

- 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. The amount of fine and court cost revenue likely to be collected by counties annually will most likely be negligible.
- Counties and municipalities may incur negligible increases in expenditures for the cost of medical examinations and HIV testing of a small number of indigent offenders likely to be charged with this offense who would be unable to pay for HIV testing.

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.

The bill requires that persons arrested for violating these prohibitions be tested for HIV at the request of the prosecutor, victim, or any other person whom the court reasonable believes had contact with the accused in circumstances related to the offense that may have resulted in the transmission of HIV. The cost of a medical examination and test by hospitals or other emergency medical facilities are to be borne by the accused, unless the accused is determined to be indigent. For accused who are indigent, a county becomes responsible for covering that cost if the offense allegedly was committed within an unincorporated area. If the offense allegedly occurred within a municipal corporation, that municipality bears the cost for medical examination and testing of indigent individuals.

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 was 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 have been charged under the law.

Our discussions with prosecutors and vice divisions of law enforcement agencies 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 that 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 vice divisions of law enforcement agencies indicate that they rarely have access to a prostitute's HIV test. 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. Three 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 third has had seven since the enactment of the statute in 1996. The Ohio 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 our 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 (DRC) 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 DRC's 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 a felony offense, the court is generally required to collect an additional \$11 in court costs that is deposited 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 will be 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 a felony offense, the court is also generally required to collect an additional \$30 in court costs that is deposited into the Reparations Fund, a.k.a. Victims of Crime Fund. If, as we previously alluded, there will be 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.

Local Government

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.

Counties and municipalities may also experience a negligible increase in expenditures associated with absorbing the cost of medical examinations and HIV testing for indigent individuals. As the number of cases is expected to be relatively small, this would represent a negligible increase in expenditures. One major municipal police department estimates that it costs the department approximately \$50 to test prostitutes for HIV under existing statute.

Laboratory testing corporations estimate that tests cost between \$54.75 (book cost) and \$96 (patient cost) for initial testing, and if that test comes back positive, the fee is an additional \$64 (book cost) to \$113 (patient cost) for confirmation. The total cost of testing one offender would range between \$118.75 and \$209.

However, local departments of health are able to perform initial HIV screenings for \$6.50, with confirmations costing another \$32. If local government were to utilize these services, it is likely that the testing costs resulting from this bill would be negligible.

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.

□ *LBO staff: Laura Bickle, Budget/Policy Analyst*
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