

Department of Planning and Budget 2017 Fiscal Impact Statement

1. Bill Number: SB1524

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Favola

3. Committee: Courts of Justice

4. Title: Hate crimes; gender, sexual orientation, gender identity, or disability; penalty.

5. Summary: This bill expands hate crimes to include crimes motivated by disability, gender, gender identity, and sexual orientation. The penalty for simple assault and battery not motivated by hate crimes is currently punishable as a Class 1 misdemeanor. Because this bill classifies crimes committed because of disability, gender, gender identity, and sexual orientation as hate crimes, the penalty would be increased to require confinement of at least six months with a mandatory minimum confinement of 30 days. If bodily injury results from hate crimes, the penalty is increased to a Class 6 felony with a mandatory minimum confinement of 30 days; if the crime is not because of a hate crime, it remains a Class 1 misdemeanor. Trespassing with the intent to damage property is currently a Class 1 misdemeanor but the penalty is increased to a Class 6 felony with a mandatory minimum confinement of 30 days. This bill also adds acts of intimidation or harassment, violence, and vandalism motivated by gender, sexual orientation, gender identity, or disability to the list of actions eligible for injunctive relief or civil damages. The bill adds crimes motivated by disability, gender, gender identity, and sexual orientation to the list of hate crimes included in the central repository managed by the Department of State Police.

6. Budget Amendment Necessary: Indeterminate, See Item 8

7. Fiscal Impact Estimates: Fiscal Impact Estimates Are Preliminary

8. Fiscal Implications: The Department of State Police (Department) maintains a central repository, referred to as Incident Based Reporting System (IBR), for the collection and analysis of hate crimes in Virginia. The Department is in the process of replacing its existing IBR system. The Department will execute a contract with a vendor for the new IBR system with an expected delivery date in late 2017. Under the contract agreement, it will take six to ten months to test, validate, and implement the new IBR system. According to the Department, the proposed legislation requires new data entry fields not currently available in the existing IBR system. If changes are required to be made to the existing system before the implementation of the new IBR, the Department estimates that it may need additional resources. Specifically, it estimates that it will need to hire a contractor to make programmatic changes, and test and validate the existing system. The Department indicates that it does not currently have information technology staff with the skills necessary to perform the changes required by the legislation. Assuming the proposed legislation becomes

effective July 1, 2017, and the conservative delivery date of ten months from now for the new IBR system, the estimated cost for a contractor to upgrade the existing system could be up to \$68,000. If the effective date of the proposed legislation is delayed until the new IBR system is completed and delivered, there would be no fiscal impact to the Department due to the fact that the new system will have the capability to capture the data required by the proposed legislation.

Because the bill would add crimes motivated by disability, gender, gender identity, and sexual orientation to the list of hate crimes, the bill may increase the number of inmates in jail and may result in longer days of confinement. There is not enough information available to reliably estimate how many additional inmates in jail could result from this proposal. Ultimately, the presiding judge will decide if there is to be any time served in jail; however, any increase in jail population will increase costs to the state. The Commonwealth presently pays the localities \$4.00 a day for each misdemeanor or otherwise local responsible prisoner held in a jail and \$12.00 a day for each state responsible inmate. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2016), the estimated total state support for local jails averaged \$32.82 per inmate, per day in FY 2015. The number of Class 6 felony convictions due to assault and battery with bodily injury and/or trespassing with the intent to damage property may also increase as a result of this bill. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to one year in jail, or 1 to 5 years in prison. Therefore, this proposal could result in an increase in the number of persons sentenced to jail or prison.

The Virginia Criminal Sentencing Commission has concluded that because none of the offenders in the last six most recent fiscal years convicted of the existing hate crime felonies has received a state-responsible (prison) sentence, the bill is not expected to increase the state-responsible bed-space needs of the Commonwealth. Because the number of new convictions and increased penalties cannot be quantified, the impact on community corrections programs, juvenile direct care, and juvenile detention facilities cannot be determined.

9. Specific Agency or Political Subdivisions Affected: Local and regional jails, Department of Corrections, Department of Juvenile Justice, Courts, and the Department of State Police

10. Technical Amendment Necessary: No

11. Other Comments: This bill is similar but not identical to HB1776.