

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 973

SHORT TITLE: HIV Assault

SPONSOR(S): Representative Justus

FISCAL IMPACT: Expenditures: Increase () Decrease ()
 Revenues: Increase () Decrease ()
 No Impact (X)
 No Estimate Available ()

FUND AFFECTED: General Fund () Highway Fund () Local Fund ()
 Other Fund ()

BILL SUMMARY: Adds G.S. 14-32.3 to create a Class H felony offense of HIV assault. The offense is committed when a person, knowing he or she is infected with HIV, (1) engages in intimate contact with another (defined as exposure to bodily fluid in manner that could transmit HIV virus); or (2) transfers, donates, or provides blood, tissue, semen, organs, or other infectious body fluid for transfusion, transplantation, insemination, or other administration; or (3) transfers to another any nonsterile intravenous or intramuscular drug paraphernalia that the offender has used. Violation is punishable by imprisonment of up to 10 years, a fine of up to \$20,000, or both. Requires a mandatory five-year term; prohibits suspended sentence, probation, early parole, or early release. Also makes offender civilly liable for damages if another becomes HIV infected as result of violation. Makes it an affirmative defense that person exposed know that defendant was HIV infected, know that the action could result in HIV infection, and consented to action with that knowledge. (Contains severability clause.)

EFFECTIVE DATE: December 1, 1993; applies to offenses committed on or after that date.

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department; Department of Correction

FISCAL IMPACT

	<u>FY</u> 93-94	<u>FY</u> 94-95	<u>FY</u> 95-96	<u>FY</u> 96-97	<u>FY</u> 97-98
EXPENDITURES	0	0	0	0	0
RECURRING					
NON-RECURRING					
REVENUES/RECEIPTS	0	0	0	0	0
RECURRING					

NON-RECURRING

POSITIONS: No new positions.

ASSUMPTIONS AND METHODOLOGY: The Administrative Office of the Courts (AOC) does not anticipate that this bill would have substantial fiscal impact on the Judicial Branch. The AOC predicts that there would be few new felony filings, based on the following considerations.

"First, its application to persons who know they are infected with HIV means that the population of potential offenders is limited. The HIV/STD Control Branch of the Division of Epidemiology within the North Carolina Department of Environment, Health, and Natural Resources reports that approximately 5,500 people in North Carolina tested positive for HIV between 2-1-90 and 2-28-93. (Using a scale developed by the Centers for Disease Control that takes into account the fact that test results between 1984 and 1990 were not required to be reported, as well as the fact that, in many cases, infected persons may not have been tested, they estimate that between 16,000 and 20,000 people in the state are infected.) The offense created by the proposed bill would apply to the unknown number of persons having positive test results before 1990, but would not apply to the unknown number of persons who are infected but do not know it. Therefore, while we cannot know the exact size of the covered population, it is clearly a relatively small subset of North Carolinians (less than half of one percent).

"Another consideration is that the current Public Health Law of North Carolina, Chapter 130A of the General Statutes, and the rules prescribed by the Commission for Health Services contain control measures for persons infected with HIV (see G.S. 130A-144 and 15A NCAC 19A .0202). These control measures address the activities listed in the proposed bill (intimate contact with another, donation or transfer of body parts or body fluids for administration to another, and transfer of intravenous or intramuscular drug paraphernalia that the infected person has used). A person not following the control measures is guilty of a misdemeanor, and can be imprisoned for up to two years. When nonconsensual sex offenses are involved, offenders can already be prosecuted as felons. If drug use were involved, an HIV assault may not be a new case, but rather an additional charge. Considering all these factors, we do not expect a substantial number of new defendants in such cases.

"Finally, the proposed bill contains stiff penalties for violations (imprisonment for up to ten years, with a mandatory minimum of five years that is not subject to suspension or probation, nor to early parole or early release, a fine of up to \$20,000, or both). Together, the penalty and the HIV control measures already in place would likely serve as substantial deterrents."

Although the AOC is not predicting a substantial fiscal impact on the Judicial Branch due to this individual bill, the AOC notes that at some point "the cumulative additional workload from bills that impact on the courts cannot simply be absorbed, and additional resources will be required."

Pertaining to the Department of Correction (DOC), no data is available to indicate the number of HIV offenders incarcerated under the existing legislation referenced above. A representative of Research and Planning for the DOC indicated that a few, if any, HIV offenders may be incarcerated; but, these offenders would be coded as assaults. No specific code exists within DOC to identify HIV assaults. In the absence of specific data, it is assumed that the number of cases affected by this bill would be small, and no significant fiscal impact would result.

SOURCES OF DATA: Administrative Office of the Courts; Department of Correction - Research and Planning Division

TECHNICAL CONSIDERATIONS: None

FISCAL RESEARCH DIVISION

733-4910

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[FRD#003]



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