



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 1776

(Patron – Plum)

LD#: 17102505

Date: 1/3/2017

Topic: Definition of hate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
None (\$0)
- **Local Adult Correctional Facilities:**
Cannot be determined, likely to be small
- **Adult Community Corrections Programs:**
Cannot be determined, likely to be small

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

*Provided by the Department of Juvenile Justice

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 gender, sexual orientation, gender identity or disability to certain offenses classified as “hate crimes.”

Under current law, simple assault is punished as a Class 1 misdemeanor. However, if the victim is chosen because of his or her 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. 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 with a 30-day mandatory minimum sentence if the victim is selected because of his or her race, religious conviction, color, or national origin. The proposal expands the hate crime provisions to include crimes committed because of the victim’s gender, sexual orientation, gender identity or disability.

The proposed legislation also adds gender, sexual orientation, gender identity and disability to § 52-8.5, which requires the Department of State Police to include acts based on these characteristics in its central repository of hate crime information.

Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar years 2014 and 2015,¹ there were 234 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, 138 instances were a simple or aggravated assault and 96 incidents involved vandalism or destruction of property. The reports indicate that 36 of the 234 incidents (15.4%) were based on the victim's sexual orientation and 5 incidents (2.1%) were based on the victim's disability. More specifically, 27 victims of assault and 9 victims of destruction of property were targeted because of their sexual orientation; furthermore, 4 victims of assault and 1 victim of destruction of property were targeted because of their disability. The *Crime in Virginia* reports do not contain detailed information regarding hate-motivated crimes that were committed because of the victim's gender or gender identity.

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2011 through FY2016, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 29 offenders. Of these, 55.2% received probation or were sentenced to the time served by the offender while awaiting trial; the remaining 44.8% were sentenced to local-responsible (jail) terms, with a median sentence of two months.

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. Two offenders were convicted of trespassing with intent to damage property as a hate crime (§ 18.2-121) as the primary offense; these offenders were sentenced to serve, respectively, ten and twelve months in jail.

Impact of Proposed Legislation:

State adult correctional facilities. Since it expands the applicability of two existing felony offenses to include acts committed because of the victim's gender, sexual orientation, gender identity or disability, the proposal may increase the number of offenders convicted of a felony under §§ 18.2-57(B) and 18.2-121. In the six most recent fiscal years, however, none of the offenders convicted of one of the existing hate-crime felonies have received a state-responsible (prison) sentence. Therefore, the proposal is not expected to increase the state-responsible bed space needs of the Commonwealth during the six-year window specified by § 30-19.1:4 for legislative impact statements.

Local adult correctional facilities. By expanding the applicability of an existing Class 1 misdemeanor offense and two felony offenses that carry mandatory minimum jail terms, the proposal may increase local-responsible (jail) bed space needs. Because the number of new convictions resulting from the proposal cannot be determined, the magnitude of the impact on jail bed space needs cannot be estimated. However, any impact is likely to be small.

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. However, any impact on adult community corrections resources is likely to be small.

¹ Virginia State Police. (2015). *Crime in Virginia 2014*.
www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2014.pdf;
Virginia State Police. (2016). *Crime in Virginia 2015*.
www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2015.pdf

Virginia’s sentencing guidelines. 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 is \$0 for periods of imprisonment in state adult correctional facilities and cannot be determined for periods of commitment to the custody of the Department of Juvenile Justice.

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