



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 300

(Patron – Watts)

LD#: 18102625

Date: 12/19/2017

Topic: Assault hate crime

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 by elevating simple assault and assault and battery without bodily injury committed because of the race, religious conviction, color or national origin of another from a Class 1 misdemeanor to a Class 6 felony. Upon conviction, the term of confinement must be at least six months with 30 days mandatory confinement.

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.

Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar years 2015 and 2016,¹ there were 140 instances of hate-motivated acts based on the race, religion, ethnicity, sexual orientation, or disability of the victim where the incident involved a simple or aggravated assault.

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2012 through FY2017, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or

¹ Virginia State Police. (2016). *Crime in Virginia 2015*.

www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2015.pdf

Virginia State Police. (2017). *Crime in Virginia 2016*.

www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2016.pdf

most serious, offense at sentencing for 26 offenders. Of these, 46.2% were sentenced to the time served by the offender while awaiting trial. The remaining 53.8% were sentenced to local-responsible (jail) terms, with a median sentence of approximately 1.3 months. These offenders would be affected by the proposed felony expansion.

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. The one offender was sentenced to serve twelve months in jail.

Impact of Proposed Legislation:

State adult correctional facilities. Since an existing misdemeanor is elevated to a felony, the proposal may increase the number of offenders convicted of a felony under §§ 18.2-57(B). 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 elevating an existing Class 1 misdemeanor to a felony and retaining the same mandatory minimum jail term, the proposal may increase local-responsible (jail) bed space needs. The effect of this change on sentences to jail 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.

Virginia's sentencing guidelines. Felony convictions under §§ 18.2-57(B) 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.