

Department of Planning and Budget 2023 Fiscal Impact Statement

1. Bill Number: HB2208 S1

House of Origin ☐ Introduced ☐ Substitute ☐ Engrossed

Second House ☐ In Committee ☒ Substitute ☐ Enrolled

2. Patron: Kilgore

3. Committee: Judiciary

4. Title: Hate crimes and discrimination; anti-Semitism; penalties.

5. Summary: The substitute bill amends § 18.2-57 (assault and battery), and provides that simple assault or assault and battery against another person because of their ethnicity is punishable as a Class 1 misdemeanor with a minimum confinement of six months and if a person intentionally selects the person against whom an assault and battery resulting in bodily injury is committed because of his or her ethnic origin, the person would be guilty of a Class 6 felony, and the penalty upon conviction would include a term of confinement of at least six months. The bill also provides that, pursuant to § 18.2-121, entering property of another for the purpose of damaging it, etc. because of his or her ethnic origin, the penalty is a Class 6 felony with a minimum confinement of six months.

6. Budget Amendment Necessary: Yes, Item 404

7. Fiscal Impact Estimates: Preliminary. See Item 8 below.

8. Fiscal Implications: According to data provided by the Virginia Criminal Sentencing Commission (VCSC), the Virginia State Police Crime in Virginia report for calendar years 2020 and 2021 identified 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.

VCSC reports that, according to General District Court Case Management System (CMS) data for fiscal year FY 2017 through FY 2022, 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 percent) were sentenced to a local-responsible jail term with a median sentence length of two months. The remaining nine offenders (26.5 percent) 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 percent 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.

VCSC also reports that 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.

Because the proposal expands the applicability of two existing misdemeanor and felony offenses to include more categories of hate-crime victims, this proposal could result in an increase in the number of persons sentenced to jail or prison. Anyone convicted of a Class 1 misdemeanor is subject to a sentence of up to 12 months in jail and a fine of not more than \$2,500, either or both. For someone convicted of a Class 6 felony, a judge has the option of sentencing the offender to a term of imprisonment of not less than one year nor more than five years, or in the discretion of the jury or the court trying the case without a jury, confinement in jail for not more than 12 months and a fine of not more than \$2,500, either or both.

There is not enough information available to reliably estimate the increase in jail population as a result of this proposal. However, any increase in jail population will increase costs to the state. The Commonwealth currently pays the localities \$4.00 a day for each misdemeanant or otherwise local-responsible prisoner held in a jail and \$15.00 a day for each state-responsible prisoner. It also funds a considerable portion of the jails' operating costs, e.g. correctional officers. The state's share of these costs on a per prisoner, per day basis varies from locality to locality. However, according to the Compensation Board's most recent Jail Cost Report (November 2022), the estimated total state support for local jails averaged \$40.39 per inmate, per day in FY 2021.

Due to the lack of data, the Virginia Criminal Sentencing Commission has concluded, pursuant to §30-19.1:4 of the Code of Virginia, that the impact of the proposed legislation on state-responsible (prison) bed space cannot be determined. In such cases, Chapter 2, 2022 Acts of Assembly, Special Session I, requires that a minimum impact of \$50,000 be assigned to the bill.

- 9. Specific Agency or Political Subdivisions Affected:** Department of Corrections, local and regional jails, local law enforcement agencies, Commonwealth Attorneys, Public Defenders offices, courts

10. Technical Amendment Necessary: No

11. Other Comments: None