

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3540
STATE OF NEW JERSEY
221st LEGISLATURE

DATED: JUNE 25, 2024

SUMMARY

- Synopsis:** Establishes criminal penalties for production or dissemination of deceptive audio or visual media, commonly known as “deepfakes.”
- Type of Impact:** Annual State expenditure and revenue increases.
- Agencies Affected:** The Judiciary; Department of Corrections; Department of Law and Public Safety; Office of the Public Defender; State Parole Board.

Office of Legislative Services Estimate

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

- The Office of Legislative Services (OLS) estimates that this bill may result in indeterminate annual State cost and revenue increases.
- The bill’s establishment of criminal penalties may result in the Department of Law and Public Safety prosecuting additional cases; the Judiciary adjudicating additional cases; the Office of the Public Defender representing additional indigent criminal offenders; the Department of Corrections housing repeat offenders convicted under the bill; and the State Parole Board supervising the return to society of any additional incarcerated persons. The OLS cannot quantify the exact fiscal impact since the number of cases, convictions, and any terms of imprisonment resulting from the bill’s provisions cannot be known.
- The State may realize an indeterminate increase in annual revenues from the collection of regular and enhanced fines and court fees. However, the State’s ability to collect these penalties and fees has historically been limited.

BILL DESCRIPTION

This bill establishes criminal and civil penalties for the production or dissemination of deceptive audio or visual media, commonly known as “deepfakes.”

The bill establishes a crime of the third degree if a natural person, without license or privilege to do so, generates or creates, or causes to be generated or created, deceptive audio or visual media with the intent that it be used as part of a plan or course of conduct to commit any crime, including but not limited to:

(1) a crime or offense under chapters 14 (sexual offenses), 16 (bias crimes), 20 (theft), 21 (forgery and fraud), 28 (perjury), or 29 (obstruction of justice) of Title 2C of the New Jersey Statutes;

(2) advertising commercial sex abuse of a minor;

(3) endangering the welfare of children and child pornography;

(4) threats or improper influence in official and political matters;

(5) false public alarms;

(6) harassment;

(7) cyber-harassment; or

(8) hazing.

The bill also establishes a crime of the third degree if a natural person, without license or privilege to do so, solicits, uses, or discloses a work of deceptive audio or visual media as part of a plan or course of conduct to commit any crime.

The bill also establishes a crime of the third degree if a natural person, without license or privilege to do so, discloses a work of deceptive audio or visual media that the person knows or should reasonably know was created in violation of this bill.

A crime of the third degree is punishable by a three to five year term of imprisonment, a fine of up to \$15,000, or both. In addition, the bill imposes an additional fine of up to \$30,000. A conviction for a violation of this bill does not merge with a conviction for the underlying crime in which the deepfake is used.

Under the bill, a person would be liable to the victim of a violation of the bill, who may bring a civil action in the Superior Court. The civil action authorized by this bill is to be in addition to, and not in lieu of any other civil action, injunctive relief, or other remedy available at law.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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The bill’s establishment of criminal penalties may result in the Department of Law and Public Safety prosecuting additional cases; the Judiciary adjudicating additional cases; the Office of the Public Defender representing additional indigent criminal offenders; the Department of Corrections housing repeat offenders convicted under the bill; and the State Parole Board supervising the return to society of any additional incarcerated persons. The OLS cannot quantify

the exact fiscal impact since the number of cases, convictions, and any terms of imprisonment resulting from the bill's provisions cannot be known.

The OLS notes that since a presumption of non-incarceration generally applies for first-time offenders of crimes of the third degree, the Department of Corrections and the State Parole Board may not necessarily experience an increase in costs for offenders convicted under the bill's provisions.

The bill establishes crimes of the third degree for certain deceptive audio or visual media crimes. A crime of the third degree is ordinarily punishable by a term of three to five years imprisonment, a fine of up to \$15,000, or both. However, the bill provides that a court may impose a fine of up to \$30,000. The State may realize an indeterminate increase in annual revenues from the collection of regular and enhanced fines and court fees; however, the State's ability to collect these penalties and fees 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.).