

Department of Planning and Budget 2021 Fiscal Impact Statement

1. Bill Number: SB1203

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|-----------------|-------------------------------------|--------------|--------------------------|------------|--------------------------|-----------|
| House of Origin | <input checked="" type="checkbox"/> | Introduced | <input type="checkbox"/> | Substitute | <input type="checkbox"/> | Engrossed |
| Second House | <input type="checkbox"/> | In Committee | <input type="checkbox"/> | Substitute | <input type="checkbox"/> | Enrolled |

2. Patron: Hashmi

3. Committee: Judiciary

4. Title: Hate crimes; associational relationships; penalty.

5. Summary: Expands the definition of “hate crime” to include a criminal act committed against a person that is motivated by, in whole or in part, animosity toward such person's actual or perceived race, color, ethnicity, religious conviction, national origin, gender, sex, disability, gender identity, gender expression, or sexual orientation or because of such person's actual or perceived association with another person or group of a certain actual or perceived race, color, ethnicity, religious conviction, national origin, gender, sex, disability, gender identity, gender expression, or sexual orientation. Current law defines a hate crime as selecting a victim on the basis of race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin. The bill provides that hate crime-motivated malicious wounding under the proposed definition shall be punishable by a term of imprisonment of not less than five years, nor more than 40 years.

6. Budget Amendment Necessary: Yes. Item 402.

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

7a. Expenditure Impact:

| <i>Fiscal Year</i> | <i>Dollars</i> | <i>Positions</i> | <i>Fund</i> |
|--------------------|----------------|------------------|-------------|
| 2021 | | | |
| 2022 | \$50,000 | | General |
| 2023 | | | |
| 2024 | | | |
| 2025 | | | |
| 2026 | | | |
| 2027 | | | |

8. Fiscal Implications: The Department of State Police (VSP) maintains a central repository for the collection and analysis of information regarding hate crimes. According to VSP, there is no anticipated fiscal impact on agency operations as a result of the provisions of this bill.

The proposed legislation increases the penalty for hate-crime motivated malicious wounding pursuant to § 18.2-51(A) from a Class 3 felony with a penalty of between five and 20 years in prison and a fine of up to \$100,000, to a felony with a term of imprisonment of between

five and 40 years. The bill also expands the applicability of hate crime motivated simple assault and trespass with intent to damage. Under current law, hate crime motivated simple assault under § 18.2-57(A) is punishable as a Class 1 misdemeanor, punishable by up to 12 months in prison or a fine of not more than \$2,500, or both. If bodily injury results, it is punishable as a Class 6 felony, with a term of imprisonment of between one and five years in prison, or a jail sentence of up to 12 months and/or a fine of not more than \$2,500. Hate crime motivated trespass with intent to damage is currently punishable as a Class 6 felony under § 18.2-121.

Based upon FY 2019 and FY 2020 Sentencing Guideline data obtained by the Virginia Criminal Sentencing Commission, 630 offenders were convicted of a Class 3 felony under § 18.2-51(A) for malicious wounding. In 514 cases, it was the primary, or most serious, offense. Most offenders (89.7%) received a state-responsible (prison) term, with a median sentence of four years. Another 4.1% were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining 6.2% of offenders did not receive an active term of incarceration to serve after sentencing.

In calendar years 2018 and 2019, there were 102 instances of hate crime motivated destruction of property and 124 cases of simple or aggravated assault, according to the Virginia State Police *Crime in Virginia* report. According to General District Court Case Management System (CMS) data for FY 2015 through FY 2020 hate crime motivated misdemeanor assault was the primary, or most serious offense, for 24 offenders; 18 (75%) were sentenced to local-responsible (jail) terms with a median sentence of two months, and the remaining six received probation or were sentenced to time served.

Circuit Court CMS data for FY 2015 through FY 2020 indicate that felony hate crime motivated assault and battery was the primary offense for one offender, who was sentenced to serve twelve months in jail. Another 14 offenders were convicted in circuit court of hate crime assault as the primary offense, with no felony convictions. Of these, 92.9% were sentenced to a local-responsible (jail) term with a median sentence of six months. The one remaining offender did not receive an active term of incarceration after sentencing. During this time period, three offenders were convicted of hate crime motivated felony trespass with intent to damage property as the primary offense. Two offenders were sentenced to serve, respectively, nine and twelve months in jail. The third offender was sentenced to serve two years in prison.

Because the bill creates an enhanced penalty for an existing felony under § 18.2-51(A) and expands the applicability of existing felonies and misdemeanors by expanding the definition of a hate crime, it may increase future state prison bed needs in the Commonwealth. However, available data is not sufficient to estimate the number of cases under the proposed legislation or estimate the overall impact. Accordingly, the magnitude of the impact on prison bed space cannot be determined at this time.

Due to the lack of data, 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 56, 2020

Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

Any potential fiscal impact on local and regional jails or the Department of Juvenile Justice (DJJ) is indeterminate at this time.

The proposed legislation may also increase the local-responsible jail bed space needs, however the extent of the impact cannot be determined at this time using existing data. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanor 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 varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2020), the estimated total state support for local jails averaged \$34.59 per inmate, per day in FY 2019.

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

10. Technical Amendment Necessary: No.

11. Other Comments: None.