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SENATE BILL NO. 790

Offered January 11, 2017

Prefiled August 25, 2016

A BILL to amend and reenact §§ 18.2-31, 18.2-51.1, and 18.2-57 of the Code of Virginia, relating to crimes against law-enforcement officers, firefighters, and other emergency personnel; penalty.

Patron—Cosgrove

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-31, 18.2-51.1, and 18.2-57 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-31. Capital murder defined; punishment.

The following offenses shall constitute capital murder, punishable as a Class 1 felony:

1. The willful, deliberate, and premeditated killing of any person in the commission of abduction, as defined in § 18.2-48, when such abduction was committed with the intent to extort money or a pecuniary benefit or with the intent to defile the victim of such abduction;

2. The willful, deliberate, and premeditated killing of any person by another for hire;

3. The willful, deliberate, and premeditated killing of any person by a prisoner confined in a state or local correctional facility as defined in § 53.1-1, or while in the custody of an employee thereof;

4. The willful, deliberate, and premeditated killing of any person in the commission of robbery or attempted robbery;

5. The willful, deliberate, and premeditated killing of any person in the commission of, or subsequent to, rape or attempted rape, forcible sodomy or attempted forcible sodomy or object sexual penetration;

6. The willful, deliberate, and premeditated killing of *a person who is* a law-enforcement officer as defined in § 9.1-101, a fire marshal appointed pursuant to § 27-30 or a deputy or an assistant fire marshal appointed pursuant to § 27-36, when such fire marshal or deputy or assistant fire marshal has police powers as set forth in §§ 27-34.2 and 27-34.2:1, an auxiliary police officer appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, an auxiliary deputy sheriff appointed pursuant to § 15.2-1603, or any law-enforcement officer of another state or the United States having the power to arrest for a felony under the laws of such state or the United States; ~~when such killing is for the purpose of interfering with the performance of his official duties by one who knows or has reason to know that such person is a law-enforcement officer, fire marshal, deputy or assistant fire marshal, auxiliary police officer, auxiliary deputy sheriff, or law-enforcement officer of another state or the United States;~~

7. The willful, deliberate, and premeditated killing of more than one person as a part of the same act or transaction;

8. The willful, deliberate, and premeditated killing of more than one person within a three-year period;

9. The willful, deliberate, and premeditated killing of any person in the commission of or attempted commission of a violation of § 18.2-248, involving a Schedule I or II controlled substance, when such killing is for the purpose of furthering the commission or attempted commission of such violation;

10. The willful, deliberate, and premeditated killing of any person by another pursuant to the direction or order of one who is engaged in a continuing criminal enterprise as defined in subsection I of § 18.2-248;

11. The willful, deliberate, and premeditated killing of a pregnant woman by one who knows that the woman is pregnant and has the intent to cause the involuntary termination of the woman's pregnancy without a live birth;

12. The willful, deliberate, and premeditated killing of a person under the age of fourteen by a person age twenty-one or older;

13. The willful, deliberate, and premeditated killing of any person by another in the commission of or attempted commission of an act of terrorism as defined in § 18.2-46.4;

14. The willful, deliberate, and premeditated killing of a justice of the Supreme Court, a judge of the Court of Appeals, a judge of a circuit court or district court, a retired judge sitting by designation or under temporary recall, or a substitute judge appointed under § 16.1-69.9:1 when the killing is for the purpose of interfering with his official duties as a judge; and

15. The willful, deliberate, and premeditated killing of any witness in a criminal case after a subpoena has been issued for such witness by the court, the clerk, or an attorney, when the killing is for the purpose of interfering with the person's duties in such case.

INTRODUCED

SB790

59 If any one or more subsections, sentences, or parts of this section shall be judged unconstitutional or
60 invalid, such adjudication shall not affect, impair, or invalidate the remaining provisions thereof but shall
61 be confined in its operation to the specific provisions so held unconstitutional or invalid.

62 **§ 18.2-51.1. Malicious bodily injury to law-enforcement officers, firefighters, search and rescue**
63 **personnel, or emergency medical services personnel; penalty; lesser-included offense.**

64 If any person maliciously causes bodily injury to another by any means including the means set out
65 in § 18.2-52, with intent to maim, disfigure, disable, or kill, and knowing or having reason to know that
66 such other person is a law-enforcement officer, as defined hereinafter, firefighter, as defined in
67 § 65.2-102, search and rescue personnel as defined hereinafter, or emergency medical services personnel,
68 as defined in § 32.1-111.1 engaged in the performance of his public duties as a law-enforcement officer,
69 firefighter, search and rescue personnel, or emergency medical services personnel, such person is guilty
70 of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years
71 and, subject to subdivision (g) of § 18.2-10, a fine of not more than \$100,000. Upon conviction, the
72 sentence of such person shall include a mandatory minimum term of imprisonment of two years.

73 If any person unlawfully, but not maliciously, with the intent aforesaid, causes bodily injury to
74 another by any means, knowing or having reason to know such other person is a law-enforcement
75 officer, firefighter, as defined in § 65.2-102, search and rescue personnel, or emergency medical services
76 personnel, engaged in the performance of his public duties as a law-enforcement officer, firefighter,
77 search and rescue personnel, or emergency medical services personnel as defined in § 32.1-111.1, he is
78 guilty of a Class 6 felony, and upon conviction, the sentence of such person shall include a mandatory
79 minimum term of imprisonment of one year.

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

83 As used in this section, "law-enforcement officer" means any full-time or part-time employee of a
84 police department or sheriff's office that is part of or administered by the Commonwealth or any
85 political subdivision thereof, who is responsible for the prevention or detection of crime and the
86 enforcement of the penal, traffic, or highway laws of the Commonwealth; any conservation officer of the
87 Department of Conservation and Recreation commissioned pursuant to § 10.1-115; any conservation
88 police officer appointed pursuant to § 29.1-200; and auxiliary police officers appointed or provided for
89 pursuant to §§ 15.2-1731 and 15.2-1733 and auxiliary deputy sheriffs appointed pursuant to § 15.2-1603.

90 As used in this section, "search and rescue personnel" means any employee or member of a search
91 and rescue organization that is authorized by a resolution or ordinance duly adopted by the governing
92 body of any county, city, or town of the Commonwealth or any member of a search and rescue
93 organization operating under a memorandum of understanding with the Virginia Department of
94 Emergency Management.

95 The provisions of § 18.2-51 shall be deemed to provide a lesser-included offense hereof.

96 **§ 18.2-57. Assault and battery; penalty.**

97 A. Any person who commits a simple assault or assault and battery is guilty of a Class 1
98 misdemeanor, and if the person intentionally selects the person against whom a simple assault is
99 committed because of his race, religious conviction, color or national origin, the penalty upon conviction
100 shall include a term of confinement of at least six months, 30 days of which shall be a mandatory
101 minimum term of confinement.

102 B. However, if a person intentionally selects the person against whom an assault and battery resulting
103 in bodily injury is committed because of his race, religious conviction, color or national origin, the
104 person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of
105 confinement of at least six months, 30 days of which shall be a mandatory minimum term of
106 confinement.

107 C. In addition, if any person commits an assault or an assault and battery against another knowing or
108 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as
109 defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the
110 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an
111 employee of a local or regional correctional facility directly involved in the care, treatment, or
112 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or
113 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,
114 an employee or other individual who provides control, care, or treatment of sexually violent predators
115 committed to the custody of the Department of Behavioral Health and Developmental Services, a
116 firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services
117 personnel member who is employed by or is a volunteer of an emergency medical services agency or as
118 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,
119 regardless of whether a resolution has been adopted by the governing body of a political subdivision
120 recognizing such firefighters or emergency medical services personnel as employees, engaged in the

performance of his public duties anywhere in the Commonwealth, 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 employee of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he 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. 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.

(Effective until July 1, 2018) "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 the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Department of Alcoholic Beverage Control, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

(Effective July 1, 2018) "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 the Commonwealth, any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn members of the enforcement division of the Department of Motor Vehicles appointed pursuant to § 46.2-217, and any employee with internal investigations authority designated by the Department of Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

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

G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any

182 school security officer or full-time or part-time employee of any public or private elementary or
183 secondary school while acting in the course and scope of his official capacity, any of the following: (i)
184 incidental, minor or reasonable physical contact or other actions designed to maintain order and control;
185 (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a
186 disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and
187 necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and
188 necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain
189 possession of weapons or other dangerous objects or controlled substances or associated paraphernalia
190 that are upon the person of the student or within his control.

191 In determining whether a person was acting within the exceptions provided in this subsection, due
192 deference shall be given to reasonable judgments that were made by a school security officer or
193 full-time or part-time employee of any public or private elementary or secondary school at the time of
194 the event.

195 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
196 **commitment. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot**
197 **be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter**
198 **780 of the Acts of Assembly of 2016 requires the Virginia Criminal Sentencing Commission to**
199 **assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the**
200 **necessary appropriation cannot be determined for periods of commitment to the custody of the**
201 **Department of Juvenile Justice.**