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HOUSE BILL NO. 311

Offered January 15, 1998

A BILL to amend and reenact §§ 8.01-42.1, 18.2-57, 18.2-121 and 52-8.5 of the Code of Virginia, relating to "hate crimes"; penalty.

Patrons—Almand, Brink, Darner, DeBoer, Hull, Keating, Moran, Plum, Puller, Scott, Van Landingham, Van Yahres, Watts and Woodrum; Senator: Howell

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That §§ 8.01-42.1, 18.2-57, 18.2-121 and 52-8.5 of the Code of Virginia are amended and reenacted as follows:

§ 8.01-42.1. Civil action for racial, religious, sexual or ethnic harassment, violence or vandalism.

A. An action for injunctive relief or civil damages, or both, shall lie for any person who is subjected to acts of (i) intimidation or harassment or (ii) violence directed against his person; or (iii) vandalism directed against his real or personal property, where such acts are motivated by ~~racial, religious, or ethnic animosity~~ *based on race, sexual orientation, religious conviction, color or national origin*.

B. Any aggrieved party who initiates and prevails in an action authorized by this section shall be entitled to damages, including punitive damages, and in the discretion of the court to an award of the cost of the litigation and reasonable attorneys' fees in an amount to be fixed by the court.

C. The provisions of this section shall not apply to any actions between an employee and his employer, or between or among employees of the same employer, for damages arising out of incidents occurring in the workplace or arising out of the employee-employer relationship.

§ 18.2-57. Assault and battery.

A. Any person who ~~shall commit~~ *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, *sexual orientation*, religious conviction, color or national origin, the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

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, *sexual orientation*, religious conviction, color or national origin, the person shall be guilty of a Class 6 felony, and the penalty upon conviction shall include a mandatory, minimum term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in part.

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 law-enforcement officer, as defined hereinafter, or firefighter, as defined in § 65.2-102, engaged in the performance of his public duties as a law-enforcement officer or firefighter, such person shall be guilty of a Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory, minimum term of confinement in jail for 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.

A "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, and any conservation officer of the Department of Conservation and Recreation commissioned pursuant to § 10.1-115, and such officer also includes auxiliary police officers appointed or provided for pursuant to §§ 15.1-159.2 and 15.1-159.4 and auxiliary deputy sheriffs appointed pursuant to § 15.1-48.

D. As used in this section, the term "mandatory, minimum" means that the sentence it describes shall be served with no suspension of sentence in whole or in part, and that no probation shall be given by the court.

§ 18.2-121. Entering property of another for purpose of damaging it, etc.; penalty.

It shall be unlawful for any person to enter the land, dwelling, outhouse or any other building of another for the purpose of damaging such property or any of the contents thereof or in any manner to interfere with the rights of the owner, user or the occupant thereof to use such property free from interference.

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60 Any person violating the provisions of this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor.
61 However, if a person intentionally selects the property entered because of the race, *sexual orientation*,
62 religious conviction, color or national origin of the owner, user or occupant of the property, the person
63 shall be guilty of a Class 6 felony and the penalty upon conviction shall include a mandatory, minimum
64 term of confinement of at least six months, thirty days of which shall not be suspended, in whole or in
65 part.

66 § 52-8.5. Reporting terroristic acts.

67 A. The Superintendent shall establish and maintain within the Department of State Police a central
68 repository for the collection and analysis of information regarding terroristic acts and groups and
69 individuals carrying out such acts.

70 B. State, county and municipal law-enforcement agencies shall report to the Department all terroristic
71 acts occurring in their jurisdictions in a form, time and manner prescribed by the Superintendent. Such
72 reports shall not be open to public inspection except insofar as the Superintendent shall permit.

73 C. For purposes of this section, "terroristic act" means (i) a criminal act committed against a person
74 or his property with the specific intent of instilling fear or intimidation in the individual against whom
75 the act is perpetrated because of race, ~~religion or ethnic~~ *sexual orientation, religious conviction or*
76 *national origin* or which is committed for the purpose of restraining that person from exercising his
77 rights under the Constitution or laws of this Commonwealth or of the United States, (ii) any illegal act
78 directed against any persons or their property because of those persons' race, ~~religion~~ *sexual orientation,*
79 *religious conviction* or national origin, and (iii) all other incidents, as determined by law-enforcement
80 authorities, intended to intimidate or harass any individual or group because of race, ~~religion~~ *sexual*
81 *orientation, religious conviction* or national origin.

82 **2. That the provisions of this act may result in a net increase in periods of imprisonment in state**
83 **correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation**
84 **is \$ 0.**