



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

Senate Bill No. 1203 (Patron – Hashmi)

LD#: 21102512

Date: 01/11/2021

Topic: Definition of hate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **Local Adult Correctional Facilities:**
Cannot be determined
- **Adult Community Corrections Programs:**
Cannot be determined

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

**Provided by the Department of Juvenile Justice

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

Summary of Proposed Legislation:

The proposal amends §§ 18.2-51 (relating to malicious and unlawful woundings), 18.2-57 (relating to assault and battery), and 18.2-121 (relating to trespassing with the intent to damage property) to redefine the certain characteristics of hate-crime victims by including a person's actual or perceived race, color, ethnicity, religious conviction, national origin, gender, sex, disability, gender identity, gender expression, or sexual orientation or a 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.

The proposal would increase the penalty for malicious wounding under § 18.2-51 from a Class 3 felony to a felony punishable by a term of imprisonment of 5 to 40 years if an offender commits such a crime by intentionally selecting a victim based on the proposed characteristics of hate-crime victims. Furthermore, by adding more detailed characteristics of hate-crime victims, the proposal would expand the applicability of the penalties for offenses currently classified as a hate crime under §§ 18.2-57 (assault and battery) and 18.2-121 (trespassing).

The proposal also provides for civil action and adds redefined categories of hate-crime victims 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.

Currently, under § 18.2-51(A), malicious wounding of another with the intent to maim, disfigure, disable, or kill is a Class 3 felony. Under § 18.2-57, simple assault is punished as a Class 1 misdemeanor if the victim is chosen because of his or her race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin; if bodily injury results, the penalty increases to a Class 6 felony. Currently, 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 if the victim is selected because of his or her race, religious conviction, color, gender, disability, gender identity, sexual orientation, or national origin.

The General Assembly in the 2020 session expanded the hate crime provisions under §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 to include the crimes committed because of the victim's gender, disability, gender identity, or sexual orientation. Prior to this revision, hate crime had been defined as the offense committed because of the victim's race, religious conviction, color or national origin. Furthermore, during the same session, the General Assembly removed the provisions requiring a 30-day mandatory minimum term of confinement that was applicable to hate crimes defined under §§ 18.2-57 and 18.2-121.

Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar years 2018 and 2019,¹ there were 226 instances of hate-motivated acts based on the race, ethnicity, sexual orientation, religion, disability, gender, or gender identity of the victim where the incident involved an assault (simple or aggravated) or the destruction of property. Of the total, 124 instances were a simple or aggravated assault and 102 incidents involved destruction of property.

According to the Sentencing Guidelines database for fiscal year (FY) 2019 and FY2020, 630 offenders were convicted of a Class 3 felony under § 18.2-51(A) for malicious wounding. It was the primary, or most serious, offense in 514 of the cases. Most of the 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.

According to General District Court Case Management System (CMS) data for fiscal year FY2015 through FY2020, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 24 offenders. Of these, 75% were sentenced to a local-responsible (jail) term with a median sentence of two months. The remaining 25% 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 14 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). Of these, 92.9% were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining one offender did not receive an active term of incarceration to serve after sentencing. Three offenders were convicted of a felony for trespassing with intent to damage property as a hate crime (§ 18.2-121) 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.

¹ Virginia State Police. (2019). *Crime in Virginia 2019*.
https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime%20In%20Virginia%202019.pdf
Virginia State Police. (2018). *Crime in Virginia 2018*.
https://www.vsp.virginia.gov/downloads/Crime_in_Virginia/Crime_in_Virginia_2018.pdf

Impact of Proposed Legislation:

State adult correctional facilities². The proposal increases the statutory maximum penalty for certain malicious wounding offenses that would be classified as hate crimes from 20 to 40 years. Furthermore, the proposal expands the applicability of two existing felony offenses under §§ 18.2-57(B) and 18.2-121 to include more detailed categories of hate-crime victims. In this way, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide a sufficient sample to identify the total number of defendants who may be affected by the proposal or to estimate the number of new state-responsible prison sentences that may result from enactment of the proposal. Therefore, the magnitude of the impact on prison bed space needs cannot be determined.

Local adult correctional facilities. Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

Adult community corrections resources. Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases affected cannot be determined, the potential impact on community corrections cannot be quantified.

Virginia’s sentencing guidelines. While the sentencing guidelines cover felony violations of § 18.2-51, the guidelines would not apply to the new hate-crime offense added by the proposal (when the act is the primary, or most serious, offense at sentencing). Furthermore, 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 cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 1289 of the Acts of Assembly of 2020 requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, the estimated amount of the necessary appropriation cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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² Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.