

LEGISLATIVE FISCAL ESTIMATE
ASSEMBLY, No. 1037
STATE OF NEW JERSEY
218th LEGISLATURE

DATED: FEBRUARY 21, 2019

SUMMARY

- Synopsis:** Expands categories of individuals who may bring a claim under wrongful imprisonment statute.
- Type of Impact:** Annual State expenditure increase and annual State revenue decrease.
- Agencies Affected:** Department of the Treasury, Judiciary, Department of Law and Public Safety, and Office of the Public Defender.

Office of Legislative Services Estimate

| Fiscal Impact | |
|--|--------------------|
| Annual State Expenditure Increase | \$0 to \$1,000,000 |
| Annual State Revenue Decrease | \$0 to \$3,000 |

- The Office of Legislative Services (OLS) estimates that this bill will increase annual State expenditures by an amount ranging from \$0 to \$1 million and reduce annual State revenues by an amount ranging from \$0 to \$3,000. In the years immediately following the effective date of the bill the fiscal impacts may be somewhat larger than in subsequent years. This is so because the bill allows for the filing of retroactive claims by some individuals within the two-year period following the effective date.
- The OLS projects that the bill will increase annual State wrongful imprisonment tort payments by an amount ranging from \$0 to \$1 million with the range reflecting the small number of wrongful imprisonment settlements per year and the wide variation in possible individual damage awards.
- The bill may increase the annual operating expenditures of the Department of Law and Public Safety by an indeterminate amount, as it will have to defend the State against additional wrongful imprisonment claims and negotiate additional settlements. The annual operating expenditures of the Judiciary may also rise by an indeterminate amount as the courts will have to adjudicate and administer additional wrongful imprisonment cases.
- Annual State revenue may decline by an amount ranging from \$0 to \$3,000 because wrongful imprisonment settlements and damage awards prompt the discharge of any lien for

services rendered by the Office of the Public Defender (OPD) in representing the defendant in the case that led to the false conviction.

BILL DESCRIPTION

This bill expands the categories of individuals who may bring a claim against the State for wrongful imprisonment. Currently, any person who has been wrongly imprisoned may bring a civil action in Superior Court, provided the person did not plead guilty to the crime for which the person was falsely convicted. The bill allows the following persons to also seek redress: 1) anyone who was wrongfully convicted of a crime and subsequently wrongfully civilly committed as a sexually violent predator; and 2) anyone who was wrongfully imprisoned after entering a false guilty plea.

The bill also clarifies the starting point of the two-year window during which an action may be brought. Individuals who become newly eligible to file a wrongful imprisonment claim under the bill and whose two-year window would have started prior to the effective date of the bill but not earlier than December 27, 2013 will have two years from the effective date to file a wrongful imprisonment claim against the State.

Furthermore, the bill adds a tier of possible damages for wrongful imprisonment. Currently, for each year of incarceration damages cannot exceed twice the amount of the claimant's income in the year prior to incarceration or \$50,000, whichever is greater. The bill adds \$25,000 in damages for each year served on State supervision; including parole, probation or as a registered sex offender. As under current law, if damages exceed \$1 million the court may order that the award be paid over a maximum period of 20 years.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The OLS has not received a formal fiscal note from the Executive. However, according to informal information obtained from the Office of the Attorney General (OAG) in the 2012-2013 legislative session, between October 1, 2007 and September 30, 2012 there were 20 wrongful imprisonment cases settled for a total of \$2,186,397, or an average of about \$109,000 per claim.

OFFICE OF LEGISLATIVE SERVICES

The OLS estimates that this bill will increase annual State expenditures by an amount ranging from \$0 to \$1 million and reduce annual State revenues by an amount ranging from \$0 to \$3,000. In the years immediately following the effective date of the bill the fiscal impacts may be somewhat larger than in subsequent years. This is so because the bill allows individuals who become newly eligible to file a wrongful imprisonment claim and whose two-year window to bring the action started between December 27, 2013 and the effective date of the bill to file the claim within the two years following the effective date.

Tort Payments: The OLS projects that the bill will increase annual State tort payments by an amount ranging from \$0 to \$1 million with the range reflecting the small number of wrongful imprisonment settlements per year and the wide variation in possible individual damage awards. Additional tort payments in any given year will depend on the number of additional wrongful imprisonment settlements and damage awards attributable to the bill and the extent to which the

bill may cause larger payment amounts than under current law. The OLS notes that the annual impact will also depend on the structure of the payments, which may be made as lump sums or in installments over several years.

In any given year, the State pays compensation only to a few individuals who were wrongfully imprisoned with amounts varying widely from case to case. The OAG indicated previously that between October 1, 2007 and September 30, 2012 there were 20 wrongful imprisonment cases settled for a total of \$2,186,397, or an average of about \$109,000 per claim. Per year, some \$437,000 was therefore awarded to four claimants during the five-year period.

These data predate the enactment of P.L.2013, c.171, which expanded the right to redress for wrongful imprisonment and raised statutory damage amounts. The amounts for each year of incarceration increased from the greater of twice the amount of the claimant's income in the year prior to the claimant's incarceration or \$20,000, to twice the claimant's income or \$50,000.

Adjusting the previously calculated annual State tort payment average of \$437,000 by the proportional increase in the annual damage award under P.L.2013, c.171 yields an average annual cost of \$1.1 million. This hypothetical amount, however, is too high, as awards in excess of \$20,000 per year of incarceration were possible even before the enactment of P.L.2013, c.171.

The impact of the 2013 expansion of the right to redress for wrongful imprisonment, in turn, appears to have been relatively minor. In response to FY 2017 OLS Discussion Points for Interdepartmental Accounts, the Department of the Treasury noted that in FY 2015, there was one wrongful incarceration settlement payment of \$207,000. In addition, the National Registry of Exonerations indicates that in New Jersey there were three persons who were exonerated in 2016 and one person in 2017.

The above information suggests that the bill is unlikely to increase annual State wrongful imprisonment tort payments by more than \$1 million, or 20 years of wrongful imprisonment served by one or more individuals compensated at the minimum rate of \$50,000 per year.

Administrative Expenditures: The bill may increase the annual operating expenses of the Department of Law and Public Safety as it will have to defend the State against additional wrongful imprisonment claims and negotiate additional settlements. The annual operating expenditures of the Judiciary may also rise as the courts will have to adjudicate and administer additional wrongful imprisonment cases, including the extinguishment of any lien for OPD services. The extent to which the increased responsibilities of the agencies will add to their administrative expenditures will depend on the additional number of wrongful imprisonment cases brought against the State and operational decisions the agencies will make in response thereto. The OLS, however, is reluctant to predict the agencies' operational responses to the bill.

Revenue Decrease: Annual State revenue may decline by a range of \$0 to \$3,000 because wrongful imprisonment settlements and damage awards trigger the discharge of any lien for services rendered by the OPD in representing the defendant in the case that led to the false conviction. The OLS has no information on the annual amount the OPD will no longer be able to recover because of the bill. The OPD charges clients in criminal cases a flat fee for its services that varies depending on the nature of the criminal case and the extent of the services provided. The maximum fee is \$750 for a five-day trial when the defendant is accused of a crime of the first or second degree with \$500 charged for each additional three trial days.

Lastly, the bill will not affect New Jersey gross income tax collections, considering that current law exempts wrongful imprisonment damages from the gross income tax.

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.).