

SENATE BILL NO. 624

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee for Courts of Justice

on _____)

(Patron Prior to Substitute—Senator Salim)

A BILL to amend and reenact § 18.2-57 of the Code of Virginia, relating to assault and battery; definition of "Islamophobia"; 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 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 H, 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.

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 minimum sentence of confinement of six months.

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

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

G. In addition, any person who commits a battery against another knowing or having reason to know that such individual is a sports official for an entity sponsoring an interscholastic or intercollegiate sports event or any person performing services as a sports official for a public entity or a private, nonprofit organization that sponsors an amateur sports event who (i) is engaged in the performance of his duties or (ii) is on the premises of such event prior to engaging in his duties or upon conclusion of his duties is guilty of a Class 1

62 misdemeanor. The sentence of such person, upon conviction, may also prohibit such person from attending
63 any such sports event operated by the entity or organization that employed such sports official for a period of
64 not less than six months as a term and condition of such sentence.

65 H. As used in this section:

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

68 "Hospital" means a public or private institution licensed pursuant to Chapter 5 (§ 32.1-123 et seq.) of Title
69 32.1 or Article 2 (§ 37.2-403 et seq.) of Chapter 4 of Title 37.2.

70 *"Islamophobia" means malicious prejudice or hatred directed toward Islam or Muslims. This definition*
71 *applies regardless of whether the victim is actually a practitioner of Islam, provided that the perpetrator*
72 *targeted such victim based on a perceived adherence to such faith.*

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

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

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

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

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

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

107 J. "Islamophobia" shall be used to assist law-enforcement officers, prosecutors, and state agencies in
108 identifying and classifying bias-motivated offenses under this section and shall not be construed to (i) create
109 a separate offense or cause of action; (ii) regulate or restrict any speech, expression, or belief protected
110 under the First Amendment to the Constitution of the United States or Article I, Section 12 of the Constitution
111 of Virginia; or (iii) limit any other right or protection guaranteed by law.

112 **2. That the Department of State Police, in consultation with the Office of the Attorney General and the**
113 **Office of Diversity, Equity, and Inclusion, shall incorporate the definition of "Islamophobia," as**
114 **defined in § 18.2-57 of the Code of Virginia, as amended by this act, into its hate crime central**
115 **repository pursuant to § 52-8.5 of the Code of Virginia.**

116 **3. That the provisions of this act may result in a net increase in periods of imprisonment or**
117 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
118 **appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be**
119 **determined for periods of commitment to the custody of the Department of Juvenile Justice.**