



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1375

(Patron – Favola)

LD#: 19101001

Date: 11/09/2018

Topic: Definition of hate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

- **Juvenile Direct Care:**
Cannot be determined*
- **Juvenile Detention Facilities:**
Cannot be determined*

*Provided by the Department of Juvenile Justice

Summary of Proposed Legislation:

The proposal amends § 18.2-57 (relating to assault and battery) and § 18.2-121 (relating to trespassing with the intent to damage property) to add crimes motivated by animosity based on gender, disability, gender identity, and sexual orientation to certain offenses classified as “hate crimes.”

Under current law, simple assault is punished as a Class 1 misdemeanor. However, if the victim is chosen because of his or her 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 the intent to damage property is a Class 1 misdemeanor under § 18.2-121. However, the penalty is increased to a Class 6 felony with a 30-day mandatory minimum sentence if the victim is selected because of his or her race, religious conviction, color, or national origin. The proposal expands the hate crime provisions to include crimes committed because of the victim’s gender, disability, gender identity, or sexual orientation.

The proposal also provides for civil action and adds gender, disability, gender identity, and sexual orientation to § 52-8.5, which requires the Department of State Police to include acts based on certain characteristics in its central repository of hate crime information. In addition, the proposal explicitly includes ethnic origin throughout § 52-8.5 where ever national origin is referenced.

Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar years 2016 and 2017,¹ there were 287 instances of hate-motivated acts based on the race, religion, ethnicity, sexual orientation, or

¹ Virginia State Police. (2017). *Crime in Virginia 2016*.

www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2016.pdf

Virginia State Police. (2018). *Crime in Virginia 2017*.

www.vsp.state.va.us/VSP%20site/VSP/downloads/Crime_in_Virginia/Crime%20in%20Virginia_2017.pdf

disability of the victim where the incident involved an assault or the destruction of property through vandalism. Of the total, 151 instances were a simple or aggravated assault and 136 incidents involved vandalism or destruction of property. The reports indicate that 52 of the 287 incidents (18.1%) were based on the victim's sexual orientation, and five incidents (1.7%) were based on the victim's disability. More specifically, 31 victims of assault and 21 victims of destruction of property were targeted because of their sexual orientation. Furthermore, three victims of assault and two victims of destruction of property were targeted because of their disability. The *Crime in Virginia* reports do not contain detailed information regarding hate-motivated crimes that were committed because of the victim's gender or gender identity.

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2013 through FY2018, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 22 offenders. Of these, 68.2% were sentenced to a local-responsible (jail) term with a median sentence of approximately 1.5 months. The remaining 31.8% received probation or were sentenced to the time served by the offender while awaiting trial.

Circuit Court CMS data for the same six-year period indicate that a felony hate-crime assault and battery (under the existing § 18.2-57(B)) was the primary offense for one offender, who was sentenced to serve twelve months in jail. However, another 17 offenders were convicted in circuit court of a misdemeanor hate-crime assault under § 18.2-57(A) as the primary offense (for these offenders, all felony charges were nolle prossed, dismissed, resulted in a not guilty finding, or were reduced to misdemeanors). Two offenders were convicted of a felony for trespassing with intent to damage property as a hate crime (§ 18.2-121) as the primary offense; these offenders were sentenced to serve, respectively, nine and twelve months in jail.

Impact of Proposed Legislation:

State adult correctional facilities. Since it expands the applicability of two existing felony offenses to include acts committed because of the victim's gender, sexual orientation, gender identity, or disability, the proposal may increase the number of offenders convicted of a felony under §§ 18.2-57(B) and 18.2-121. In the six most recent fiscal years, however, none of the offenders convicted of one of the existing hate-crime felonies have received a state-responsible (prison) sentence. Therefore, the proposal is not expected to increase the state-responsible bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. By expanding the applicability of an existing Class 1 misdemeanor offense and two felony offenses that carry mandatory minimum jail terms, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated. However, any impact is likely to be small.

Adult community corrections resources. Raising a crime from a Class 1 misdemeanor to a Class 6 felony may decrease the demand for local community-based probation services and increase the need for state community corrections resources. The *Code of Virginia*, however, allows judges to utilize local community-based probation programs for Class 5 and Class 6 felons as well as misdemeanants. Data are not available to estimate the impact on local or state community corrections resources that may result from the proposal. However, any impact on adult community corrections resources is likely to be small.

Virginia's sentencing guidelines. Felony convictions under §§ 18.2-57(B) and 18.2-121 are not covered by the sentencing guidelines as the primary (most serious) offense. However, convictions under these statutes could augment the guidelines recommendation if the most serious offense at sentencing is covered by the guidelines. No adjustment to the guidelines would be necessary under the proposal.

Juvenile direct care. According to the Department of Juvenile Justice, the impact of the proposal on direct care (juvenile correctional center or alternative commitment placement) bed space needs cannot be determined.

Juvenile detention facilities. According to the Department of Juvenile Justice, the impact of the proposal on the bed space needs of juvenile detention facilities cannot be determined.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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