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HOUSE BILL NO. 1751

Offered January 9, 2013

Prefiled January 8, 2013

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery; certain employees of Department of Behavioral Health and Developmental Services; penalty.

 Patron—Miller

 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 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, *an employee or other individual who provides control, care or treatment of sexually violent predators committed to the custody of the Department of Behavioral Health and Developmental services*, 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 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. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a health care provider as defined in § 8.01-581.1 who is engaged in the performance of his duties as an emergency health care provider in an emergency room of a hospital or clinic or on the premises of any other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall be a mandatory minimum term of confinement.

F. 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

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59 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
60 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
61 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
62 Recreation commissioned pursuant to § 10.1-115, any special agent of the Department of Alcoholic
63 Beverage Control, conservation police officers appointed pursuant to § 29.1-200, and full-time sworn
64 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
65 § 46.2-217, and such officer also includes jail officers in local and regional correctional facilities, all
66 deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities,
67 auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary
68 deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington
69 Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such
70 fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

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

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

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

90 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
91 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is**
92 **\$299,513 for periods of imprisonment in state adult correctional facilities and cannot be**
93 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**