

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE FISCAL NOTE

BILL NUMBER: HB 974

SHORT TITLE: AIDS Test/Sex Offenders

SPONSOR(S): Representative Justus

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

FUNDS AFFECTED: General Fund (X) Highway Fund () Local Fund (X)
 Other Fund ()

BILL SUMMARY: Creates new G.S. 15A-615 allowing victim, or parent, guardian or guardian ad litem of minor victim, to request that defendant be tested for HIV infection after a finding of probable cause or the issuance of an indictment for a nonconsensual sex offense listed in bill. Requires district attorney, upon such request, to petition court to require defendant to be tested for HIV infection (testing to be performed by Department of Correction if defendant is in its custody and by local health department in all other circumstances). Provides that test results will be given to victim and defendant, but that results are not admissible as evidence in any criminal proceeding.

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

PRINCIPAL DEPARTMENT(S)/PROGRAM(S) AFFECTED: Judicial Department; Department of Correction, Local Health Departments

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
RECURRING EXPEND.*	\$44,198	\$44,198	\$44,198	\$44,198	\$44,198
GENERAL FUND	770	770	770	770	770
LOCAL FUND	43,428	43,428	43,428	43,428	43,428
NON-RECURRING	0	0	0	0	0
REVENUES/RECEIPTS	0	0	0	0	0

* Projected expenditures do not include inflationary increases.

POSITIONS: No new positions.

ASSUMPTIONS AND METHODOLOGY: The expenditures estimated above represent the cost for local health departments and the Department of Correction to provide HIV testing and test related counseling for

1,215 sex offenders. This number of offenders was arrived at after the Administrative Office of the Courts (AOC) conducted a name search (i.e., a search which identifies numbers of individuals rather than numbers of filings) on persons charged with nonconsensual sex offenses, including first and second degree rape, first and second degree sex offense, crime against nature, and felonious incest involving a child. Other criminal sex offenses such as indecent liberties and attempted offenses were not counted since they generally do not involve nonconsensual intercourse. (The proposed legislation specifically targets cases involving vaginal, anal, or oral intercourse.)

Based on this analysis, the AOC estimated that approximately 1,350 defendants per year would be subject to an HIV test under this bill. Although it seems likely that the vast majority of victims would want defendants to be tested for AIDS, it seems probable that in some cases, whether due to a lack of information or other reasons, the victim would not request an HIV test. Therefore, it is estimated that an HIV test would be requested for at least 90% of the defendants, or in 1,215 cases.

Relying on this initial estimate, projected expenditures have been calculated for each of the departments involved (i.e., Judicial Department, Department of Correction, and the local health departments). The assumptions and methodology associated with the analyses for each individual department are as follows:

Judicial Department No substantial fiscal impact is anticipated for this department. The following narrative has been prepared by the Administrative Office of the Courts and is the basis for this assumption.

" ...the current Public Health Law of North Carolina, Chapter 130A of the General Statutes, and the rules prescribed by the Commission for Health Services (see 15A NCAC 19A.0202) already provide that such defendants shall be tested if 'the victim notifies the local or state health director and requests information concerning the HIV status of the defendant' and if 'the local or state health director determines that the alleged sexual contact involved in the offense would pose a significant risk of transmission of HIV if the defendant were HIV infected.' Thus, the bill contrasts with current law in that the victim's request would be directed to the district attorney, rather than to the local or state health director.

The district attorney is to petition the court for an order requiring the defendant to be tested, and the court is to (must) grant the petition. This bill, unlike the rules of the Commission, does not require a determination by the health director concerning whether the alleged offense involved a significant risk of infection.

While the changes noted above would seem to shift substantial duties from public health officers to district attorney's offices, this is not entirely the case for two reasons. First, as a practical matter, district attorneys sometimes are involved in

the request because victims may notify law enforcement officers of their concern, then law enforcement contacts the district attorney's office, and the district attorney's office may coordinate with the local health director to process the request. Second, while under G.S. 130A-25, violation of the rules of the Commission for Health Services or a local board of health is a misdemeanor, the order from the public health agency is sometimes not followed, with the defendant refusing to submit to testing. In such cases, the district attorney's office must petition the court for an order enforcing the public health director's order, and thus is already involved.

Assuming that 90%, or 1,094, of the requests from victims will require additional involvement above that under current law, we can estimate the impact on the court system. District attorneys, with the help of victim/witness assistant staff, will be responsible for preparing and presenting petitions for AIDS-test orders. Since the provisions of HB 974 are mandatory (i.e., the district attorney must petition the court and the court must issue an order), in general, no contested issues and relatively little time would be involved for each petition. In fact, routinization of this process would likely result in less expenditure of time per case for cases in which district attorneys are involved. (At least for some early cases, however, objections from defendants and appellate challenges may be expected.) If district attorney staff devote an average of fifteen minutes to each petition, including time in court, a total of 274 hours would be required to process the petitions. Because the procedures are mandatory, we assume that very little court time would be required for consideration of AIDS-test petitions and for the issuing of orders. If an average of five minutes of the court's time were required per petition, a total of about 91 hours would be required. Given that these relatively small demands would be spread throughout the state, we are not itemizing any additional personnel needs. (We are assuming that the Judicial Branch will not be responsible for payments of the AIDS tests. The unclarity in the bill concerning what agency is to pay for the tests is discussed in the "Technical Considerations" section below.)

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

Hence, the AOC does not anticipate that this bill would have a substantial fiscal impact on the Judicial Branch. However, as explained above, this bill could pose a net increase in the workload of district attorneys and superior court judges, but such increases are not expected to be substantial.

Department of Correction (DOC) The proposed legislation states that the Department of Correction shall test those defendants (i.e., the defendants from whom victims have requested an HIV test) that are in

the Department's custody. Data provided by the DOC indicates that there were 71 "safekeeper" and "pre-diagnostic" sex offenders within the custody of the DOC (prior to trial/court) in 1992. [Note that a "safekeeper" is a defendant awaiting trial and housed by the DOC rather than a local jail for medical reasons, discipline problems, etc.. A "pre-diagnostic" defendant is a defendant also awaiting court and housed by the DOC so that departmental psychologists can provide a complete psychological evaluation when such an evaluation has been ordered by the court.] Assuming that all 71 of the sex offenders are offenders that would be ordered to have an HIV test under the proposed legislation, estimated costs are calculated as follows.

Currently, HIV tests performed within the DOC are sent to an independent lab that charges \$10 per test. If the initial test result appears to be positive, the lab performs a second, more expensive test at the rate of \$30 per test. Data provided by the Laboratory Services Section of the Health Division located within the Department of Environment, Health, and Natural Resources (EHNR) estimates that between 2.5% and 3% (on average) of HIV tests performed are positive and would require a second test. Note that this average is based on a diverse population from which the EHNR lab receives testing samples. For a more specific population such as alleged sexual offenders, the average may be higher. However, since 2.5% - 3% is the best estimate available, calculations resulting in the above cost estimates are based on a 3% average and are equivalent to 2 positive DOC tests per year. Thus, an expenditure of \$770 is estimated for the DOC [(71 offenders x a \$10 cost per initial test) + (2 offenders x \$30 per second testing) = \$770]

[Note that the following section will calculate counseling costs associated with HIV testing. No such costs have been calculated for the DOC because it is assumed that the trained staff already employed within the department could adequately meet the counseling requirements for the relatively small number of sex offenders while operating within existing resources.]

Local Health Departments The majority of the costs associated with testing the estimated 1,215 sex offenders identified under this bill will occur within the local health departments. The proposed legislation states that if the defendant is not in the custody of the DOC, the defendant will be tested by the local health department. In addition, the "local health director shall inform the victim of the results of the test and shall counsel the victim appropriately." Note that the legislation also states that the local health director is responsible for the notification and counseling of all victims. The defendant shall be notified and counseled by the agency conducting the test.

Cost data provided by Jim Jones, Section Chief of the Epidemiology Section of the Health Division of EHNR, for local health departments to provide the required testing and counseling is an average of \$4.35 per test performed and \$16.30 per person counseled. Note that the \$4.35 per test estimate is based on the cost of labwork completed within the Laboratory Services Section (where tests

administered by the local health departments are currently sent) and include the additional costs associated with retesting positive results.

Based on the expected 1,215 sex offenders (noted above) who would be tested under the proposed legislation minus the 71 offenders who are expected to be tested by the DOC, the following expenditure estimates are made for the local health departments. First, there is the approximate cost of \$4,976 to test 1,144 offenders ($1,144 \times \$4.35 = \$4,976$). Secondly, there are the more considerable costs associated with counseling the 1,215 victims (lowest possible number) and 1,144 offenders not within the custody of the DOC. Combined counseling costs total \$38,452 [$(1,215 + 1,144) \times \$16.30 = \$38,452$]. [Note that the proposed bill provides that both the victim and defendant receive "appropriate counseling". For purposes of this note, appropriate counseling is assumed to mean the pre and post test counseling proscribed by the Commission for Health Services.] Combining test and counseling costs, the total costs estimated for the local health departments are \$43,428 per year.

Conclusion The fiscal impact table on page one of this note reflects the total required expenditures of \$44,198 that are estimated to result from this bill. General Fund impact is estimated to be approximately \$770 per year (costs associated with testing within the DOC). Local Fund expenditure is estimated to be \$43,428 (costs associated with tests and counseling performed by local health departments).

SOURCES OF DATA: Administrative Office of the Courts - AOC Court Information System; Interviews with a representative of the Communicable Disease Control Section of the Division of Epidemiology and the Laboratory Services Section within the North Carolina Department of Environment, Health, and Natural Resources; Interviews with a district attorney; N.C. General Statutes; N.C. Administrative Code; Department of Correction - Division of Prisons

TECHNICAL CONSIDERATIONS: As noted by the AOC, this "bill specifies who is to conduct the AIDS tests ... but it does not specify details of payment. Presumably, the Department of Correction would pay for tests for persons in their custody. Current Commission [for Health Services] rules state that a '(1) local health department shall provide testing for HIV infection with individual pre- and post-test counseling at no charge to the patient.' However, whether the local health department would conduct a test against a person's will, and what agency would pay for court-ordered tests are unclear."

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