

Department of Planning and Budget 2020 Fiscal Impact Statement

1. Bill Number: SB179ES1

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

2. Patron: Favola

3. Committee: Finance and Appropriations

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

5. Summary: Includes within the definition of “hate crime” a criminal act involving § 18.2-57 (assault and battery) or § 18.2-121 (trespass with the intent to damage) committed against a person because of their gender, disability status (as defined in the bill), gender identity, or sexual orientation. A violation of § 18.2-57 is a Class 1 misdemeanor, of which any penalty must include a term of confinement of at least six months; a violation of this section is punishable as a Class 6 felony, with a term of confinement of six months, if it results in bodily injury. A violation of § 18.2-121 is a Class 6 felony, and requires a term of confinement of at least six months. Currently, cases are only considered hate crimes if the victim is selected for their race, religion, color, or national origin. The bill removes a requirement that current hate crime violations in these sections carry a mandatory minimum term of confinement of 30 days. The bill requires reporting of such crimes to the central repository maintained by the Department of State Police (VSP).

The bill also provides that no provider or user of an interactive computer service is liable for any action voluntarily taken by it in good faith to restrict access to, or availability of, material that the provider or user considers to be obscene, lewd, lascivious, excessively violent, harassing, or intended to incite hatred on the basis of these characteristics. The bill contains an enactment clause which provides that the provisions of this act shall not become effective unless an appropriation effectuating the purposes of this act is included in a general appropriation act passed in 2020 by the General Assembly that becomes law.

6. Budget Amendment Necessary: Yes. Item 402.

7. Fiscal Impact Estimates: Preliminary. See below.

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2020			
2021	\$50,000	0	General
2022			
2023			
2024			
2025			

- 8. Fiscal Implications:** The Department of State Police (VSP) maintains a central repository for the collection and analysis of hate crimes (Incident Based Reporting system) in the Commonwealth. According to VSP, this bill is not expected to have a fiscal impact on agency operations.

The bill expands the applicability of existing felonies and misdemeanors. Therefore, this bill could result in additional persons being sent to jail or prison. Currently, assault and battery that is classified as a hate crime is punishable as a Class 1 misdemeanor and requires a term of confinement of at least six months, with a 30-day mandatory minimum sentence. Both assault and battery when bodily injury occurs and entering property to damage, when classified as a hate crime, are punishable as a Class 6 felony and require a term of confinement of at least six months, with a 30-day mandatory minimum sentence. The bill does remove the 30-day mandatory minimum requirement for these sections.

Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail. There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail. It also funds a large 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 2019), the estimated total state support for local jails averaged \$34.07 per inmate, per day in FY 2018.

For someone convicted of a Class 6 felony, a judge has the option of sentencing him to up to 12 months in jail, or one to five years in prison. In the six most recent fiscal years required for analysis, one offender convicted of a hate crime felony received a state-responsible (prison) sentence. The Virginia Criminal Sentencing Commission has concluded, pursuant to § 30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 854, 2019 Acts of Assembly, requires that a minimum impact of \$50,000 be assigned to the bill.

Any potential fiscal impact on the Department of Juvenile Justice (DJJ) is indeterminate at this time.

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

- 10. Technical Amendment Necessary:** No.

- 11. Other Comments:** None.