Fiscal Note & Local Impact Statement

122 nd General Assembly of Ohio

BILL:	**Am. H.B. 686**	DATE:	**December 2, 1998**
STATUS:	**As Recommended by Senate Criminal Justice Subcommittee**	SPONSOR:	**Rep. Young**

LOCAL IMPACT STATEMENT REQUIRED: **No — Minimal cost**

CONTENTS: **Includes under felonious assault persons testing positive for HIV who engage in sexual conduct with a minor, unsuspecting adult partner, or person lacking mental capacity**

State Fiscal Highlights

STATE FUND	FY 1998	FY 1999	FUTURE YEARS
General Revenue Fund			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	Potential minimal increase	Potential minimal increase
Reparations Fund, a.k.a. Victims of Crime Fund			
Revenues	- 0 -	Potential negligible gain	Potential negligible gain
Expenditures	- 0 -	- 0 -	- 0 -

- The Department of Rehabilitation and Correction may experience a minimal increase in annual incarceration costs and post-release control costs, as it is possible that an extremely small number of additional offenders will be sentenced to prison or an equally small number of offenders who would have been sent to prison under existing law will serve longer sentences.

- An extremely small amount of locally collected court cost revenue may be generated annually for the state GRF and the Reparations Fund, a.k.a., Victims of Crime Fund.

Local Fiscal Highlights

LOCAL GOVERNMENT	FY 1998	FY 1999	FUTURE YEARS
Counties			
Revenues	Potential negligible gain	Potential negligible gain	Potential negligible gain
Expenditures	Potential minimal increase	Potential minimal increase	Potential minimal increase

- As the number of criminal matters that may be affected annually statewide appears to be extremely small, any increase in county adjudication, prosecution, and indigent defense costs will be at the most minimal.

- It is probably best not to look upon this as a revenue generation opportunity; thus, the amount of additional court cost and fine money that may be collected by counties annually will most likely be negligible.

Detailed Fiscal Analysis

Provisions of the Bill

This bill adds to the existing felonious assault offense a prohibition against persons testing positive for HIV engaging in sexual conduct with the following persons:

- A minor
- An uninformed adult partner
- Any person lacking mental capacity to appreciate the significance of the knowledge that the offender has tested positive for HIV

Violation of this prohibition would be a felony of the second degree, which means that a conviction carries the presumption of a definite prison term of 2-to-8 years and a maximum fine of up to $15,000.

Criminal Cases

Illinois currently has a similar, but more inclusive statute on the books involving criminal transmission of HIV (ILCS 5/12-16.2). This statute includes situations in which an individual engages in intimate contact with another, knowing that he or she is infected with HIV. In this statute, it is irrelevant whether the victim is informed or not. This statute also includes provisions governing transfer and donation of tissues and use of drug paraphernalia. The Illinois Department of Corrections reports that they currently have 3 inmates in their prison system for this Class 2 felony offense. This statute has been in effect since 1989, and only a handful of people has been charged under the law.

Discussions with prosecutors and vice divisions in Ohio suggest that there will be very few criminal cases created or affected by this bill. Particularly problematic from a prosecutorial perspective could be proving in court that the defendant knew that he or she had HIV at the time of the alleged offense.

That said, it should at least be noted the bill appears to have some use in conjunction with existing law involving prostitution and HIV. Existing law states that individuals engaging in prostitution after a positive HIV test may be charged with a third degree felony (ORC 2907.25). Theoretically, these individuals could be charged with a second-degree felony under this bill. However, the practical application of the existing statute makes this unlikely. Discussions with police vice divisions indicate that they rarely have access to prostitutes' HIV tests. Under ORC 2907.27, HIV tests may be performed on persons charged with prostitution at the request of the prosecutor or the victim. In practice, however, law enforcement agencies rarely have access to the test results. Two major municipal vice squads were asked about the number of successful prosecutions stemming from this statute. One city had three cases in the past year; another had approximately six charges with no successful prosecutions. The Criminal Sentencing Commission estimates that there are fewer than six individuals entering the prison system per year under this

statute. This is an area of criminal activity in which this bill would appear to carry great potential applicability, but from which few new cases will likely be generated as a result of privacy laws and practices.

Based on the experience of Illinois and discussions with Ohio's law enforcement and prosecutorial community, LBO assumes that there will be extremely few existing criminal cases affected, or new criminal cases created, by this bill annually.

State Government

Expenditures. Felonious assault is a felony of the second degree. Conviction on an offense of the second degree generally carries a presumption in favor of a definite prison term of anywhere from 2-to-8 years. Clearly then, as a result of this bill, it is possible that additional offenders will be sentenced to prison, and that offenders who would have been sent to prison under existing law will serve longer sentences. However, as it appears that the number of criminal cases created or affected by this bill annually will be extremely small, the potential increase in the state's prison population will be small as well. The Department of Rehabilitation and Correction may experience a minimal increase in annual incarceration costs and post-release control costs. The latter marks the period after release from imprisonment during which offenders are subject to supervision by the Adult Parole Authority. Costs for medical care of inmates with HIV or AIDS are expected to be minimal. Very few individuals are expected to enter the prison system as a result of the provisions of this bill, and the annual cost for medical care to such individuals is estimated to be around $5,000 to $10,000 per inmate.

Revenues. When an individual is convicted of or pleads guilty to a felony offense, the court is generally required to collect an additional $11 in court costs and then pay it into the state's GRF. Although never referred to expressly in any of its enactments, the General Assembly intended that these moneys were to be used to assist public defender offices. If, as we previously alluded, there are very few additional criminal cases created or affected by this bill, then the amount of additional GRF revenue that may be generated annually will be extremely small.

When an individual is convicted of or pleads guilty to a felony offense, the court is also generally required to collect an additional $30 in court costs and then pay it into the Reparations Fund, a.k.a. Victims of Crime Fund. If, as we previously alluded, there are very few criminal cases created or affected by this bill, then the amount of additional revenue that may be generated annually for the Reparations Fund will be extremely small as well.

Counties

Expenditures. Counties may experience an increase in adjudication, prosecution, and indigent defense burdens in handling the criminal cases created or affected by this bill. However, as that number of criminal matters appears to be extremely small, any increase in that annual burden is likely to be minimal at most.

Revenues. Additional court cost and fine revenue may be generated for counties. Conviction on a felonious assault charge, which is a second-degree felony, carries a maximum $15,000 fine. However, as the number of criminal matters appears to be extremely small, it is probably best not to look at this as a revenue generation opportunity; thus, the amount of additional court cost and fine revenue that may be collected by counties annually will most likely be negligible.

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