

RACIAL AND ETHNIC COMMUNITY CRIMINAL JUSTICE AND PUBLIC SAFETY IMPACT STATEMENT

[Third Reprint]

ASSEMBLY, No. 5154 STATE OF NEW JERSEY

SUMMARY

Synopsis: Requires jury, rather than court, to determine whether certain defendants are persistent offenders.

INTRODUCTION

The Office of Legislative Services does not develop or maintain source data concerning the criminal justice system in the State. The Office of Legislative Services makes reasonable efforts to obtain data from Executive Branch Departments and the Judiciary. This statement may reflect information provided by the United States Census Bureau, the Administrative Office of the Courts within the Judiciary, the New Jersey Department of Corrections, the New Jersey Office of the Attorney General, and the Youth Justice Commission in the New Jersey Department of Law and Public Safety. The publicly available data and the data provided by the responding departments and agencies contained within this statement allows for a general overview of the frequencies of events of interest (i.e. arrests, charges, and convictions) for racial and ethnic minorities for the crimes identified herein. This statement does not provide for an in-depth analysis of that data.

Additional data concerning recidivism rates and incarceration rates for the specific crimes addressed within this statement sorted by race and ethnicity is needed in order to make a conclusion on the impacts on racial and ethnic minorities. Additional data concerning the deterrent effects of similar laws of this type is needed to determine the impact on community criminal justice and public safety. It should be noted that the data needed may not currently be collected by the responding departments or agencies or may not exist.¹

BILL DESCRIPTION

Assembly Bill No. 5154 (3R) requires the jury in a criminal case, rather than the judge, to determine whether certain defendants are persistent offenders subject to an extended term of imprisonment. The bill is intended to conform the provisions of several statutes to recent rulings by the United States Supreme Court and New Jersey Supreme Court.

¹ This racial and ethnic community criminal justice and public safety impact statement has been produced by the Office of Legislative Services pursuant to section 2 of P.L.2017, c.286 (C.52:11-57.1). Although impact statements are considered a tool for policymaking, the Office of Legislative Services does not take a policy position in preparing a racial and ethnic community criminal justice and public safety impact statement. The role of the Office of Legislative Services is to gather and present data for legislators to review. This statement may reflect information provided by the United States Census Bureau, Office of Juvenile Justice and Delinquency Prevention in the United States Department of Justice, New Jersey Department of Corrections, and Youth Justice Commission in the New Jersey Department of Law and Public Safety.

Under current law, upon application of the prosecutor, the judge may sentence a person convicted of a crime of the first, second, or third degree to an extended term of imprisonment if the judge finds that the defendant is a persistent offender. The statute defines a persistent offender as “a person who at the time of the commission of the crime is 21 years of age or over, who has been previously convicted on at least two separate occasions of two crimes, committed at different times, when he was at least 18 years of age, if the latest in time of these crimes or the date of the defendant’s last release from confinement, whichever is later, is within 10 years of the date of the crime for which the defendant is being sentenced.”

In Erlinger v. United States, 602 U.S. 821 (2024), a case involving the federal Armed Career Criminal Act, the United States Supreme Court held that the Fifth and Sixth Amendments to the United States Constitution require a unanimous jury to determine beyond a reasonable doubt whether a defendant’s past offenses were “committed on separate occasions.” The New Jersey Supreme Court, in State v. Carlton, 262 N.J. 629 (2026), called on the Legislature to promptly amend the New Jersey persistent offender statute to comply with the ruling of the United States Supreme Court and provide clear direction to the courts, prosecutors, and defense attorneys.

The bill provides that the court may sentence a person convicted of a crime of the first, second, or third degree to an extended term of imprisonment only if the grounds demonstrating that the defendant is a persistent offender have been established in a separate proceeding before the jury, and the jury unanimously finds beyond a reasonable doubt that the enhancing facts existed. The proceeding would be conducted after the jury finds the defendant guilty.

The bill also provides that, in order for the court to have the option to sentence a defendant to an extended term in a case where a grand jury presented an indictment, the predicate enhancing facts must have been presented to the grand jury and charged in that indictment. If the defendant waives the right to a jury trial, the court would need to find beyond a reasonable doubt that the enhancing facts existed. If the defendant pleads guilty to the substantive crime, the defendant would need to knowingly and voluntarily admit to the enhancing facts in order for the court to have the option to sentence the defendant to an extended term.

Federal and State Census Information²

	Population	Caucasian	African American	Native American/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander	Hispanic	Two or More Races /Other
National Census Estimate	331,450,000	59.3%	13.6%	1.3%	6.1%	0.3%	18.9%	2.9%
State Census Estimate	9,289,000	53.5%	15.3%	0.7%	10.3%	0.1%	21.5%	2.4%

² Publicly available data obtained from the federal census for national and State populations as of April 1, 2020.

Federal and State Inmate Population Data³

	Population	Caucasian	African American	Native American/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander	Hispanic	Two or More Races /Other
Federal Adult Inmate Population ⁴	156,241	56.98%	38.5%	3.1%	1.6%	N/A	29.5%	N/A
State Adult Inmate Population ⁵	10,679	26%	60%	.1%	1%	.02%	20%	6%

State Census and State Inmate Population Data

	Population	Caucasian	African American	Native American/ Alaska Native	Asian	Native Hawaiian/ Other Pacific Islander	Hispanic	Two or More Races /Other
State Census Estimate	9,289,000	53.5%	15.3%	0.7%	10.3%	0.1%	21.5%	2.4%
State Adult Inmate Population ⁶	10,679	26%	60%	.1%	1%	.02%	20%	6%

DATA PROVIDED BY THE EXECUTIVE BRANCH

The Office of the Attorney General did not provide, nor does the publicly available data from the Criminal Justice Data Dashboard maintained by the Office of the Attorney General contain, relevant statistical data that captures the nature of the persistent offender sentencing scheme described within this bill.

The following response was provided by the Youth Justice Commission:

The Youth Justice Commission (YJC) does not maintain or have direct access to detailed data on youth arrests, prosecutions, or adjudications (i.e. convictions). The YJC is not a prosecutorial agency. The YJC does not keep racial and ethnic data segregated by crimes for arrests, prosecutions, or adjudications for the juveniles committed to its care.

The Department of Corrections did not provide, nor does the publicly available data from the Department of the Corrections concerning the State inmate population provide relevant statistical data that captures the nature of the persistent offender sentencing scheme described within this bill.

³ Categorical racial information as presented in the chart may differ from how originally presented by the Federal Bureau of Prisons and the New Jersey Department of Corrections. The Federal Bureau of Prisons reports inmate race using the following categories: Asian, Black, Native American, and White. New Jersey Department of Corrections reports inmate race using the following categories: Black, White, Asian, American Indian/Alaskan Native, Native Hawaiian/Pacific Islander, and Other or Not Coded.

⁴ Publicly available data of federally sentenced persons in custody of the Federal Bureau of Prisons, as of June 20, 2026.

⁵ Publicly available data produced by the New Jersey Department of Corrections concerning the State inmate population on January 1, 2026.

⁶ Publicly available data produced by the New Jersey Department of Corrections concerning the State inmate population on January 1, 2026.

DATA PROVIDED BY THE JUDICIARY

The Administrative Office of the Courts was unable to provide data within the timeframe, established by the Legislative Services Commission, for the production of the Racial and Ethnic Community Justice and Public Safety Impact Statement.