



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1142 **(Patron – Scott, J.M.)**

LD#: 10101472

Date: 12/3/2009

Topic: Definition of hate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000*
- **Local Adult Correctional Facilities:**
\$1,510 (less than 1 bed)
- **Adult Community Corrections Programs:**
Cannot be determined

- **Juvenile Correctional Centers:**
Cannot be determined
- **Juvenile Detention Facilities:**
Cannot be determined

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 781 of the 2009 Acts of Assembly requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

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 sexual orientation to certain offenses covered as “hate crimes.”

Under current law, simple assault is punished as a Class 1 misdemeanor. However, if the victim is chosen because of his 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. The proposal expands the second portion of the heightened penalties, relating to assault and battery resulting in bodily injury, to include offenses committed because of the victim’s sexual orientation. An offender could also be convicted under existing *Code* of other felony assault charges, regardless of the way in which they choose a victim, depending upon his intent and the severity of the victim’s injuries.

Trespassing with the intent to damage property (§ 18.2-121) is a Class 1 misdemeanor, but the punishment increases to a Class 6 felony with a 30-day mandatory minimum sentence if the victim is selected because of his race, religious conviction, color or national origin. Under the proposal, these enhancements would also apply if the offender targets the victim based upon sexual orientation.

The proposed legislation also adds sexual orientation to § 8.01-42.1, which provides for civil action by any person subjected to harassment, violence or vandalism based on his race, religious conviction or ethnic origin, and to § 52-8.5, which requires the state police to maintain a central repository for information on terroristic acts and those who carry out such acts, including those based on race, religion, or ethnicity. In addition, the proposal modifies § 8.01-49.1(A), which limits liability for restricting access to or availability of defamatory material on the internet, to include sexual orientation.

Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar year 2008,¹ there were 260 instances of hate-motivated acts based on the race, religion, ethnicity, sexual orientation or disability of the victim where the incident involved an assault or the destruction of property through vandalism. Of the total, 121 instances were a simple or aggravated assault and 139 incidents involved vandalism or destruction of property. The report indicates that 30 of the 260 incidents (11.5%) were based on the victim's sexual orientation. More specifically, 13 victims of assault and 17 victims of destruction of property were targeted because of their sexual orientation.

According to Local Inmate Data System (LIDS) data, a misdemeanor hate-crime assault and battery (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 132 inmates held pre- or post-trial in jail during calendar year (CY) 2007 and CY2008. Nearly all of the cases resulted in a local-responsible (jail) term, with a median sentence of 3 months.

According to fiscal year (FY) 2007 and FY2008 Pre/Post-Sentence Investigation (PSI) data, there were two felony convictions for hate-crime assault and battery resulting in bodily injury (§ 18.2-57(B)) during this time period. In both of these cases, the primary, or most serious offense, was a street robbery. There were two convictions for trespassing with intent to damage property as a hate crime (§ 18.2-121) during the same two-year period; the hate crime was the primary offense in both of these cases. The two offenders were sentenced to a local-responsible (jail) term; while one offender received a sentence of two months, the other was sentenced to six months in jail. Although no individuals were sentenced to a prison term for these offenses between FY2004 and FY2008, offenders convicted of a felony under the proposal would be eligible to receive a prison term.

Impact of Proposed Legislation:

State adult correctional facilities. Because it raises the penalties for assault and battery resulting in bodily injury and trespassing with the intent to damage property to felonies when the victim is selected due to his or her sexual orientation, the proposal may increase the future state-responsible (prison) bed space needs of the Commonwealth. Although eligible for a prison sentence, none of the offenders convicted of a hate-crime felony during the past five years were given a prison term. Nonetheless, the proposal could result in additional offenders sentenced to prison in the future. The magnitude of the impact cannot be estimated, but it is likely to be small.

Local adult correctional facilities. Felony offenders given a local-responsible (jail) term typically receive longer sentences on average than misdemeanor offenders who serve jail time. In this way, the proposal is expected to increase the need for local-responsible (jail) beds. The impact on local-responsible (jail) beds is estimated to be an increase of less than one bed by FY2016 (state cost: \$1,367; local cost: \$1,510).

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.

¹ Virginia State Police. (2008). *Crime in Virginia 2008*.
http://www.vsp.state.va.us/downloads/Crime_in_Virginia_2008.pdf

Virginia's sentencing guidelines. Offenses listed under §§ 18.2-57(B) and 18.2-121 are not covered by the guidelines as the primary offense but may augment the guidelines recommendation if a covered offense is the most serious at conviction. No adjustment to the guidelines would be necessary under the proposal.

Juvenile correctional centers. According to the Department of Juvenile Justice, the impact of the proposal on juvenile correctional center 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 781 of the 2009 Acts of Assembly 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.

Assumptions underlying the analysis include:

General Assumptions

1. State and local responsibility is based on § 53.1-20 as analyzed for the Secretary of Public Safety's Committee on Inmate Forecasting in 2009.
2. Cost per jail bed was based on The Compensation Board's FY2008 Jail Cost Report. The state cost was calculated from the revenue portion and the resulting sum was \$29.93 per day or \$10,932 per year. The local cost was calculated by using the daily expenditure cost of \$67.99 per inmate (not including capital accounts or debt service) as the base, and subtracting revenues accrued from the state and federal governments, which resulted in \$33.06 per day or \$12,075 per year. *Where the estimated bed space impact included a portion (or fraction) of a bed, a prorated cost was included in the estimate.*

Assumptions relating to sentence lengths

1. The impact of the proposed legislation, which would be effective on July 1, 2010, is phased in to account for case processing time.
2. To gauge the impact on sentencing, it was assumed that the distribution of sentences for the affected cases will be similar to the distribution of sentences under the existing provisions for existing felony assault and trespassing hate crimes under §§ 18.2-57 and 18.2-121, respectively.
3. The estimated number of offenders who would be sentenced under the proposal was adjusted to reflect the proportion of incidents reported for the proposed hate crime compared to existing hate crimes, which cover race, religion and ethnicity. For assault and battery, the number of hate crime simple assault incidents was estimated based upon the proportion of hate crime assaults that were simple assaults in CY2006. Specifically, 84.9% of assault incidents identified as hate crimes based on race, religion, ethnicity or sexual orientation in CY2006 were simple assaults. For trespassing, 17 hate crime incidents were related to sexual orientation in CY2009, out of the 130 total trespassing incidents based upon race, religion, ethnicity or sexual orientation.
4. The local-responsible bed-space impact was derived by estimating the increased number of convictions under the proposed legislation. Release dates were estimated based on the average rates at which felony inmates in local jails earned sentence credits. For local-responsible felons, this rate was 10.3%.

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