

LEGISLATIVE FISCAL ESTIMATE

SENATE, No. 3346

STATE OF NEW JERSEY

220th LEGISLATURE

DATED: MARCH 6, 2023

SUMMARY

Synopsis: Upgrades burglary of a residence to crime of the second degree.

Type of Impact: Annual expenditure and revenue increases to the State.

Agencies Affected: Department of Corrections; State Parole Board; the Judiciary; Department of Law and Public Safety; Office of the Public Defender.

Office of Legislative Services Estimate

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

- The Office of Legislative Services (OLS) anticipates that the Department of Corrections would incur indeterminate annual cost increases under the bill if individuals were given prison sentences or were sentenced to longer prison terms than they otherwise would have been absent the bill’s provisions. The State Parole Board would also have to supervise the return to society of additional formerly incarcerated persons.
- Crimes of the second degree carry a presumption of incarceration for all persons convicted of these crimes, while a presumption of non-incarceration usually applies to first time offenders of crimes of the third degree. The upgraded offense could create a reluctance on the part of a defendant to enter a guilty plea, thereby generating additional costs for the Department of Law and Public Safety to prosecute additional cases, the Judiciary to adjudicate more cases, and the Office of the Public Defender to represent additional low-income criminal defendants.
- The State may receive indeterminate annual revenue from fines and penalties imposed on and collected from individuals convicted of the upgraded offense. However, the State’s ability to collect these fines and penalties has historically been limited.

BILL DESCRIPTION

The bill establishes that a person who unlawfully enters or surreptitiously remains in a dwelling or other structure adapted for overnight accommodation of persons, whether or not a person is

actually present, is guilty of burglary and a crime of the second degree. This description could apply to residential homes, condominiums, apartments, guest homes, vacation rentals, and other such places for overnight lodging, whether or not occupied at the time of the act.

This bill further indicates that a person who commits burglary of a residence would be subject to the provisions of the No Early Release Act. Under this act, persons convicted of certain violent or serious crimes of the first or second degree are required to serve a minimum term of at least 85 percent of the sentence imposed, during which time the person is not eligible for parole.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the Department of Corrections would incur indeterminate annual cost increases under the bill if individuals were given prison sentences or were sentenced to longer prison terms than they otherwise would have been absent the bill's provisions. Currently, burglary is a crime of the third degree with certain exceptions. This bill upgrades all crimes of burglary of a residence to a crime of the second degree and further provides that a person who commits this crime would be subject to the provisions of the No Early Release Act if convicted. Persons convicted under this statute are required to serve a minimum term of at least 85 percent of the sentence imposed. Crimes of the second degree carry a presumption of incarceration for all persons convicted of these crimes while a presumption of non-incarceration generally applies to first time offenders of crimes of the third degree. The OLS notes that to the extent the bill results in additional incarcerations or longer incarcerations, the department would incur higher costs. Based on information provided by the department, the FY 2021 average annual cost for housing an inmate was \$55,389, whereas the average daily cost was \$151.75. According to statistics made available on the department's website, as of January 2022, of the 12,492 inmates in State facilities, 526, or approximately four percent, were incarcerated for "property offenses," which include burglary, arson, theft, forgery, embezzlement, and receiving or possessing stolen property. The data do not provide a breakdown by the number of inmates incarcerated for residential burglaries. The State Parole Board would also have to supervise the return to society of additional formerly incarcerated persons, which would result in increased utilization of the Parole Board's resources.

The OLS finds that the upgraded offense could create a reluctance on the part of a defendant to enter a guilty plea, thereby generating additional costs for the Department of Law and Public Safety to prosecute additional cases, the Judiciary to adjudicate more cases, and the Office of the Public Defender to represent additional low-income criminal defendants. According to the Uniform Crime Report, 12,983 burglaries were reported for the year 2020 and 5,081 for the period January through July of 2021. The data does not provide details on how many of these were residential burglaries or how many individuals were sentenced for incarceration in State prisons.

Additional indeterminate annual State revenue may accrue from fine and penalty payments from convicted violators of the upgraded statutory provision. Crimes of the second degree are punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both; whereas, crimes of the third degree are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both. The OLS cannot determine the number of convictions the bill may

generate, and by extension, the total of any resultant fine and penalty revenue. The OLS additionally notes that State's ability to collect fines 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.).