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SENATE BILL NO. 531

Offered January 12, 2022

Prefiled January 12, 2022

A *BILL to amend and reenact §§ 18.2-57, 18.2-151.1, 18.2-152.7:1, 18.2-404, and 18.2-414 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 8.01-42.6 and 8.01-226.14, by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-987, and by adding in Article 1 of Chapter 9 of Title 18.2 a section numbered 18.2-414.3, relating to certain crimes committed while participating in a riot; civil action for damages; affirmative defense; reduction in law-enforcement agency operating budget; penalty.*

Patron—DeSteph

Referred to Committee on the Judiciary

Be it enacted by the General Assembly of Virginia:

1. That §§ 18.2-57, 18.2-151.1, 18.2-152.7:1, 18.2-404, and 18.2-414 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 8.01-42.6 and 8.01-226.14, by adding in Article 5 of Chapter 9 of Title 15.2 a section numbered 15.2-987, and by adding in Article 1 of Chapter 9 of Title 18.2 a section numbered 18.2-414.3 as follows:

§ 8.01-42.6. *Civil action for damages caused during a riot or unlawful assembly.*

A. A person with the lawful authority to direct a law-enforcement agency who uses that authority to prohibit law-enforcement officers from taking lawful law-enforcement action that would prevent or materially mitigate significant bodily injury or death or damage or destruction of property caused by or related to a riot as defined in § 18.2-405 or unlawful assembly as defined in § 18.2-406 for any reason other than to prevent imminent harm to the safety of law-enforcement officers shall be liable for civil damages to any person who subsequently suffers bodily injury or death or whose property is subsequently damaged, destroyed, or otherwise rendered unusable as the result of a third party's criminal conduct if the injury was caused by an act that is a violation of a criminal law.

B. For any action brought pursuant to this section, a plaintiff may sue to recover compensatory damages, punitive damages, and reasonable attorney fees and costs, including costs and reasonable fees for expert witnesses. If the plaintiff prevails in such action, the court shall award reasonable attorney fees and costs, including costs and reasonable fees for expert witnesses to the plaintiff.

C. This section shall not apply to any strategic, tactical, or operational decisions made by a law-enforcement officer in the performance of his official duties.

§ 8.01-226.14. *Affirmative defense; participation in a riot.*

A. In a civil action for wrongful death or injury to a person or property, it is an affirmative defense to such action that the claimed injury or damage was sustained by a person participating in a riot in violation of § 18.2-405. Such defense shall be established by evidence that the person has been convicted of a violation of § 18.2-51.2, 18.2-57, 18.2-96, 18.2-152.7:1, 18.2-404, 18.2-414, or 18.2-414.3 or by proof of the commission of such a crime by preponderance of the evidence.

B. If the affirmative defense under subsection A is raised, the court shall, upon motion of the defendant, stay the proceedings during the pendency of a criminal proceeding that forms the basis for the defense.

§ 15.2-987. *Reduction in local law-enforcement agency operating budget; penalty.*

Notwithstanding any contrary provisions of law, any locality that reduces the operating budget of its local law-enforcement agency may (i) receive no appropriation in the general appropriation act for highway system maintenance and operations or for maintenance and operation of roads; (ii) receive no allocation of highway funds pursuant to Article 5 (§ 33.2-351 et seq.) of Chapter 3 of Title 33.2 for roads within such locality; and (iii) receive no payments for maintenance, construction, or reconstruction of highways under § 33.2-319. If such funding is eliminated, it shall be effective for each fiscal year for which the locality reduces the operating budget of its law-enforcement agency, and the elimination may be rescinded for any fiscal year in which such locality restores such operating budget or increases it beyond the baseline level.

§ 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

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59 at least six months.

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

64 C. ~~In addition,~~ *If* any person commits an assault or an assault and battery against another knowing
65 or having reason to know that such other person is a judge, a magistrate, a law-enforcement officer as
66 defined in subsection F G, a correctional officer as defined in § 53.1-1, a person directly involved in the
67 care, treatment, or supervision of inmates in the custody of the Department of Corrections or an
68 employee of a local or regional correctional facility directly involved in the care, treatment, or
69 supervision of inmates in the custody of the facility, a person directly involved in the care, treatment, or
70 supervision of persons in the custody of or under the supervision of the Department of Juvenile Justice,
71 an employee or other individual who provides control, care, or treatment of sexually violent predators
72 committed to the custody of the Department of Behavioral Health and Developmental Services, a
73 firefighter as defined in § 65.2-102, or a volunteer firefighter or ~~any~~ *an* emergency medical services
74 personnel member who is employed by or is a volunteer of an emergency medical services agency or as
75 a member of a bona fide volunteer fire department or volunteer emergency medical services agency,
76 regardless of whether a resolution has been adopted by the governing body of a political subdivision
77 recognizing such firefighters or emergency medical services personnel as employees, engaged in the
78 performance of his public duties anywhere in the Commonwealth, such person is guilty of a Class 6
79 felony, and, upon conviction, the sentence of such person shall include a mandatory minimum term of
80 confinement of six months.

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

84 D. ~~In addition,~~ *if any* Any person who commits a battery against another knowing or having reason
85 to know that such other person is a full-time or part-time employee of any public or private elementary
86 or secondary school and is engaged in the performance of his duties as such; ~~he~~ is guilty of a Class 1
87 misdemeanor and the sentence of such person upon conviction shall include a sentence of 15 days in
88 jail, two days of which shall be a mandatory minimum term of confinement. However, if the offense is
89 committed by use of a firearm or other weapon prohibited on school property pursuant to § 18.2-308.1,
90 the person shall serve a mandatory minimum sentence of confinement of six months.

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

97 F. *Any person who commits an assault or an assault and battery while participating in a riot as*
98 *defined in § 18.2-405 is guilty of a Class 6 felony.*

99 G. As used in this section:

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

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

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

109 "Law-enforcement officer" means any full-time or part-time employee of a police department or
110 sheriff's office that is part of or administered by the Commonwealth or any political subdivision thereof
111 who is responsible for the prevention or detection of crime and the enforcement of the penal, traffic or
112 highway laws of the Commonwealth, any conservation officer of the Department of Conservation and
113 Recreation commissioned pursuant to § 10.1-115, any special agent of the Virginia Alcoholic Beverage
114 Control Authority, conservation police officers appointed pursuant to § 29.1-200, full-time sworn
115 members of the enforcement division of the Department of Motor Vehicles appointed pursuant to
116 § 46.2-217, and any employee with internal investigations authority designated by the Department of
117 Corrections pursuant to subdivision 11 of § 53.1-10, and such officer also includes jail officers in local
118 and regional correctional facilities, all deputy sheriffs, whether assigned to law-enforcement duties, court
119 services or local jail responsibilities, auxiliary police officers appointed or provided for pursuant to
120 §§ 15.2-1731 and 15.2-1733, auxiliary deputy sheriffs appointed pursuant to § 15.2-1603, police officers

of the Metropolitan Washington Airports Authority pursuant to § 5.1-158, and fire marshals appointed pursuant to § 27-30 when such fire marshals have police powers as set out in §§ 27-34.2 and 27-34.2:1.

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

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

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

§ 18.2-151.1. Injuring, destroying, removing, or tampering with firefighting equipment, emergency medical services vehicle, or law-enforcement vehicle; penalty.

A. Any person who injures, destroys, removes, tampers with, or otherwise interferes with the operation of (i) any equipment or apparatus used for fighting fires or for protecting property or human life by a fire company or fire department, as those terms are defined in § 27-6.01, or (ii) any emergency medical services vehicle, as defined in § 32.1-111.1, intending to temporarily or permanently prevent the useful operation of such equipment or apparatus, or (iii) any conspicuously marked law-enforcement vehicle is guilty of a Class 1 misdemeanor.

B. Any person who injures, destroys, or otherwise interferes with the operation of a conspicuously marked law-enforcement vehicle while such vehicle is occupied by a law-enforcement officer, as defined by § 9.1-101, intending to prevent such law-enforcement officer from performing his official duties is guilty of a Class 6 felony.

§ 18.2-152.7:1. Harassment by computer; penalty.

A. If any person, with the intent to coerce, intimidate, or harass any person, shall use a computer or computer network to communicate obscene, vulgar, profane, lewd, lascivious, or indecent language, or make any suggestion or proposal of an obscene nature, or threaten any illegal or immoral act, he is guilty of a Class 1 misdemeanor. A violation of this section may be prosecuted in the jurisdiction in which the communication was made or received or in the City of Richmond if venue cannot otherwise be established and the person subjected to the act is one of the following officials or employees of the Commonwealth and such official or employee was subjected to the act while engaged in the performance of his public duties or because of his position with the Commonwealth: the Governor, Governor-elect, Lieutenant Governor, Lieutenant Governor-elect, Attorney General, or Attorney General-elect, a member or employee of the General Assembly, a justice of the Supreme Court of Virginia, or a judge of the Court of Appeals of Virginia.

B. It is unlawful for any person to electronically publish another person's personal identifying information with the intent to, or with the intent that a third party will use the information to, (i) incite violence or commit a crime against such other person or (ii) threaten or harass such other person in a manner as to place the person in reasonable fear of bodily harm. Any person who violates the provisions of this subsection is guilty of a Class 1 misdemeanor.

For the purposes of this section, "personal identifying information" means a home address, home telephone number, mobile telephone number, social security number, or driver's license number or state identification card number, provided that such information has not been lawfully obtained from publicly available information, including information from federal, state, or local government records lawfully made available to the public.

§ 18.2-404. Obstructing free passage of others.

Any person or persons who in any public place or on any private property open to the public (i) unreasonably or unnecessarily obstructs the free passage of other persons to and from or within such place or property or (ii) maliciously obstructs access to any place of business and who shall fail or refuse to cease such obstruction or move on when requested to do so by the owner or lessee or agent or employee of such owner or lessee or by a duly authorized law-enforcement officer shall be is guilty of a Class 1 misdemeanor. Nothing in this section shall be construed to prohibit lawful demonstration or picketing.

§ 18.2-414. Injury to property or persons by persons unlawfully or riotously assembled.

If any person or persons, unlawfully or riotously assembled, pull down, injure, or destroy, or begin

182 to pull down, injure, or destroy any dwelling house or, other building, or property of another where the
183 cost of damage to such property is the value of \$1,000 or more, or assist therein, or perpetrate any
184 premeditated injury on the person of another, he shall be is guilty of a Class 6 felony.

185 **§ 18.2-414.3. Maliciously obstructing a highway.**

186 Any person who maliciously obstructs the normal use of any highway, as defined in § 46.2-100, by
187 endangering the safe movement of vehicles or pedestrians and (i) impeding or hindering the use of such
188 highway by others or (ii) standing on or remaining in such highway is guilty of a Class 1 misdemeanor.

189 **2. That the provisions of this act may result in a net increase in periods of imprisonment or**
190 **commitment. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the**
191 **necessary appropriation cannot be determined for periods of imprisonment in state adult**
192 **correctional facilities; therefore, Chapter 552 of the Acts of Assembly of 2021, Special Session I,**
193 **requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of**
194 **\$50,000. Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary**
195 **appropriation cannot be determined for periods of commitment to the custody of the Department**
196 **of Juvenile Justice.**

197 **3. That this act shall be referred to as the Accountability and Responsibility Act.**