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SENATE BILL NO. 1395

Offered January 9, 2019

Prefiled January 8, 2019

A BILL to amend and reenact §§ 18.2-51.1 and 18.2-57 of the Code of Virginia, relating to assault and battery against a health care provider; enhanced penalty.

Patrons—Howell; Delegate: Hope

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-51.1 and 18.2-57 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, emergency medical services personnel or health care provider; 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, search and rescue personnel, as defined hereinafter, ~~or~~ emergency medical services personnel, as defined in § 32.1-111.1, *or health care provider, as defined in § 8.01-581.1*, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, ~~or~~ emergency medical services personnel, *or health care provider in a hospital or in an emergency room on the premises of any clinic or any other facility rendering emergency medical care*, such person is guilty of a felony punishable by imprisonment for a period of not less than five years nor more than 30 years and, subject to subdivision (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, search and rescue personnel, ~~or~~ emergency medical services personnel, *or health care provider, as defined in § 8.01-581.1*, engaged in the performance of his public duties as a law-enforcement officer, firefighter, search and rescue personnel, ~~or~~ emergency medical services personnel as defined in § 32.1-111.1, *or health care provider*, he is 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 the 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 or any member of a search and rescue organization operating under a memorandum of understanding with the Virginia Department of Emergency Management.

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

§ 18.2-57. Assault and battery; penalty.

A. Any person who commits a simple assault or assault and battery is 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

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59 person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of
60 confinement of at least six months, 30 days of which shall be a mandatory minimum term of
61 confinement.

62 C. In addition, if any person commits an assault or an assault and battery against another knowing or
63 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as
64 defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the
65 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an
66 employee of a local or regional correctional facility directly involved in the care, treatment, or
67 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or
68 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,
69 an employee or other individual who provides control, care, or treatment of sexually violent predators
70 committed to the custody of the Department of Behavioral Health and Developmental Services, a
71 firefighter as defined in § 65.2-102, or a volunteer firefighter or any emergency medical services
72 personnel member who is employed by or is a volunteer of an emergency medical services agency or as
73 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,
74 regardless of whether a resolution has been adopted by the governing body of a political subdivision
75 recognizing such firefighters or emergency medical services personnel as employees, engaged in the
76 performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6
77 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of
78 confinement of six months.

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

82 D. In addition, if any person commits a battery against another knowing or having reason to know
83 that such other person is a full-time or part-time employee of any public or private elementary or
84 secondary school and is engaged in the performance of his duties as such, he is guilty of a Class 1
85 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in
86 jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is
87 committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1,
88 the person shall serve a mandatory minimum sentence of confinement of six months.

89 E. In addition, any person who commits a *simple assault or an assault and battery* against another
90 knowing or having reason to know that such individual is a health care provider as defined in
91 § 8.01-581.1 who is engaged in the performance of his duties in a hospital or in an emergency room on
92 the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1
93 misdemeanor. The sentence of such person, upon conviction, shall include a term of confinement of 15
94 days in jail, two days of which shall be a mandatory minimum term of confinement.

95 F. As used in this section:

96 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of
97 Title 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

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

103 "Law-enforcement officer" means any full-time or part-time employee of a police department or
104 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
105 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
106 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
107 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage
108 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn
109 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
110 § 46.2-217, and any employee with internal investigations authority designated by the Department of
111 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local
112 and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court
113 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to
114 §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers
115 of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed
116 pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

117 "School security officer" means an individual who is employed by the local school board for the
118 purpose of maintaining order and discipline, preventing crime, investigating violations of school board
119 policies and detaining persons violating the law or school board policies on school property, a school
120 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 school security officer or full-time or part-time employee of any public or private elementary or secondary school while acting in the course and scope of his official capacity, any of the following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or other dangerous objects or controlled substances or associated paraphernalia that are upon the person of the student or within his control.

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

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 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2018, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.