

1 VIRGINIA ACTS OF ASSEMBLY — CHAPTER

2 *An Act to amend and reenact § 18.2-57 of the Code of Virginia, relating to affirmative defense or reduced*
 3 *penalty for mental illness, neurocognitive disorder, or intellectual or developmental disability.*

4 [H 246]

5 Approved

6 **Be it enacted by the General Assembly of Virginia:**7 **1. That § 18.2-57 of the Code of Virginia is amended and reenacted as follows:**8 **§ 18.2-57. Assault and battery; penalty.**

9 A. Any person who commits a simple assault or assault and battery is guilty of a Class 1 misdemeanor,
 10 and if the person intentionally selects the person against whom a simple assault is committed because of his
 11 race, religious conviction, gender, disability, gender identity, sexual orientation, color, or ethnic or national
 12 origin, the penalty upon conviction shall include a term of confinement of at least six months.

13 B. However, if a person intentionally selects the person against whom an assault and battery resulting in
 14 bodily injury is committed because of his race, religious conviction, gender, disability, gender identity, sexual
 15 orientation, color, or ethnic or national origin, the person is guilty of a Class 6 felony, and the penalty upon
 16 conviction shall include a term of confinement of at least six months.

17 C. In addition, if any person commits an assault or an assault and battery against another knowing or
 18 having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as defined in
 19 subsection H, a correctional officer as defined in § 53.1-1, a person directly involved in the care, treatment, or
 20 supervision of inmates in the custody of the Department of Corrections or an employee of a local or regional
 21 correctional facility directly involved in the care, treatment, or supervision of inmates in the custody of the
 22 facility, a person directly involved in the care, treatment, or supervision of persons in the custody of or under
 23 the supervision of the Department of Juvenile Justice, an employee or other individual who provides control,
 24 care, or treatment of sexually violent predators committed to the custody of the Department of Behavioral
 25 Health and Developmental Services, a firefighter as defined in § 65.2-102, or a volunteer firefighter or any
 26 emergency medical services personnel member who is employed by or is a volunteer of an emergency
 27 medical services agency or as a member of a bona fide volunteer fire department or volunteer emergency
 28 medical services agency, regardless of whether a resolution has been adopted by the governing body of a
 29 political subdivision recognizing such firefighters or emergency medical services personnel as employees,
 30 engaged in the performance of his public duties anywhere in the Commonwealth, such person is guilty of a
 31 Class 6 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of
 32 confinement of six months.

33 *It is an affirmative defense to prosecution of a person for assault or assault and battery under this*
 34 *subsection if such person proves, by a preponderance of the evidence, that at the time of the assault or*
 35 *assault and battery (i) the person's behaviors were a result of (a) mental illness as defined in § 37.2-100 or*
 36 *(b) a neurocognitive disorder, including dementia, or an intellectual disability or a developmental disability*
 37 *such as autism spectrum disorder, as defined in the most recent edition of the Diagnostic and Statistical*
 38 *Manual of Mental Disorders of the American Psychiatric Association, or (ii) the person met the criteria for*
 39 *issuance of an emergency custody order pursuant to § 37.2-808. If such person intends to introduce evidence*
 40 *pursuant to this subsection, he, or his counsel, shall give notice in writing to the attorney for the*
 41 *Commonwealth at least 60 days prior to his trial in circuit court, or at least 14 days if the trial date is set*
 42 *within 21 days of his last court appearance, of his intention to present such evidence. In the event that such*
 43 *notice is not given, and the person proffers such evidence at his trial as a defense, then the court may in its*
 44 *discretion either allow the Commonwealth a continuance or, under appropriate circumstances, bar such*
 45 *person from presenting such evidence. The period of any such continuance shall not be counted for speedy*
 46 *trial purposes under § 19.2-243.*

47 *If such person does not prove by a preponderance of the evidence that at the time of the assault or assault*
 48 *and battery his behaviors were a result of his mental illness, intellectual disability, developmental disability,*
 49 *or neurocognitive disorder but the evidence establishes that his mental illness, intellectual disability,*
 50 *developmental disability, or neurocognitive disorder otherwise contributed to his behaviors, the finder of fact*
 51 *may find such person guilty of a Class 1 misdemeanor.*

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

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

56 D. In addition, if any person commits a battery against another knowing or having reason to know that

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57 such other person is a full-time or part-time employee of any public or private elementary or secondary
 58 school and is engaged in the performance of his duties as such, he is guilty of a Class 1 misdemeanor and the
 59 sentence of such person upon conviction shall include a sentence of 15 days in jail, two days of which shall
 60 be a mandatory minimum term of confinement. However, if the offense is committed by use of a firearm or
 61 other weapon prohibited on school property pursuant to § 18.2-308.1, the person shall serve a mandatory
 62 minimum sentence of confinement of six months.

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

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

75 G. In addition, any person who commits a battery against another knowing or having reason to know that
 76 such individual is a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or
 77 any person performing services as a sports official for a public entity or a private, nonprofit organization that
 78 sponsors an amateur sports event who (i) is engaged in the performance of his duties or (ii) is on the premises
 79 of such event prior to engaging in his duties or upon conclusion of his duties is guilty of a Class 1
 80 misdemeanor. The sentence of such person, upon conviction, may also prohibit such person from attending
 81 any such sports event operated by the entity or organization that employed such sports official for a period of
 82 not less than six months as a term and condition of such sentence.

83 H. As used in this section:

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

86 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title
 87 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

88 "Judge" means any justice or judge of a court of record of the Commonwealth including a judge
 89 designated under § 17.1-105, a judge under temporary recall under § 17.1-106, or a judge pro tempore under
 90 § 17.1-109, any member of the State Corporation Commission, or of the Virginia Workers' Compensation
 91 Commission, and any judge of a district court of the Commonwealth or any substitute judge of such district
 92 court.

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

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

108 "Sports official" includes an umpire, referee, judge, scorekeeper, timekeeper, or other person who is a
 109 neutral participant in a sports event.

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

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

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