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HOUSE BILL NO. 267

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice

on _____)

(Patron Prior to Substitute--Delegate Watts)

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault or assault and battery against law-enforcement officer; arrest and prosecution of individual experiencing a mental health emergency.

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

27 in the custody of or under the supervision of the Department of Juvenile Justice, an employee or other
28 individual who provides control, care, or treatment of sexually violent predators committed to the custody
29 of the Department of Behavioral Health and Developmental Services, a firefighter as defined in § 65.2-
30 102, or a volunteer firefighter or any emergency medical services personnel member who is employed by
31 or is a volunteer of an emergency medical services agency or as a member of a bona fide volunteer fire
32 department or volunteer emergency medical services agency, regardless of whether a resolution has been
33 adopted by the governing body of a political subdivision recognizing such firefighters or emergency
34 medical services personnel as employees, engaged in the performance of his public duties anywhere in
35 the Commonwealth, such person is guilty of a Class 6 felony, and, upon conviction, the sentence of such
36 person shall include a mandatory minimum term of confinement of six months.

37 It is an affirmative defense to prosecution of an individual for assault or assault and battery against
38 a law-enforcement officer, as defined in subsection G, or a correctional officer, as defined in § 53.1-1, if
39 at the time of the assault or assault and battery (i) the law-enforcement officer or correctional officer was
40 responding to a request for service; (ii) (a) the individual had (1) a mental illness as defined in § 19.2-
41 271.6 or (2) a neurocognitive disorder, including dementia, or a neurodevelopmental disability, including
42 a developmental disability or intellectual disability, such as autism spectrum disorder, as defined in the
43 most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American
44 Psychiatric Association or (b) the individual met the criteria for the issuance of an emergency custody
45 order pursuant to § 37.2-808; and (iii) the assault or assault and battery was caused by or had a direct and
46 substantial relationship to the person's illness, disorder, or disability.

47 Nothing in this subsection shall be construed to affect the right of any person charged with a
48 violation of this section from asserting and presenting evidence in support of any defenses to the charge
49 that may be available under common law.

50 D. In addition, if any person commits a battery against another knowing or having reason to know
51 that such other person is a full-time or part-time employee of any public or private elementary or secondary
52 school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and
53 the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which

54 shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a
55 firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a
56 mandatory minimum sentence of confinement of six months.

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

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

69 G. As used in this section:

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

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

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

79 "Law-enforcement officer" means any full-time or part-time employee of a police department or
80 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof

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

93 "Mental health emergency" means as a result of mental illness (i) there exists a substantial
94 likelihood that a person will, in the near future, cause serious physical harm to himself or others as
95 evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if
96 any, or (ii) the person is severely disoriented or lacks the capacity to recognize reality.

97 "Mental illness" means a disorder of thought, mood, emotion, perception, or orientation that
98 significantly impairs judgment, behavior, capacity to recognize reality, or ability to address basic life
99 necessities and requires care and treatment for the health, safety, or recovery of the individual experiencing
100 such disorder or for the safety of others.

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

102 H. "Simple assault" or "assault and battery" shall not be construed to include the use of, by any
103 school security officer or full-time or part-time employee of any public or private elementary or secondary
104 school while acting in the course and scope of his official capacity, any of the following: (i) incidental,
105 minor or reasonable physical contact or other actions designed to maintain order and control; (ii)
106 reasonable and necessary force to quell a disturbance or remove a student from the scene of a disturbance
107 that threatens physical injury to persons or damage to property; (iii) reasonable and necessary force to

108 prevent a student from inflicting physical harm on himself; (iv) reasonable and necessary force for self-
109 defense or the defense of others; or (v) reasonable and necessary force to obtain possession of weapons or
110 other dangerous objects or controlled substances or associated paraphernalia that are upon the person of
111 the student or within his control.

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

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