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HOUSE BILL NO. 424

Offered January 15, 1998

A *BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery of a custodial employee of the Department of Corrections; penalty.*

Patrons—Ruff, Councill, Dudley, Ingram, Sherwood and Weatherholtz

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 shall commit 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 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, 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.

D. *Any prisoner who commits an assault or assault and battery upon a custodial employee of the Department of Corrections with bodily fluid or excretions shall be guilty of a felony punishable by a term of imprisonment of no more than five years and a fine of no more than \$ 5,000.*

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.~~

2. That the provisions of this act may result in a net increase in periods of imprisonment in state correctional facilities. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$125,000.

INTRODUCED

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