

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3093

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 12, 2023

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3093 (1R), with committee amendments.

As amended and reported by the committee, Senate Bill No. 3093 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, or person engaged in emergency first-aid or medical services suffers bodily injury.

Under current law, it is a crime of the third degree to assault a law enforcement officer if the victim is injured; 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. The bill also amends current law to specify whether an assault on a law enforcement officer results in bodily injury or serious bodily injury, or no injury. The bill provides that a conviction for assaulting a law enforcement officer would not merge with any other criminal offense. Under the bill, a mandatory term of incarceration under the No Early Release Act (NERA) would not apply to second degree assault of a law enforcement officer, unless the assault resulted in bodily injury or seriously bodily injury.

The amended bill would also upgrade the penalty for assault with bodily fluids of a law enforcement officer, paid or volunteer firefighter, or person engaged in emergency first-aid or medical services suffers bodily injury. Under current law, it is a crime of the fourth degree for a person to assault 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 amended bill would add firefighters and persons engaged in emergency first-aid or medical services to the list of officers 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 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. Additionally, a warrant would be required to be issued telephonically, in accordance with the Rules of Court, if the judge is satisfied that sufficient grounds for granting the application have been shown. Any positive results for a communicable disease will be shared with the assault victim.

A crime of the second degree is punishable by five to 10 years imprisonment, a fine of up to \$150,000, or both.

COMMITTEE AMENDMENTS

The committee amendments:

(1) amend current law to specify whether an assault on a law enforcement officer results in bodily injury or serious bodily injury, or no injury;

(2) remove the provision prohibiting a defendant from entering a guilty plea to a lesser charge; and

(3) provide that a person charged with assault with a bodily fluid would be required to provide a blood or other biological sample upon consent or in accordance 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. Additionally, a warrant would be required to be issued telephonically, in accordance with the Rules of Court, if the judge is satisfied that sufficient grounds for granting the application have been shown.

FISCAL IMPACT:

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 agencies would incur caseload and expenditure increases: i) the Department of Corrections would have to house more inmates for longer terms of imprisonment and the State Parole Board would have to supervise their return to society; ii) the Judiciary would need to adjudicate additional cases; iii) the Office of the Public Defender may have to represent additional low-income criminal defendants; and iv) the Department of Law and Public Safety would have to prosecute additional cases if the increased penalties create a reluctance on the part of the defendant to enter a guilty plea.

This bill will also result in increased costs to the State due to the requirement that, in certain instances, persons 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. For 2022, through June, 129 assaults with bodily fluids were reported by the Department of Corrections.

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.