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SENATE BILL NO. 1306

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on the Judiciary)

(Patron Prior to Substitute—Senator Morrissey)

Senate Amendments in [] - February 3, 2021

A *BILL to amend and reenact § 18.2-57 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 19.2-9.2, relating to assault and battery; penalty.*

Be it enacted by the General Assembly of Virginia:

1. That § 18.2-57 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 19.2-9.2 as follows:

§ 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, gender, disability, gender identity, sexual orientation, color, or national origin, the penalty upon conviction shall include a term of confinement of at least six months.

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, gender, disability, gender identity, sexual orientation, color, or national origin, the person is guilty of a Class 6 felony, and the penalty upon conviction shall include a term of confinement of at least six months.

C. In addition, if any person commits an assault or an assault and battery *resulting in a bodily injury* against another knowing or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in subsection F, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice, 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 any emergency medical services personnel member who is employed by or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency medical services agency, regardless of whether a resolution has been adopted by the governing body of a political subdivision 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.~~

If any person is charged with committing an offense in violation of this subsection (i) whose physical or mental capacity is diminished to the extent that he needs counseling or supervisory assistance or assistance with activities of daily living or instrumental activities of daily living or (ii) who has been diagnosed with an autism spectrum disorder as defined in § 38.2-3418.17, a developmental disability as defined in § 37.2-100, or an intellectual disability as defined in § 37.2-100, a jury or the court may find the accused not guilty of violating this subsection but guilty of a simple assault or assault and battery in violation of subsection A, punishable as a Class 1 misdemeanor.

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 *or restrict the court from entering a deferred disposition in accordance with § 19.2-303.6.*

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 in a hospital or in an emergency room on the premises of any clinic or other facility rendering emergency medical care is guilty of a Class 1 misdemeanor. The sentence of such

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60 person, upon conviction, shall include a term of confinement of 15 days in jail, two days of which shall
61 be a mandatory minimum term of confinement.

62 F. As used in this section:

63 "Disability" means a physical or mental impairment that substantially limits one or more of a
64 person's major life activities.

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

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

72 "Law-enforcement officer" means any full-time or part-time employee of a police department or
73 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
74 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
75 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
76 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage
77 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn
78 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
79 § 46.2-217, and any employee with internal investigations authority designated by the Department of
80 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local
81 and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court
82 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to
83 §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers
84 of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed
85 pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

86 "School security officer" means the same as that term is defined in § 9.1-101.

87 G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
88 school security officer or full-time or part-time employee of any public or private elementary or
89 secondary school while acting in the course and scope of his official capacity, any of the following: (i)
90 incidental, minor or reasonable physical contact or other actions designed to maintain order and control;
91 (ii) reasonable and necessary force to quell a disturbance or remove a student from the scene of a
92 disturbance that threatens physical injury to persons or damage to property; (iii) reasonable and
93 necessary force to prevent a student from inflicting physical harm on himself; (iv) reasonable and
94 necessary force for self-defense or the defense of others; or (v) reasonable and necessary force to obtain
95 possession of weapons or other dangerous objects or controlled substances or associated paraphernalia
96 that are upon the person of the student or within his control.

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

101 **§ 19.2-9.2. Prosecution of assault and battery against a law-enforcement officer.**

102 [~~Before~~ In the event of] any arrest, indictment, or service of a petition in the case of a juvenile is
103 made for a violation of subsection C of § 18.2-57 where the alleged assault and battery was committed
104 against a law-enforcement officer, (i) such alleged assault and battery shall be investigated by another
105 law-enforcement officer who was not the subject of the alleged assault and battery and (ii) [~~the arrest,~~
106 ~~indictment, or service of a petition shall be approved by the attorney for the Commonwealth.~~ such
107 investigative information shall be provided in discovery to the defendant prior to trial.]