

Department of Planning and Budget 2024 Session Fiscal Impact Statement

1. Bill Number: SB120

House of Origin Introduced Substitute Engrossed
Second House In Committee Substitute Enrolled

2. Patron: Subramanyam

3. Committee: Committee for Courts of Justice

4. Title: Hate crimes and discrimination; ethnic animosity; penalties.

5. Summary: Provides that it is the policy of the Commonwealth to safeguard all individuals within the Commonwealth from unlawful discrimination in employment and in places of public accommodation because of such individual's ethnic origin. This bill adds victims who are intentionally selected because of their ethnic origin to the categories of victims whose intentional selection for hate crimes results in a higher criminal penalty for the offence. The bill provides, pursuant to § 18.2-57, that simple assault or assault and battery against another person because of their ethnic origin is punishable as a Class 1 misdemeanor with a minimum confinement of six months and, if the assault and battery results in bodily injury, is punishable as a Class 6 felony with a minimum confinement of six months. The bill also provides that, pursuant to § 18.2-121, entering property of another for purpose of damaging it, etc. because of ethnic origin is punishable as a Class 6 felony with a minimum confinement of six months.

6. Budget Amendment Necessary: Yes, Item 390.

7. Fiscal Impact Estimates: Preliminary (see Item 8 below).

8. Fiscal Implications: According to the Virginia State Police, this bill is not expected to have a fiscal impact on agency operations. Any fiscal impact this bill may have on courts or other state agencies is not known at this time. If additional information becomes available, this impact statement will be revised.

According to data provided by the Virginia Criminal Sentencing Commission (VCSC), the Virginia State Police Crime in Virginia report for calendar years 2021 and 2022 identified 235 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, 131 instances were a simple or aggravated assault and 104 incidents involved destruction of property.

General District Court Case Management System (CMS) data provided by VCSC for fiscal year FY 2018 through FY 2023 indicate that a misdemeanor hate-crime assault (under the existing § 18.2-57(A)) was the primary, or most serious, offense at sentencing for 43 offenders over this time period. Of these, 27 offenders (62.8%) were sentenced to local-

responsible (jail) terms with a median sentence length of two months. The remaining 16 offenders (37.2%) 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 eight offenders; of these, five were sentenced to serve jail terms with a median sentence of six months. The remaining three offenders were sentenced to serve state-responsible (prison) terms with a median sentence of 1.8 years. However, another 20 offenders were convicted in circuit court of a misdemeanor hate-crime assault under § 18.257(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, 70.0% were sentenced to a local-responsible (jail) term with a median sentence of 3.3 months. The remaining offenders did not receive an active term of incarceration to serve after sentencing.

VCSC also reports that two 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; 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 localities \$5.00 a day for each misdemeanor or otherwise local-responsible prisoner held in a jail. It also funds a large 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 2023), the estimated total state support for local jails averaged \$45.76 per inmate, per day in FY 2022.

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 1 of the Acts of Assembly of 2023, Special Session I, requires that a minimum fiscal 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.