

# SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

**BILL NO.** House Bill 1794

**PRINTER'S NO.** 2472

**AMOUNT**

No Fiscal Impact

**FUND**

General Fund

**DATE INTRODUCED**

July 20, 2011

**PRIME SPONSOR**

Representative Mustio

**HISTORY OF BILL**

Referred to JUDICIARY, July 20, 2011

Reported as amended, Oct. 4, 2011

First consideration, Oct. 4, 2011

Laid on the table, Oct. 4, 2011

Removed from table, Oct. 5, 2011

Second consideration, Oct. 17, 2011

Re-committed to APPROPRIATIONS, Oct. 17, 2011

Re-reported as committed, Oct. 18, 2011

Third consideration and final passage, Oct. 18, 2011 (197-1)  
(Remarks see House Journal Page 2022-2023), Oct. 18, 2011

In the Senate

Referred to JUDICIARY, Oct. 19, 2011

Reported as committed, Oct. 2, 2012

First consideration, Oct. 2, 2012

Second consideration, Oct. 3, 2012

Re-referred to APPROPRIATIONS, Oct. 3, 2012

Re-reported as committed, Oct. 16, 2012

**DESCRIPTION AND PURPOSE OF BILL**

House Bill 1794 creates a stand-alone act entitled the HIV-Related Testing for Sex Offenders Act to provide for a statutory mechanism for victims of certain sex crimes to request a court order the defendant to submit to HIV testing.

This legislation is required in order to bring the Commonwealth in compliance with §102 (Grants to Encourage Arrest and Enforce Protection Orders Improvements) of the federal Violence Against Women Act of 1994, 42 U.S.C. 3796hh (VAWA), which requires states to enact a statute to allow for HIV-related testing of certain sexual offenders within 48 hours of an indictment of, or filing of an information against, the defendant when the request for testing is made by the victim. Failure to enact such a statute results in a 5% reduction in federal grants awarded under VAWA.

# SENATE APPROPRIATIONS COMMITTEE

## FISCAL NOTE

House Bill 1794 gives a District Attorney or any other attorney for the Commonwealth, the authority to make application to the court for HIV-related testing of the defendant for a violation of any of the following offenses of Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes:

- §3121 – rape;
- §3122.1 - statutory sexual assault;
- §3123 – involuntary deviate sexual intercourse;
- §3124.1 – sexual assault;
- §3124.2 – institutional sexual assault;
- §3125 – aggravated indecent assault;
- §3126 – indecent assault;
- §4302 – incest;
- §4304 - endangering welfare of children, if the offense involved sexual contact with the victim;
- §6301 - corruption of minors, if the offense involved sexual contact with the victim;
- §6312 - sexual abuse of children, if the offense involved sexual contact with the victim; and
- §6320 - sexual exploitation of children, if the offense involved sexual contact with the victim.

The HIV-related test shall be administered no later than 48 hours after the filing of the bill of information or criminal information.

The legislation allows for the court to order that the cost of the HIV-related testing and any follow-up testing of the defendant be borne by the Pennsylvania Department of Health or the Pennsylvania Department of Corrections or by the defendant if the defendant is an adult. Upon conviction, the court shall order that the cost of testing be assessed against the defendant if the defendant is an adult. Finally, the bill states that in no event shall the victim pay for HIV-related testing.

This act shall take effect in 60 days.

### **FISCAL IMPACT:**

According to the Office on Violence Against Women (OVW), a component of the U.S. Department of Justice, for fiscal years 2006 through 2011, Pennsylvania received \$8,593,349 in grant awards under VAWA, of which \$429,667 was withheld due to Pennsylvania being in non-compliance with the VAWA. Enactment of this legislation will ensure that the Commonwealth will receive all grant funds awarded under VAWA with no penalty being assessed.

There are two basic tests used in testing for HIV infection. The first is a screening test called the EIA. If an EIA test indicates the presence of HIV in a person, a follow-up test, the Western Blot, is administered to confirm the initial indication. According to the Pennsylvania Department of Health, an initial HIV screening test on oral fluids costs \$13.00 and a confirmatory test costs \$40.00.

# **SENATE APPROPRIATIONS COMMITTEE**

## **FISCAL NOTE**

According to the Pennsylvania Commission on Sentencing, there are approximately 5,000 arrests annually for at least one of the Title 18 offenses listed above. There currently is no data available to determine the number of arrests that actually involved "sexual contact with the victim" or the "probable transmission of bodily fluids between a defendant and victim," a requirement for the court to order a defendant to submit to HIV-related testing.

It's assumed that any costs incurred by the Commonwealth to administer such tests would be offset by the additional VAWA grant funds that would be awarded to the Commonwealth by the U.S. Department of Justice.