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SENATE BILL NO. 1013

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to affirmative defense or reduced penalty for a neurocognitive disorder or intellectual or developmental disability.

Patrons—Boysko; Delegate: Shin

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; 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 ethnic 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 ethnic 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, the person shall serve a mandatory

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SB1013

59 minimum sentence of confinement of six months.

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

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

72 G. As used in this section:

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

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

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

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

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

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

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