



Fiscal Impact Statement for Proposed Legislation

Virginia Criminal Sentencing Commission

House Bill No. 618

Amendment in the Nature of a Substitute

(Patrons Prior to Substitute – Plum and Kory)

LD#: 20108748

Date: 02/20/2020

Topic: Definition of hate crimes

Fiscal Impact Summary:

- **State Adult Correctional Facilities:**
\$50,000 *
- **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

* The estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 854 of the 2019 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 gender, disability, gender identity, and sexual orientation to certain offenses classified as “hate crimes.” The proposal defines disability as a physical or mental impairment that substantially limits one or more of a person’s major life activities. Lastly, the proposal removes the provisions requiring a 30-day mandatory minimum term of confinement currently applicable to 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, disability, gender identity, or sexual orientation.

The proposal also provides for civil action and adds gender, disability, gender identity, and sexual orientation 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. In addition, the proposal explicitly includes ethnic origin throughout § 52-8.5 wherever national origin is referenced.

Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar years 2017 and 2018,¹ there were 285 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, 139 instances were a simple or aggravated assault and 146 incidents involved vandalism or destruction of property. The reports indicate that 47 of the 285 incidents (16.5%) were based on the victim's sexual orientation, and ten incidents (3.5%) were based on the victim's disability. More specifically, 27 victims of assault and 20 victims of destruction of property were targeted because of their sexual orientation. Furthermore, eight victims of assault and two victims of destruction of property were targeted because of their disability. The *Crime in Virginia* 2018 report added information regarding hate-motivated crimes that were committed because of the victim's gender or gender identity; among these new categories, one simple assault was reported based on gender bias, and one vandalism/destruction of property instance was reported based on gender identity bias.

According to General District Court Case Management System (CMS) data for fiscal year (FY) 2014 through FY2019, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 22 offenders. Of these, 59.1% were sentenced to a local-responsible (jail) term with a median sentence of approximately 1.5 months. The remaining 40.9% 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 15 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, 86.7% were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining 13.93% received probation or were sentenced to the time served by the offender while awaiting trial. 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.

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, only one offender convicted of one of the existing hate-crime felonies received a state-responsible (prison) sentence. Available data do not provide a sufficient sample 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. The proposal expands the applicability of an existing Class 1 misdemeanor offense and two felony offenses but eliminates mandatory minimum jail terms. The net

¹ Virginia State Police. (2017). *Crime in Virginia 2017*. www.vsp.state.va.us/downloads/Crime_in_Virginia/Crime_in_Virginia_2017.pdf
Virginia State Police. (2018). *Crime in Virginia 2018*.
www.vsp.state.va.us/VSP%20site/VSP/downloads/Crime_in_Virginia/Crime%20in%20Virginia_2018.pdf

impact of the proposal on local-responsible (jail) bed space needs cannot be determined. 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) 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 854 of the 2019 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.

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