



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 473

(Patron – Ticer)

Date Submitted: 12/31/03

LD #: 04-7539828

Topic: Definition of “hate crimes”

Proposed Change:

The proposal amends § 18.2-57 (relating to assault and battery) and § 18.2-121 (relating to trespassing with intent to damage property) to add crimes motivated by animosity based on sexual orientation to those offenses covered as “hate crimes.”

Currently, assault and trespassing crimes motivated by the victim’s sexual orientation are punished as Class 1 misdemeanors and are not subject to the enhanced penalties specified for crimes committed because of the victim’s race, religious conviction, color or national origin.

Under current law, an assault or an assault and battery is punished as a Class 1 misdemeanor. However, if the victim is chosen because of his race, religious conviction, color or national origin, the offense carries a 30-day mandatory minimum term of confinement; if bodily injury results, the penalty for this offense increases to a Class 6 felony with a 30-day mandatory minimum sentence. Trespassing with intent to damage property (§ 18.2-121) is a Class 1 misdemeanor, but the punishment increases to a Class 6 felony with a 30-day mandatory minimum sentence if the victim is selected because of his race, religious conviction, color or national origin.

The proposed legislation also adds sexual orientation to § 8.01-42.1, which provides for civil action by any person subjected to harassment, violence or vandalism based on his race, religious conviction or ethnic origin, and to § 52-8.5, which requires the state police to maintain a central repository for information on terroristic acts and those who carry out such acts including those based on race, religion, or ethnicity.

Current Practice:

According to Virginia’s Incident Based Reporting System (IBR) for calendar year (CY) 2000, there were 226 incidences in Virginia of hate-motivated acts based on the race, religion, sexual orientation, ethnicity or disability of the victim where the incident involved an assault or the destruction of property through vandalism. Of the total, 86 incidences were simple assaults, 22 incidents were aggravated assaults, and 118 incidences involved vandalism or destruction of property. IBR data reveals that 19 of these 226 incidences (8.4%) were based on the victim’s sexual orientation.

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According to fiscal year (FY) 2000 and 2001 Pre/Post-Sentence Investigation (PSI) data, there were three felony convictions for hate-crime assault and battery resulting in bodily injury (§ 18.2-57(B)); two were sentenced to state-responsible (prison) term of one year and one was sentenced to no incarceration beyond time already served. There was one conviction for trespassing with intent to damage property as a hate crime (§ 18.2-121) during the same two-year period; that person was sentenced to 46 days.

According to Local Inmate Data System (LIDS) data, there were 225 misdemeanor convictions for hate-crime assault and battery (§ 18.2-57(A)) among offenders held pre- or post-trial in jail during FY2001 and FY2002; nearly all of these cases resulted in a local-responsible (jail) term with a median sentence of 35 days, while 6% were sentenced to prison (due to one or more accompanying felony convictions). Approximately 3% of the offenders satisfied the mandatory, minimum 30-day confinement while awaiting trial.

Impact of Proposed Legislation:

By adding sexual orientation to the hate-crime statutes, the proposed legislation establishes mandatory minimum penalties for several existing crimes and increases the penalty for such crimes resulting in bodily injury to a Class 6 felony. Application of sentences for similar crimes indicates that the proposal would increase the need for state-responsible (prison) beds. In this scenario, over the next six years, the minimum net high state-responsible impact would be less than one bed. However, this is a minimum estimate because LIDS data do not provide information of whether the victim received bodily injury; no impact was estimated for that aspect of the proposal.

In addition, there will be a local-responsible (jail) bed space impact; based on the methodology, there will be a increased need for one partial jail bed statewide, for a cost to the state of \$960 (using FY2002 jail inmate costs) for reimbursement to localities. There would be an additional statewide cost to the localities of \$653 for the same partial bed.

The anticipated impact on community corrections programs is expected to be twofold. First, for crimes raised from a Class1 misdemeanor to a Class 6 felony, there should be a small shift from local to state-funded programs. And second, on average, the need for a program placement will be delayed by about four months (the difference in time actually served for the current misdemeanor versus the time estimated to be served under the proposed felony). A third factor may impact on community corrections programs; that is, the supervision for a felony crime may be longer than for the comparable crime when it was defined as a misdemeanor. Additionally, there may be an increased need for prison or jail bed space based on probation or post-release supervision revocations. A judge can impose and suspend more time for a felony than a misdemeanor, and, consequently, if an offender violates release conditions, the potential amount of time that a judge may re-impose for a revocation is longer as well.

Convictions for hate crimes relating to assaults (§ 18.2-57) and trespassing (§ 18.2-121) are not covered by the sentencing guidelines as the primary offense but may augment the guidelines

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recommendation if a covered offense is the most serious at conviction. No adjustment to the sentencing guidelines would be necessary under the proposal.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is at least \$3,689 for periods of imprisonment in state adult correctional facilities and is \$0 for periods of commitment to the custody of the Department of Juvenile Justice.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary's Committee on Inmate Forecasting in 2003.
2. New cases representing misdemeanor and local-responsible sentences were based on forecasts developed by the Virginia Criminal Sentencing Commission using the LIDS database.
3. The estimated number of offenders that would be sentenced under the proposal was adjusted to reflect the proportion of incidents reported for the respective hate-crime compared to all crimes. For assault and battery, there were 12 hate-crime simple assault incidents of 60,717 total incidents; for trespass, there were seven hate-crime incidents of 76,543 total incidents.
4. Cost per prison bed was assumed to be \$22,606 per year as provided by the Department of Planning and Budget to the Commission pursuant to § 30-19.1:4. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimated amount of necessary appropriation.*
5. Cost per jail bed was based on the Compensation Board's FY2002 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.81 per day or \$10,889 per year. The local cost was calculated by using the daily expenditure cost of \$54.12 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$20.29 per day or \$7,410 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2004, is phased in to account for case processing time.
2. The state-responsible bed-space impact was derived by estimating the difference between expected dates of release under current law and under the proposed legislation. Release dates were estimated based on the average rates at which inmates in Department of Corrections' facilities were earning sentence credits as of December 31, 2002; for assault offenses the rate was 9.18 and for nonviolent offenses the rate was 9.54%. Release dates for local-responsible felony convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by felons, sentenced in FY2003; this rate was 89.70%. Release dates for misdemeanor convictions were estimated based on data provided by the Compensation Board on the average percentage of time actually served by misdemeanants, sentenced in FY2003, with no accompanying felony conviction; this rate was 39.66%.
3. Sentences for persons affected by the felony provision for hate-based trespass of the proposal were randomly drawn from among convictions for the current hate-based crimes of trespass and assault. Sentences for persons affected by the misdemeanor provision for the hate-based assault were randomly drawn from among convictions for the current crime. Whenever a sampled sentence did not exceed the existing sentence, the original sentence was used.

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