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## HOUSE BILL NO. 267

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Joint Conference Committee  
on March 9, 2024)

(Patron Prior to Substitute—Delegate Watts)

A *BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery; affirmative defense; penalty.*

**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; 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 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 G, 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.

*It is an affirmative defense to prosecution of an individual for assault or assault and battery under this subsection if such individual proves, by a preponderance of the evidence, that at the time of the assault or assault and battery (i) the individual's behaviors were a result of (a) mental illness as defined in § 37.2-100 or (b) a neurocognitive disorder, including dementia, or an intellectual disability or a developmental disability such as autism spectrum disorder, as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association, or (ii) the individual met the criteria for issuance of an emergency custody order pursuant to § 37.2-808.*

*If such individual does not prove by a preponderance of the evidence that at the time of the assault or assault and battery his behaviors were a result of his mental illness, intellectual disability, developmental disability, or neurocognitive disorder but the evidence establishes that his mental illness, intellectual disability, developmental disability, or neurocognitive disorder otherwise contributed to his behaviors, the finder of fact may find the accused guilty of a misdemeanor pursuant to subsection A.*

*Nothing in this subsection shall be construed to allow an affirmative defense for voluntary intoxication.*

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 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,

60 the person shall serve a mandatory minimum sentence of confinement of six months.

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

67 F. In addition, any person who commits an assault or an assault and battery against another knowing  
68 or having reason to know that such individual is an operator of a vehicle operated by a public  
69 transportation service as defined in § 18.2-160.2 who is engaged in the performance of his duties is  
70 guilty of a Class 1 misdemeanor. The sentence of such person, upon conviction, shall also prohibit such  
71 person from entering or riding in any vehicle operated by the public transportation service that employed  
72 such operator for a period of not less than six months as a term and condition of such sentence.

73 G. As used in this section:

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

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

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

83 "Law-enforcement officer" means any full-time or part-time employee of a police department or  
84 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof  
85 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or  
86 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and  
87 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage  
88 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn  
89 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to  
90 § 46.2-217, and any employee with internal investigations authority designated by the Department of  
91 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local  
92 and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court  
93 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to  
94 §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers  
95 of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed  
96 pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

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

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

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