009 requires the Virginia Criminal Sentencing Commission to**
93 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
94 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
95 **Department of Juvenile Justice.**