LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4370

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 3, 2020

SUMMARY

Synopsis: Allows AOC to retroactively rescind or modify mandatory term of parole ineligibility for certain offenses.

Type of Impact: Indeterminate Net Impact to the State.

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

Office of Legislative Services Estimate

Fiscal Impact	**Annual**
State Net Expenditure Impact	Indeterminate

- The Office of Legislative Services (OLS) concurs with the Judiciary that the enactment of this bill would result in indeterminate State expenditure increase. The Administrative Office of the Courts (AOC) states that the proposed legislation to resentence an indeterminate number of inmates will have a significant fiscal impact on the courts. However, the courts are not able to determine the costs associated with the legislation without data from the Department of Corrections (DOC) as to the number of inmates eligible for resentencing. The OLS anticipates an increased caseload and administrative burden on the AOC under the provisions of the bill.

- Accelerating the release date of inmates to parole supervision would lower annual DOC expenditures, but absent information from the DOC, the OLS is unable to quantify the reduction in annual DOC operating expenditures. The OLS estimates indeterminate but nominal costs to the DOC to conduct a study on the anticipated expenses to upgrade the department's existing data infrastructure in order to improve its ability to collect, track, and analyze data related to the criminal justice system.

- The OLS estimates an increase in expenditure for the State Parole Board (SPB) with additional inmates qualifying for parole.

- The Office of the Public Defender would see an increase in expenses for representing indigent inmates who do not have an attorney.

BILL DESCRIPTION

This bill authorizes the Supreme Court to issue an order to retroactively rescind the mandatory minimum period of parole ineligibility of inmates who committed certain offenses prior to, and who are in the custody of the DOC on, the effective date of the bill. The offenses eligible for a retroactive modification of judgment, unless the prosecutor filed an objection, include convictions for:

- being the leader of a cargo theft network;
- crimes involving theft from a cargo carrier;
- shoplifting;
- wrongful access, disclosure of information;
- maintaining or operating a controlled dangerous substance production facility;
- manufacturing, distributing, or dispensing controlled dangerous substances;
- employing a juvenile in a drug distribution scheme;
- distribution on or within 1,000 feet of school property;
- distribution to persons under the age of 18; or
- mandatory term for repeat drug offenders.

The Supreme Court also is authorized under the bill to retroactively modify the judgments of conviction made prior to the bill's enactment to resentence an inmate to a fixed minimum term of 50 percent of the sentence of incarceration imposed in lieu of the 85 percent fixed minimum term for second degree robbery or burglary, unless the prosecutor objects.

In addition, the bill requires the Commissioner of Corrections to identify, from a list of defendants sentenced for the enumerated crimes provided by the AOC, inmates in the custody of the DOC who are eligible for resentencing pursuant to an order under the bill, and provide a list of eligible inmates to the Supreme Court, the Attorney General, and county prosecutors. The State is to determine, not later than 60 days following receipt of the list, whether there is a basis to file an objection in any inmate's case. The bill prohibits prosecutors from filing an objection without the prior approval of the Attorney General.

The Attorney General is required to provide to the Administrative Director of the Courts and the DOC notice as to the identity of each inmate for whom a determination is made to file an objection. The DOC is to notify the inmate and the inmate's attorney or, if the inmate does not have an attorney, the public defender of the determination to file an objection. An objection is to be filed with the Superior Court in the county where the conviction occurred. Any objection is to be filed within 60 days of receipt of the list of eligible inmates provided by the DOC, or within 30 days of providing notice of a determination to file an objection, whichever date is later.

The court may order the retroactive modification of judgments of conviction of eligible inmates as to whom the prosecutor does not file an objection without conducting a hearing.

In the event the prosecutor files an objection, the bill requires the inmate's judgment of conviction to be retroactively modified unless the court, after a hearing, finds by clear and convincing evidence that rescinding the term of parole ineligibility imposed upon the inmate would likely pose a substantial risk to public safety. The court also may find by clear and convincing evidence that aggravating factors associated with rescinding or reducing, as the case may be, the term of parole ineligibility substantially outweigh the mitigating factors of doing so.

A court that denies retroactive modification of the judgment of conviction may sentence the inmate to a period of parole ineligibility. However, the court is prohibited from imposing a period of parole ineligibility in excess of the period that would have applied prior to the prosecutor's objection. The bill requires an inmate afforded a hearing to rescind or reduce, as the case may be, the term of parole ineligibility to be represented by the public defender, unless the inmate retains other counsel.

Finally, the bill requires the Commissioner of Corrections to conduct a study on the anticipated expenses to upgrade the department's existing data infrastructure in order to improve its ability to collect, track, and analyze data related to the criminal justice system. Within six months of the bill's enactment the commission is to submit a report to the Governor and the Legislature with recommendations for additional funding necessary for the department to invest in upgrades to its data infrastructure.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received. However, upon request, the AOC has indicated to the OLS that the bill may have a significant fiscal impact. The AOC states that, "this legislation, which will require the court to resentence an indeterminate number of inmates, will have a significant impact on the courts. However, the courts are not able to determine the costs associated with the legislation without data from the Department of Corrections as to the number of inmates eligible for resentencing."

OFFICE OF LEGISLATIVE SERVICES

The OLS concurs with the Judiciary and anticipates an increase in caseload and administrative burden for the AOC. Under the provisions of the bill, the courts are authorized to issue an order retroactively to rescind the mandatory minimum period of parole ineligibility. The bill authorizes the courts to retroactively modify the judgments of conviction made prior to the bill's enactment to resentence an inmate. There is no further information available to determine the number of offenders who would qualify for resentencing under the provisions of this bill.

A shift of inmates from State prison facilities to the parole system could potentially reduce the housing costs for the DOC but raise costs of the SPB with an increase in number of inmates qualifying for parole supervision. However, absent information from the DOC, the OLS is unable to quantify the reduction in annual DOC operating expenditures or increase in expenses for the SPB.

The bill requires the DOC to conduct a study on the anticipated expenses to upgrade the department's existing data infrastructure in order to improve its ability to collect, track, and analyze data related to the criminal justice system. The costs, likely nominal in amount, associated with this study would be largely for the reimbursement of necessary expenses, including but not limited to travel, office support staff, printing and other miscellaneous costs.

The Office of the Public Defender may see an increase in expenses for representing additional inmates who do not have an attorney.

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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.).