

LEGISLATIVE FISCAL ESTIMATE
SENATE, No. 3325
STATE OF NEW JERSEY
220th LEGISLATURE

DATED: MAY 12, 2023

SUMMARY

Synopsis: Enhances penalties for possession, distribution, and manufacture of certain amounts of fentanyl.

Type of Impact: Annual State expenditure and revenue increases.

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

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Increase	Indeterminate
State Revenue Increase	Indeterminate

- The Office of Legislative Services (OLS) finds that this bill will result in annual State expenditure and revenue increases. The following State agencies would incur caseload and expenditure increases: i) the Department of Corrections would have to house more inmates for longer terms of imprisonment and the State Parole Board would have to supervise their return to society; ii) the Department of Law and Public Safety would have to prosecute additional cases; iii) the Judiciary would have to adjudicate additional cases; and iv) the Office of the Public Defender would have to represent additional low-income criminal defendants.
- To the extent the bill results in additional incarcerations or longer incarcerations, the Department of Corrections would incur higher costs. The OLS does not have sufficient information on the potential increases in number of convictions and terms of imprisonment resulting from the bill's provisions and therefore is unable to estimate the exact costs to the State.
- The OLS notes that the State may receive indeterminate revenue from fines imposed on individuals convicted of the crimes under this bill. However, the State's ability to collect criminal fines and penalties has historically been limited.

BILL DESCRIPTION

This bill enhances penalties for possession, distribution, and manufacture of fentanyl based on the amount of fentanyl involved. The bill would: (1) create new amount thresholds to establish new first-degree crimes for manufacturing, distributing, or dispensing fentanyl or its analog, or possessing such with intent to do so, as well as for simple possession of fentanyl; (2) reduce the current amount thresholds for second- and third-degree manufacturing, distributing, or dispensing fentanyl or its analog, or possessing such with intent to do so, thus upgrading the penalties for acts committed involving smaller amounts of such; and (3) add to the crime of manufacturing, distributing, or dispensing fentanyl or its analog, or possessing such with intent to do so, “fentanyl mixtures,” with distinct amount thresholds establishing the grading of criminal acts involving such mixtures.

FISCAL ANALYSIS

EXECUTIVE BRANCH

None received.

OFFICE OF LEGISLATIVE SERVICES

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According to data made available on the Department of Corrections website, as of January 2023, a total of 916 people were incarcerated in State prisons for drug violations, which include distribution, manufacture, possession, and use of drugs. However, the department notes that virtually all drug offenses are for sale and distribution rather than for mere possession. The OLS does not have data available by the type or degree of the drug offense to indicate how many of these inmates are incarcerated in State prisons for fentanyl-related violations. The OLS notes that to the extent the bill results in additional incarcerations or longer incarcerations, the department would incur higher costs. Based on information provided by the department, the FY 2021 average annual cost for housing an inmate was \$55,389, whereas the average daily cost was \$151.75.

The OLS is unable to quantify the exact fiscal impact of this bill, but finds that it will result in increased expenditures and revenues to the State due to the following provisions:

1. The bill creates a new first degree crime of manufacturing, distributing, dispensing or possessing with the intent to distribute 10 grams or more of fentanyl. A crime of the first degree is punishable by a term of imprisonment of 10 to 20 years, ordinarily a fine of up to \$200,000, or both. This bill establishes an enhanced fine of up to \$500,000. Currently, the highest degree of crime for fentanyl violations is a crime of the second degree. A crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. The State expenditures are likely to increase for housing offenders for a longer term under the bill. The enhanced fines will potentially increase State revenues.

2. The bill reduces the current amount threshold for second degree crimes of manufacturing, distributing, dispensing or possessing with the intent to distribute. Under the bill, a violation involving five to less than 10 grams of fentanyl is a crime of the second degree. As mentioned above, a crime of the second degree is punishable by a term of imprisonment of five to 10 years, a fine of up to \$150,000, or both. This provision is likely to result in increased expenditures for the Department of Corrections due to longer terms of incarceration. The number of individuals incarcerated may also increase as a second degree crime does not carry a presumption of non-incarceration for first time offenders.

3. The bill reduces the current amount threshold, from less than 28 grams (one ounce) to less than five grams, for a third degree manufacturing, distributing, or dispensing fentanyl. A crime of the third degree is punishable by a term of imprisonment of three to five years, ordinarily a fine of up to \$15,000, or both. The bill establishes an enhanced fine of up to \$75,000. Generally, crimes of the third degree carry a presumption of non-incarceration for first time offenders. This bill will result in increased State costs for housing more inmates in prison facilities in cases where repeat offenders are convicted. These costs could potentially be offset to some extent by revenues from the enhanced fines.

4. The bill also establishes fentanyl mixtures threshold quantities to be graded as crimes of the first, second, and third degree, which is also likely to contribute to State costs from housing more individuals in prison facilities.

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.).