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## F I S C A L I M P A C T R E P O R T

SPONSOR: McSorley DATE TYPED: 2/05/03 HB                 

SHORT TITLE: Penalties for Hate Crimes SB 249

ANALYST: Maloy

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY03	FY04	FY03	FY04		
	See Narrative	See Narrative		Recurring	General Fund

Relates to SB 38.

### SOURCES OF INFORMATION

#### Responses Received From

Administrative Offices of the Courts

Public Defenders Office

Corrections Department

Office of the Attorney General

### SUMMARY

#### Synopsis of Bill

- Senate Bill 249 adds a new section to the Criminal Sentencing Act with sentencing enhancements for crimes that are committed against a victim or their property based on a victim's race, religion, color, national origin, ancestry, gender, or sexual orientation, and gender identity commonly referred to as "Hate Crimes".
- The bill defines "gender identity" as a person's self-perception or that by another of the person's identity as a male or female based upon the person's behavior, appearance, or physical characteristics that are in accord or opposed to a person's physical anatomy, chromosomal sex or sex at birth.
- SB 249 provides that, if the finder of fact makes a finding that an offender intentionally injured a person or intentionally damaged a person's property because of actual or perceived race, religion, color, national origin, ancestry, gender, sexual orientation, or gender identity of that person, the offender may have his or her sentence enhanced by a set

number of days depending on whether the crime is a petty misdemeanor, a misdemeanor or a felony. The enhancement term based on the underlying crime breaks down as follows:

- If the underlying crime was a petty misdemeanor, the sentence maybe increased by thirty (30) days. Such time shall not be suspended or deferred, provided the total sentence cannot exceed one hundred and eighty (180) days. Except, if the finder of fact makes a finding that the offender has a prior criminal petty misdemeanors involving hate crimes, the sentence may be enhanced by sixty (60) days. Such time shall not be suspended or deferred, provided the total sentence does not exceed one hundred and eighty (180) days
- If the underlying crime was a full misdemeanor, the sentence may be increased by ninety (90) days. Such time shall not be suspended or deferred, provided the total sentence cannot exceed three hundred sixty-four (364) days. Except, if the finder of fact makes a finding that the offender has a prior misdemeanor involving hate crimes, the sentence may be enhanced by one hundred and eighty (180) days. Such time shall not be suspended or deferred, provided the total sentence shall not exceed three hundred sixty-four (364) days.
- If the underlying crime was a non-capital felony, the sentence may be enhanced by one (1) year. Such time shall not be suspended or deferred. If the finder of fact makes a finding that the offender has a prior felony conviction that involving hate crimes, the sentence may be enhanced by three (3) years.
- SB 249 also establishes how the issue of whether or not the underlying crime is a hate crime is to be presented to the finder of fact. If the case of the underlying charge went before a jury, the issue of whether the offense was also a hate crime shall be presented to the same jury by special interrogatory. If the underlying crime is presented to a judge, the issue of whether the offense was also a hate crime shall be presented to the judge.

#### Significant Issues.

- Is the standard of proof to be the same for the underlying offense and the hate crime charge?
- Is it intended that the increase in penalty for a petty misdemeanor gives rise to an offender's right to counsel? Currently, those accused of a petty misdemeanor do not have such a right. Currently, persons facing a maximum sentence of 180 days do not have a right to counsel, or to a jury. Persons facing a maximum sentence of 190 days do have such rights.
- Is it intended that the increase in penalty for a full misdemeanor gives rise to the sentence being served in the penitentiary rather than the jail?

**3. FISCAL IMPLICATIONS**

- Enhanced sentences will result in longer terms of incarceration. This will have a fiscal and administrative impact on the Department of Corrections. However, it should be noted that the expected number of offenders who will fall into this category is small.
- The possibility of longer sentences will also increase costs for the District Attorneys Office, the Public Defenders Office and the Courts because the number of trials requested will likely increase. These additional costs should be such that these offices can absorb them due to the small number of offenders who will fall into this category.

SJM/sb:yr