



Impact Analysis on Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 844 (Patron – Hope)

LD#: 10100770

Date: 12/11/2009

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 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 due to a person's homeless status to certain offenses covered as "hate crimes." Under the proposal, a homeless person is defined as an individual who lacks a fixed, regular, and adequate nighttime residence.

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 these provisions to include offenses committed because of the victim's status as a homeless person. 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 his status as a homeless person.

The proposed legislation also adds homeless individuals 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 homeless individuals.

Analysis:

According to a report published by the Virginia Department of Housing and Community Development (DHCD),¹ at least 8,913 individuals were homeless during a 24-hour period in January 2009. However, DHCD estimates that between 35,652 and 44,565 individuals in Virginia will experience homelessness during 2009.

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 three 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 given a prison sentence 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 status as a homeless person, 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 being sentenced to prison in the future. The magnitude of the impact cannot be estimated.

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. In addition, the imposition of a 30-day mandatory minimum for certain crimes may also increase the need for local-responsible (jail) beds. However, the magnitude of the impact cannot be determined.

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 Department of Housing and Community Development. (2009). *Virginia's Homeless Programs 2008-09 Program Year: A Report to the House Appropriations and Senate Finance Committees*. http://www.dhcd.virginia.gov/HomelessnessToHomeownership/PDFs/Virginia_Homeless_Report.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.

homeless01_0770