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HOUSE BILL NO. 2065

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 25, 2013)

(Patron Prior to Substitute—Delegate Peace)

A BILL to amend and reenact §§ 18.2-48.1, 18.2-57, 18.2-431.1, 18.2-473.1, 18.2-474, 18.2-474.1, 18.2-475, 18.2-476, and 18.2-477.2 of the Code of Virginia, relating to offenses committed by persons committed to the Department of Juvenile Justice in juvenile correctional centers; penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-48.1, 18.2-57, 18.2-431.1, 18.2-473.1, 18.2-474, 18.2-474.1, 18.2-475, 18.2-476, and 18.2-477.2 of the Code of Virginia are amended and reenacted as follows:

§ 18.2-48.1. Abduction by prisoners or child; penalty.

Any ~~prisoner~~ person confined in a state, local, or community correctional facility or committed to the Department of Juvenile Justice in any juvenile correctional center, or in the custody of an employee thereof, or who has escaped from any such facility or from any person in charge of such prisoner or committed person, who abducts or takes any person hostage ~~shall be~~ is guilty of a Class 3 felony.

§ 18.2-57. Assault and battery.

A. Any person who commits a simple assault or assault and battery ~~shall be~~ 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 person ~~shall be~~ is guilty of a Class 6 felony, and 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.

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 judge, a law-enforcement officer as defined ~~hereinafter in subsection F~~, a correctional officer as defined in § 53.1-1, a person ~~employed by the Department of Corrections~~ directly involved in the care, treatment, or supervision of inmates in the custody of the Department of Corrections, a firefighter as defined in § 65.2-102, or a volunteer firefighter or lifesaving or rescue squad member who is a member of a bona fide volunteer fire department or volunteer rescue or emergency medical squad regardless of whether a resolution has been adopted by the governing body of a political subdivision recognizing such firefighters or members as employees, engaged in the performance of his public duties, 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 teacher, principal, assistant principal, or guidance counselor of any public or private elementary or secondary school and is engaged in the performance of his duties as such, he ~~shall be~~ 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'

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60 Compensation Commission, and any judge of a district court of the Commonwealth or any substitute
61 judge of such district court.

62 "Law-enforcement officer" means any full-time or part-time employee of a police department or
63 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
64 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
65 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
66 Recreation commissioned pursuant to § 10.1-115, any special agent of the Department of Alcoholic
67 Beverage Control, conservation police officers appointed pursuant to § 29.1-200, and full-time sworn
68 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
69 § 46.2-217, and such officer also includes jail officers in local and regional correctional facilities, all
70 deputy sheriffs, whether assigned to law-enforcement duties, court services or local jail responsibilities,
71 auxiliary police officers appointed or provided for pursuant to §§ 15.2-1731 and 15.2-1733, auxiliary
72 deputy sheriffs appointed pursuant to § 15.2-1603, police officers of the Metropolitan Washington
73 Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire
74 marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

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

80 G. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
81 teacher, teacher aide, principal, assistant principal, guidance counselor, school security officer, school
82 bus driver or school bus aide, while acting in the course and scope of his official capacity, any of the
83 following: (i) incidental, minor or reasonable physical contact or other actions designed to maintain
84 order and control; (ii) reasonable and necessary force to quell a disturbance or remove a student from
85 the scene of a disturbance that threatens physical injury to persons or damage to property; (iii)
86 reasonable and necessary force to prevent a student from inflicting physical harm on himself; (iv)
87 reasonable and necessary force for self-defense or the defense of others; or (v) reasonable and necessary
88 force to obtain possession of weapons or other dangerous objects or controlled substances or associated
89 paraphernalia that are upon the person of the student or within his control.

90 In determining whether a person was acting within the exceptions provided in this subsection, due
91 deference shall be given to reasonable judgments that were made by a teacher, teacher aide, principal,
92 assistant principal, guidance counselor, school security officer, school bus driver, or school bus aide at
93 the time of the event.

94 **§ 18.2-431.1. Illegal conveyance or possession of cellular telephone by prisoner or child; penalty.**

95 A. It shall be unlawful for any person without authorization to provide or cause to be provided a
96 cellular telephone to an incarcerated prisoner *or person committed to the Department of Juvenile Justice*
97 *in any juvenile correctional center.*

98 B. It shall be unlawful for an incarcerated prisoner *or person committed to the Department of*
99 *Juvenile Justice in any juvenile correctional center* without authorization to possess a cellular telephone
100 during the period of his incarceration.

101 C. Any violation of this section ~~shall be~~ *is* a Class 6 felony.

102 **§ 18.2-473.1. Communication with prisoners or child; penalty.**

103 It shall be unlawful for any person outside of any state or local correctional facility *or any juvenile*
104 *correctional center*, other than the jailers or custodial officers in charge of the prisoners *or in charge of*
105 *the persons committed to the Department of Juvenile Justice*, to communicate without authority by word
106 or sign with any prisoner confined within a state or local correctional facility *or with any person*
107 *committed to the Department of Juvenile Justice in any juvenile correctional center.* Any person
108 violating this section ~~shall be~~ *is* guilty of a Class 4 misdemeanor.

109 **§ 18.2-474. Delivery of articles to prisoners or child.**

110 No person shall willfully in any manner deliver, or attempt to deliver, to any prisoner confined under
111 authority of the Commonwealth of Virginia, or of any political subdivision thereof, *or to any person*
112 *committed to the Department of Juvenile Justice in any juvenile correctional center*, any article of any
113 nature whatsoever, without first securing the permission of the person in whose charge such prisoner *or*
114 *committed person* is, and who may in his discretion grant or refuse permission. Any person violating
115 this section ~~shall be~~ *is* guilty of a Class 1 misdemeanor.

116 Nothing herein contained shall be construed to repeal or amend § 18.2-473.

117 **§ 18.2-474.1. Delivery of drugs, firearms, explosives, etc., to prisoners or child.**

118 Notwithstanding the provisions of § 18.2-474, any person who shall willfully in any manner deliver,
119 attempt to deliver, or conspire with another to deliver to any prisoner confined under authority of the
120 Commonwealth of Virginia, or of any political subdivision thereof, *or to any person committed to the*
121 *Department of Juvenile Justice in any juvenile correctional center*, any drug which is a controlled

substance regulated by the Drug Control Act in Chapter 34 (§ 54.1-3400 *et seq.*) of Title 54.1, synthetic cannabinoids or marijuana, ~~shall be~~ *is* guilty of a Class 5 felony. Any person who shall willfully in any manner so deliver or attempt to deliver or conspire to deliver to any such prisoner *or confined or committed person*, firearms, ammunitions, or explosives of any nature ~~shall be~~ *is* guilty of a Class 3 felony.

Nothing herein contained shall be construed to repeal or amend § 18.2-473.

§ 18.2-475. Officers, etc., voluntarily allowing person convicted, charged, or adjudicated delinquent of felony to escape; penalty.

If any sheriff, jailer, or other officer, or any guard or other person summoned or employed by any such sheriff, jailer, or other officer, voluntarily allows a prisoner *or person committed to the Department of Juvenile Justice* convicted of, ~~or~~ charged with, *or adjudicated delinquent of* a felony to escape from his custody, he ~~shall be~~ *is* guilty of a Class 4 felony.

§ 18.2-476. Officers, etc., willfully and deliberately permitting person convicted of, charged with, or adjudicated delinquent of a nonfelonious offense to escape or willfully refusing to receive person; penalty.

If any sheriff, jailer, or other officer, or any guard or other person summoned or employed by such sheriff, jailer, or other officer, willfully and deliberately permits a prisoner *or person committed to the Department of Juvenile Justice* convicted of, ~~or~~ charged with, *or adjudicated delinquent of* an offense not a felony, to escape from his custody, or willfully refuses to receive into his custody a person lawfully committed thereto, he ~~shall be~~ *is* guilty of a Class 2 misdemeanor.

§ 18.2-477.2. Punishment for certain offenses committed within a secure juvenile facility or detention home.

It shall be unlawful for a person *committed to the Department of Juvenile Justice in any juvenile correctional center or* detained in a secure juvenile facility or detention home to commit any of the offenses enumerated in § 53.1-203. A violation of this section shall be punishable as a Class 4 ~~misdemeanor in the same manner as prescribed for adults in § 53.1-203.~~

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, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 3 of the Acts of Assembly of 2012, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000. Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.