

# LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

## ASSEMBLY, No. 2378

### STATE OF NEW JERSEY 221st LEGISLATURE

DATED: SEPTEMBER 30, 2024

#### SUMMARY

- Synopsis:** Upgrades certain penalties for assaulting law enforcement officer and requires offender to be tested for communicable diseases in certain instances.
- Type of Impact:** Annual State expenditure and revenue increases. Annual local expenditure increase.
- Agencies Affected:** Department of Law and Public Safety; County Prosecutors; the Judiciary; Office of the Public Defender; Department of Corrections; State Parole Board; Department of Health.

#### Office of Legislative Services Estimate

<b>Fiscal Impact</b>	<b><u>Annual</u></b>
<b>State Cost Increase</b>	Indeterminate
<b>State Revenue Increase</b>	Indeterminate
<b>Local Cost Increase</b>	Indeterminate

- The Office of Legislative Services (OLS) anticipates that the bill will result in indeterminate additional annual costs to the State. The bill upgrades certain crimes concerning assault of a law enforcement officer from crimes of the third degree and the fourth degree to a crime of the second degree. Crimes of the second degree carry a presumption of incarceration for persons convicted of these crimes while, generally, a presumption of non-incarceration applies to first time offenders of crimes of the third degree and the fourth degree.
- The following State and local agencies would incur caseload and expenditure increases: a) the Department of Law and Public Safety may have to provide guidance and other information related to the bill's provisions; b) county prosecutors would have to prosecute additional cases if the increased penalties create a reluctance on the part of the defendant to enter a guilty plea; c) the Judiciary would have to adjudicate additional cases; d) the Office of the Public Defender may have to represent additional low-income criminal defendants; e) the Department of Corrections would have to house more inmates for longer terms of imprisonment; and f) the State Parole Board would have to supervise the return to society of additional convicts.

- This bill will also result in increased costs to the State due to the provision requiring any person charged with assault with a bodily fluid be tested for communicable diseases at a clinical laboratory licensed by the Department of Health. The OLS cannot confirm how many such individuals will require testing or who will pay for it. For context, the Department of Corrections reported 128 assaults with bodily fluids for 2021.
- The State may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the upgraded offenses; however, the State's ability to collect fines and penalties has historically been limited.

## **BILL DESCRIPTION**

This bill upgrades certain penalties for assaulting a law enforcement officer. The bill also increases the penalty for assault with bodily fluids if the victim is a law enforcement officer, paid or volunteer firefighter, court service officer, or person engaged in emergency first-aid or medical services and suffers serious bodily injury.

Under current law, it is a crime of the third degree to assault a law enforcement officer if the victim suffers bodily injury; otherwise, it is a crime of the fourth degree. Under this bill, the penalty for assaulting a law enforcement officer would become a crime of the second degree if the assault results in serious bodily injury to the officer. The bill provides that a conviction for assaulting a law enforcement officer would not merge with a conviction for any other criminal offense. Under the bill, a mandatory term of incarceration under the No Early Release Act would not apply to second degree assault of a law enforcement officer, unless the assault resulted in seriously bodily injury. In addition, a person charged with second degree assault of a law enforcement officer would be prohibited from applying to enter a Pretrial Intervention Program.

The bill would also upgrade the penalty for assault with bodily fluids of a law enforcement officer, court services officer, paid or volunteer firefighter, or person engaged in emergency first-aid or medical services who suffers serious bodily injury. Under current law, it is a crime of the fourth degree for a person to assault with bodily fluids a Department of Corrections employee, county correctional police officer, juvenile correctional police officer, State juvenile facility employee, juvenile detention staff member, probation officer, any sheriff, undersheriff or sheriff's officer, or any municipal, county, or State law enforcement officer. If the victim suffers bodily injury, it is a crime of the third degree. The bill would add court service officers, firefighters, and persons engaged in emergency first-aid or medical services to the list of individuals protected under current law.

Under the bill, the penalty for assault with bodily fluids would be upgraded to a crime of the second degree if the victim suffers serious bodily injury. Additionally, any person charged with assault with a bodily fluid would be required to provide a blood sample or other biological sample drawn to be tested for communicable diseases at a clinical laboratory licensed by the Department of Health, upon consent given by the person charged or in compliance with a warrant issued by a judge of the Superior Court. The court would be required to issue a warrant upon finding there is probable cause to believe that the person's blood or other bodily fluid came into contact with a victim of the assault and that the victim is at risk of transmission of a communicable disease. Any positive results for a communicable disease will be shared with the assault victim. Additionally, the bill provides that upon the issuance of a warrant, the blood sample or biological sample taken from a person pursuant to the bill may not be used by law enforcement for any purpose other than to test for communicable diseases. Under the bill, a separate warrant is required to be obtained

before law enforcement may use the blood sample or biological sample for any other investigatory purpose. After completion of the testing, the blood sample or biological sample is required to be destroyed.

Under current law, serious bodily injury is defined as “bodily injury which creates a substantial risk of death or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.” A crime of the second degree is punishable by five to 10 years imprisonment, a fine of up to \$150,000, or both.

## **FISCAL ANALYSIS**

### ***EXECUTIVE BRANCH***

None received.

### ***OFFICE OF LEGISLATIVE SERVICES***

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The following State and local agencies would incur caseload and expenditure increases: a) the Department of Law and Public Safety may have to provide guidance and other information related to the bill’s provisions; b) county prosecutors would have to prosecute additional cases if the increased penalties create a reluctance on the part of the defendant to enter a guilty plea; c) the Judiciary would have to adjudicate additional cases; d) the Office of the Public Defender may have to represent additional low-income criminal defendants; e) the Department of Corrections would have to house more inmates for longer terms of imprisonment; and f) the State Parole Board would have to supervise the return to society of additional convicts. The OLS finds that to the extent that the bill will result in additional incarcerations, based on information provided by the Department of Corrections, the FY 2023 average annual cost for housing, ensuring security, and providing services to an incarcerated individual was \$75,574, whereas the average daily cost was \$207.

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In response to an FY 2023 budget follow-up question, the Department of Corrections noted that there were a total of 194 assaults on correctional staff in 2018, three assaults with a weapon and 51 assaults with bodily fluids. By 2021, the total number of correctional staff assaults was 319, with no assaults with weapons and 128 assaults with bodily fluids. For 2022, through June, the number of correctional staff assaults was at 247, with 129 assaults with bodily fluids. The OLS does not have data for the full year of 2022 or 2023.

The OLS cannot determine the number of convictions the bill’s provisions may generate or the associated fine and penalty revenue. The State may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the upgraded offenses; however, the State’s ability to collect fines and penalties has historically been limited.

*Section:       Judiciary*

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This legislative fiscal estimate has been produced by the Office of Legislative Services due to the failure of the Executive Branch to respond to our request for a fiscal note.

This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).