

HOUSE BILL NO. 267

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate 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 and battery of a law-enforcement officer; 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

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

36 It is an affirmative defense to prosecution of an individual for assault or assault and battery under
37 this subsection if such individual proves, by a preponderance of the evidence, that at the time of the assault
38 or assault and battery (i) the individual's behaviors were a result of (a) mental illness as defined in § 19.2-
39 271.6, (b) an intellectual disability or a developmental disability as defined in § 37.2-100, such as autism
40 spectrum disorder as defined in the most recent edition of the Diagnostic and Statistical Manual of Mental
41 Disorders of the American Psychiatric Association, or (c) a neurocognitive disorder, including dementia
42 or (ii) the individual met the criteria for issuance of an emergency custody order pursuant to § 37.2-808.

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

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

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

54 the sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which
55 shall be a mandatory minimum term of confinement. However, if the offense is committed by use of a
56 firearm or other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a
57 mandatory minimum sentence of confinement of six months.

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

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

70 G. As used in this section:

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

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

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

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

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

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

