



## Fiscal Impact Statement for Proposed Legislation

### Virginia Criminal Sentencing Commission

#### House Bill No. 2208

(Patron – Kilgore)

LD#: 23103994

Date: 01/09/2023

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 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 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.

Pursuant to § 30-19.1:4, fiscal impact statements prepared by the Virginia Criminal Sentencing Commission only include the estimated increase in operating costs associated with additional state-responsible prison beds and do not reflect any other costs or savings that may be associated with the proposed legislation.

#### 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) by adding victims who are intentionally selected as an expression of anti-Semitism to the categories of victims whose intentional selection for a hate crime results in a higher criminal penalty for the offense. By adding more detailed characteristics of hate-crime victims, the proposal would expand the applicability of the penalties for offenses currently classified as a hate crime under §§ 18.2-57 and 18.2-121.

The proposal also provides for civil action and adds redefined categories of hate-crime victims 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. Finally, the proposal specifies that no provider or user of an interactive computer service on the Internet shall be liable for any action voluntarily taken by it in good faith to restrict access to material that the provider or user considers to be intended to incite hatred on the basis of anti-Semitism.

Currently, under § 18.2-57, simple assault is punished as a Class 1 misdemeanor if the victim is chosen because of his or her race, religious conviction, gender, disability, gender identity, sexual orientation, color, or national origin. If bodily injury results, the penalty increases to a Class 6 felony. Currently, trespassing with the intent to damage property is a Class 1 misdemeanor under § 18.2-121. However, if the victim (the owner, user, or occupant of the property) is selected because of his or her race, religious conviction, color,

gender, disability, gender identity, sexual orientation, or national origin, the penalty is increased to a Class 6 felony.

The General Assembly in the 2020 session expanded the hate crime provisions under §§ 8.01-42.1, 8.01-49.1, 18.2-57, 18.2-121, and 52-8.5 to include the crimes committed because of the victim's gender, disability, gender identity, or sexual orientation. Prior to this revision, hate crimes had been defined as an offense committed because of the victim's race, religious conviction, color or national origin. Furthermore, during the same session, the General Assembly removed the provisions requiring a 30-day mandatory minimum term of confinement that was applicable to hate crimes defined under §§ 18.2-57 and 18.2-121.

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### Analysis:

According to the Virginia State Police *Crime in Virginia* report for calendar years 2020 and 2021,<sup>1</sup> there were 240 instances of hate-motivated acts based on the race, ethnicity, sexual orientation, religion, disability, gender, or gender identity of the victim where the incident involved an assault (simple or aggravated) or the destruction of property. Of the total, 124 instances were a simple or aggravated assault and 116 incidents involved destruction of property.

According to General District Court Case Management System (CMS) data for fiscal year FY2017 through FY2022, a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 34 offenders over this time period. Of these, 25 offenders (73.5%) were sentenced to a local-responsible jail term with a median sentence length of two months. The remaining nine offenders (26.5%) did not receive an active term of incarceration to serve after sentencing.

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 three offenders, all of whom were sentenced to serve jail terms with a median sentence of eight months. 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, 73.3% were sentenced to a local-responsible (jail) term with a median sentence of six months. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

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. One offender was sentenced to a state-responsible prison term of two years, and another was sentenced to a local-responsible jail term of nine months. The remaining offender did not receive an active term of incarceration to serve after sentencing.

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### Impact of Proposed Legislation:

**State adult correctional facilities.** The proposal expands the applicability of two existing felony offenses under §§ 18.2-57(B) and 18.2-121 to include more categories of hate-crime victims. In this way, the proposal could increase the state-responsible (prison) bed space needs of the Commonwealth. However, available data do not provide a sufficient sample to identify the total number of defendants who may be affected by the proposal or 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.

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<sup>1</sup> Virginia State Police. (2021). *Crime in Virginia 2021*. <https://vsp.virginia.gov/wp-content/uploads/2022/06/CrimeInVirginia2021.pdf>  
Virginia State Police. (2020). *Crime in Virginia 2020*. [https://vsp.virginia.gov/wp-content/uploads/2022/02/Crime\\_In\\_Virginia\\_2020.pdf](https://vsp.virginia.gov/wp-content/uploads/2022/02/Crime_In_Virginia_2020.pdf)

**Local adult correctional facilities.** Similarly, the impact of the proposal on local-responsible (jail) bed space needs cannot be determined.

**Adult community corrections resources.** Because the proposal could result in convictions and subsequent supervision requirements for an additional number of offenders, the proposal may increase the need for adult community corrections resources. Since the number of cases affected cannot be determined, the potential impact on community corrections cannot be quantified.

**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 (as additional offenses) 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.

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**Pursuant to § 30-19.1:4 of the Code of Virginia, the estimated amount of the necessary appropriation cannot be determined for periods of imprisonment in state adult correctional facilities; therefore, Chapter 2 of the Acts of Assembly of 2022, Special Session I, requires the Virginia Criminal Sentencing Commission to assign a minimum fiscal impact of \$50,000.**

**Pursuant to § 30-19.1:4 of the Code of Virginia, 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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