

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 2635
STATE OF NEW JERSEY
219th LEGISLATURE

DATED: JULY 29, 2020

SUMMARY

- Synopsis:** Includes false incrimination and filing false police report as form of bias intimidation; establishes crime of false 9-1-1 call with purpose to intimidate or harass based on race or other protected class.
- Type of Impact:** Annual expenditure and revenue increases to the State and local governments.
- Agencies Affected:** Department of Law and Public Safety; Administrative Office of the Courts; Law Enforcement Agencies; Department of Corrections; County Correctional Facilities.

Office of Legislative Services Estimate

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Cost Increase		Indeterminate	
State Revenue Increase		Indeterminate	
Local Cost Increase		Indeterminate	
Local Revenue Increase		Indeterminate	

- The Office of Legislative Services (OLS) anticipates that the State, county prosecutor’s offices, local law enforcement agencies, and municipal courts will incur indeterminate additional annual operating expenses from enforcing, prosecuting, and trying the offenses established and expanded by the bill, and incarcerating any offenders. The State and municipal governments also may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the offenses established by this bill.

BILL DESCRIPTION

This bill would expand the list of crimes that constitute a form of bias intimidation to include the crime of falsely incriminating another person or filing a false police report. Under the bill, a person who falsely incriminates, files a false police report, or calls the 9-1-1 emergency telephone system with the purpose to intimidate an individual or group of individuals because of race, color,

religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity would be subject to a criminal penalty.

The bill would expand the list of underlying offenses for bias intimidation to include falsely incriminating someone or filing a false police report. Under N.J.S.2C:28-4, a person who knowingly gives or causes to be given false information to a law enforcement officer in order to implicate another commits false incrimination, a crime of the third degree. False incrimination is a crime of the second degree if the victim was implicated in a crime of the first or second degree. The penalty for a crime of the third degree is three to five years imprisonment, a fine of up to \$15,000, or both. Second degree crimes are punishable by five to 10 years imprisonment, a fine of up to \$150,000, or both.

N.J.S.2C:28-4 also establishes the fourth degree crime of reporting to law enforcement authorities an offense or other incident that did not occur, or pretending to furnish the authorities with information relating to an arrest or incident for which the offender has no information. This bill establishes a higher criminal penalty for falsely giving information to law enforcement agencies with the purpose to intimidate a victim because of his or her race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity.

In addition, the bill establishes a third degree crime of knowingly placing a 9-1-1 call with purpose to intimidate or harass an individual or group of individuals because of race, color, religion, gender, disability, sexual orientation, gender identity or expression, national origin, or ethnicity. Under N.J.S.2C:33-3, it is a fourth degree crime to call 9-1-1 without the purpose of reporting the need for 9-1-1 service.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

The OLS anticipates that the State, county prosecutor's offices, local law enforcement agencies, and municipal courts will incur indeterminate additional annual operating expenses from enforcing, prosecuting, and trying the offenses established by the bill, and incarcerating any offenders. The State and municipal governments also may receive indeterminate additional annual revenue from fines and penalties imposed on and collected from individuals convicted of the offenses established by this bill.

The OLS, however, lacks sufficient information to quantify the bill's fiscal impacts. It is unclear how many persons would be prosecuted, tried, and sentenced for the expanded bias intimidation offenses in fiscal years following enactment.

Expenditure Increases: The OLS estimates that the bill will produce indeterminate annual expenditure increases to the State, counties, and municipalities; however, the OLS has no information on the additional workload and cost that the expansion of the bias intimidation law may impose on the affected State departments.

The bill is estimated to increase State operating expenditures if: a) the Department of Law and Public Safety enforces, and prosecutes violators of, the expanded bias intimidation law; b) the Judiciary adjudicates additional bias intimidation criminal cases; c) the Office of the Public Defender provides legal representation to low-income criminal defendants who are charged with

having violated the expanded bias intimidation law; and d) the Department of Corrections houses and cares for individuals sentenced to certain prison terms.

The bill's expansion of bias intimidation crimes and disorderly persons offenses will increase the workload of the Division of Criminal Justice in the Department of Law and Public Safety, county prosecutor's offices, the Administrative Office of the Courts, and municipal courts, as additional defendants will be prosecuted and tried. Crimes of the first, second, third, and fourth degree are adjudicated by the Superior Court. Disorderly person offenses are adjudicated by municipal courts, in most circumstances.

A presumption of incarceration applies to first degree and second degree crimes; however, a presumption of non-incarceration applies to first-time offenders of crimes of the third and fourth degree, and disorderly persons cases. Repeat offenders, however, could be incarcerated. The OLS notes that to the extent that the bill will result in additional incarcerations, the Department of Corrections has indicated that the average estimated per capita cost to house an inmate in a State prison facility in FY 2016 totaled \$45,000. Department data also indicate that the marginal cost for food, wages and clothing for an additional prison inmate in its facilities totals \$7.15 per day, or \$2,610 annually.

The OLS, however, cannot project the number of future prosecutions, trials, and incarcerations related to the crimes established by the bill. Any additional State cost from the expansion of the State's bias intimidation law may be offset, in part, by criminal fines and penalties imposed by the courts on persons convicted of having violated the expanded law; however, the State's ability to collect criminal fines and penalties has historically been limited.

Revenue Gains: Additional indeterminate annual State and municipal revenue will accrue from fine and penalty payments from convicted violators of new and expanded statutory provisions.

In establishing the expansion of first, second, third, and fourth degree crimes and disorderly persons offenses, the bill creates the potential for recurring State and municipal revenue gains:

- Crimes of the first degree are punishable by a term of imprisonment of 15 to 30 years, a fine of up to \$200,000, or both.
- Crimes of the second degree are punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both.
- Crimes of the third degree are punishable by a term of imprisonment of three to five years, a fine of up to \$15,000, or both.
- Fourth degree crimes are punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000, or both.
- Disorderly persons offenses are punishable by a term of imprisonment of up to six months, a fine of up to \$1,000, or both.

The OLS cannot determine the number of convictions of the bill's newly created third degree crimes for sending a false electronic message to a 9-1-1 emergency telephone system, and by extension the total of any resultant fine, fee, and assessment collections.

The OLS additionally notes that due to financial constraints many penalties go unpaid by persons who are convicted of disorderly persons offenses and crimes.

Section: Law and Public Safety

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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.).