LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 4417

STATE OF NEW JERSEY
222nd LEGISLATURE

DATED: JUNE 23, 2026

SUMMARY

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

Type of Impact: Annual State expenditure increase.

Agencies Affected: The Judiciary; Office of the Public Defender; counties.

Office of Legislative Services Estimate

Fiscal Impact	Annual
State Expenditure Increase	Indeterminate
Local Expenditure Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill will result in indeterminate annual cost increases to the State. The bill 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, which is likely to extend jury deliberations. The judge's bench time as well as the workload of public defenders will also increase in tandem with the length of the jury deliberations. This may result in increased administrative costs and judicial workload.

- Additionally, the OLS notes that per the bill, if the defendant waives the right to a jury trial, the court would be required to find beyond a reasonable doubt that the enhancing facts existed, which could also result in additional bench time and administrative costs. The OLS, however, does not have any data to indicate the number of defendants waiving their right to a jury trial.

- The OLS notes that the county prosecutors may see an increase in administrative costs and workload due to the provision requiring that the grand jury indictment must now include the predicate enhancing fact and that these must be presented to the grand jury.

BILL DESCRIPTION

This bill 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.

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 [the person] 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.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS finds that this bill will result in indeterminate annual cost increases to the State. The bill 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, which is likely to extend jury deliberations. In New Jersey, petit jurors are paid $5 for each day of service. If the petit juror serves more than three days, the pay rate will increase to $40 per day beginning on the fourth day. Grand jurors are paid $5 for each day of service. The judge's bench time as well as

the workload of public defenders will also increase in tandem with the length of the jury deliberations. This may result in increased administrative costs and judicial workload. The OLS also notes that the bill's requirement that a defendant who pleads guilty must knowingly and voluntarily admit to the enhancing facts in order for the court to have the option to impose an extended term may affect plea negotiations, potentially resulting in fewer guilty pleas in cases where the State seeks a persistent offender enhancement and a corresponding increase in the number of cases proceeding to trial.

The OLS does not have sufficient information or any historical data on the number of offenders who were or are likely to be prosecuted as persistent offenders to provide the fiscal impact of these provisions.

Additionally, the OLS notes that per the bill, if the defendant waives the right to a jury trial, the court would be required to find beyond a reasonable doubt that the enhancing facts existed, which could also result in additional bench time and administrative costs. The OLS, however, does not have any data to indicate the number of defendants waiving their right to a jury trial.

The OLS notes that the county prosecutors may see an increase in administrative costs and workload due to the provision requiring that the grand jury indictment must now include the predicate enhancing facts and that these must be presented to the grand jury.

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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.).