

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

SENATE, No. 946

STATE OF NEW JERSEY 216th LEGISLATURE

DATED: AUGUST 11, 2014

SUMMARY

- Synopsis:** Implements constitutional amendment providing for pretrial detention of certain criminal defendants; establishes non-monetary bail alternatives for release; authorizes Judiciary to revise fees for certain legal programs and services.
- Type of Impact:** County government inmate housing savings, county government speedy trial expenditures, General Fund revenue and expenditures.
- Agencies Affected:** County corrections agencies, county prosecutors, Judiciary, State Office of the Public Defender, Department of Law and Public Safety.

Office of Legislative Services Estimate-Immediate Impact

Fiscal Impact	<u>FY 2015</u>	<u>FY 2016</u>	<u>FY 2017</u>
State Revenue	\$42.1 million	\$42.1 million	\$42.1 million
State Expenditures- Legal Services of NJ	\$10.1 million	\$10.1 million	\$10.1 million
State Expenditures- Statewide digital e- court information system	\$10 million	\$10 million	\$10 million

Office of Legislative Services Estimate-Additional Impact If Constitution Amended

Fiscal Impact	<u>Year 1</u>	<u>Year 2</u>	<u>Year 3</u>
State Expenditures- Judiciary	\$19.9 million	\$35 million	\$35 million
State Expenditures- Other	Indeterminate Increase– See comments below		
County Expenditures	Indeterminate Impact– See comments below		

- The Office of Legislative Services (OLS) concludes that the aggregate fiscal impact of Senate No. 946 (3R), as well as the timing of portions of that impact, is indeterminate. The OLS estimates that State revenue will increase by \$42.1 million annually, as has been indicated by the Judiciary. The OLS also estimates that State expenditures will increase by up to \$10.1 million annually due to the dedication of increased judicial revenues to increased State funding for Legal Services of New Jersey and its affiliates. Expenditures by the Judiciary on a Statewide digital e-court information system will also increase by up to \$10 million annually, due to the dedication of increased judicial revenues. The bill will also result in additional State expenditures of an indeterminate amount, and will also have an indeterminate impact on county expenditures, if an amendment to the State Constitution modifying the right to bail for all persons in order to permit court-ordered pretrial detention is approved.
- According to the Administrative Office of the Courts (AOC), the bill's provisions regarding non-monetary bail alternatives and speedy trial deadlines (which are contingent upon approval of the requisite constitutional amendment) that require the creation of a Statewide Pretrial Services Program would necessitate the hiring of staff to administer risk assessments and monitor defendants pending trial (including electronic monitoring, drug testing, and treatment services) at a cost of \$35 million annually plus an additional \$2.4 million in one-time costs to establish a fully integrated information technology system dedicated to the work of the Pretrial Services Unit. Utilizing this information, the OLS estimate illustrates the impact of the bill on the Judiciary as if the requisite constitutional amendment were approved and the applicable provisions of the bill were implemented the following January, and assumes that in the implementation fiscal year half the annual costs plus the initial information technology cost will be incurred. Given these cost estimates, at full implementation the bill will result in aggregate State expenditures that will exceed additional State revenue by at least \$13 million annually.
- The OLS concludes that the implementation of bail reforms and speedy trial deadlines would most likely decrease the number of individuals incarcerated in the county jails awaiting trials thus generating an indeterminate savings for the counties. Each county's savings would be determined by the number of individuals released as a result of this bill. The OLS further notes that these savings could be offset in small, perhaps insignificant degree by the bill's requirement that all persons committed to jail after being arrested on warrant remain incarcerated until the AOC conducts risk assessments and the courts conduct hearings for pretrial release or pretrial detention.
- The OLS also notes that implementation of the speedy trial provisions enumerated in the bill would impose additional responsibilities upon State and county prosecutors and the State Office of the Public Defender, as well as the courts, increasing county and State costs by an indeterminate amount.
- The AOC estimates that the increase in fees to be enacted by court rule as authorized by section 12 of the bill will result in \$42.1 million annually for deposit in the "21st Century Justice Improvement Fund" to fund a Statewide Pretrial Services Program, a statewide digital e-court information system, and Legal Services of New Jersey. The OLS has utilized that estimate to illustrate the bill's potential impact, but notes that the AOC has not provided any detailed data upon which the estimate is based. The OLS further notes that the projected

annual revenue increase may not be achieved in the first fiscal year if the effective date of fee increases is significantly delayed by the rule adoption process.

- The OLS further notes that the Department of Law and Public Safety may incur additional expenses in an indeterminate amount to support the activities of the Pretrial Services Program Review Commission which would be established by the bill.

BILL DESCRIPTION

Senate Bill No. 946 (3R) of 2014 concerns several aspects of court administration. It would: (1) establish statutory speedy trial deadlines for persons being detained in jail, both pre- and post-indictment; (2) reform the manner in which determinations for bail and other forms of criminal pretrial release are made; (3) provide courts with the authority to deny pretrial release and instead order pretrial detention; and (4) authorize the Judiciary to revise and supplement fees to help fund a pretrial risk assessment and monitoring program, and other court-related programs and services.

The provisions concerning categories (1) through (3) listed above would only be implemented after enactment of an amendment to the New Jersey Constitution modifying the current constitutional right to bail for all persons. These provisions would take effect on the same day that a constitutional amendment, after approval by the voters, becomes part of the Constitution.

The provisions concerning category (4), authorizing the Judiciary to revise and supplement fees for the pretrial assessment and monitoring program related to the bill and for other court-related programs and services would take effect immediately.

Speedy trial deadlines

The bill would establish the following deadlines:

- A person who has been charged with a crime and for whom pretrial detention is ordered by the court pursuant to the bill could not remain detained in jail for more than 90 days on that charge prior to the return of an indictment. If the person is not indicted within the specified 90 days, the person would be released from jail upon motion of the person or on the court's own motion unless, on motion of the prosecutor, the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release, and also finds that the failure to indict in accordance with the time requirements was not due to unreasonable delay by the prosecutor. If the court makes these findings it may allocate an additional period of up to 45 days in which the return of an indictment shall occur. Notwithstanding the court's previous findings for ordering the person's pretrial detention (discussed in more detail below), the court would release the person on the person's own recognizance or set appropriate non-monetary conditions for the person's release.

- A person who has been indicted and for whom pretrial detention is ordered by the court could not remain detained in jail for more than 180 days on that charge following the return or unsealing of the indictment, whichever is later, not counting excludable time for reasonable delays as set forth in the bill, before commencement of the trial. In the event a person's trial does not begin within the specified 180 days, the person would be released from jail unless on motion of the prosecutor the court finds that a substantial and unjustifiable risk to the safety of any other person or the community or the obstruction of the criminal justice process would result from the defendant's release from custody, so that no appropriate conditions for the defendant's

release could reasonably address that risk, and also finds that the failure to commence trial in accordance with the time requirement was not due to unreasonable delay by the prosecutor. If the court so finds, the court may allocate an additional period of time in which the defendant's trial shall commence before the defendant is released. Notwithstanding the court's previous findings for ordering the person's pretrial detention, the court would release the person on the person's own recognizance or set appropriate non-monetary conditions for the person's release to reasonably assure the person's appearance in court.

- In the event of a trial ordered after a mistrial or upon a motion for a new trial, such trial would commence within 120 days of the entry of the order of the court. A trial ordered upon the reversal of a judgment by any appellate court would commence within 120 days of the service of that court's trial mandate.

For any of the above deadlines, the bill sets forth certain periods which would be excluded in computing the time within which a case would need to be indicted or tried.

The speedy trial deadlines established by the bill would apply to any person who committed a crime on or after the effective date of the applicable provisions (which are tied to the approval of the constitutional amendment).

Reforms for bail and other pretrial release determinations

To help support the bill's bail and other pretrial release reforms, the Administrative Director of the Courts would establish and maintain a Statewide Pretrial Services Program.

Under the program, a risk assessment would be conducted on any person for whom a complaint-warrant is issued for an initial charge involving an indictable offense or disorderly persons offense within 48 hours of the person's commitment to jail for the purpose of making recommendations to the court concerning an appropriate pretrial release determination. The Statewide Pretrial Services Program would also monitor appropriate persons released on court-ordered conditions.

The bill would require that the court make a pretrial release decision "without unnecessary delay," but in no case later than 48 hours after the commitment to jail. The court would consider the person's circumstances and the risk assessment performed by the Statewide Pretrial Services Program before making any pretrial release decision.

A person out of jail on pretrial release could have the release revoked by a court, upon motion by a prosecutor, for violating a restraining order or condition of release, or a finding of probable cause that the person committed a new crime while on release. The court could only take action to revoke the person's pretrial release on a finding by clear and convincing evidence that no monetary bail, non-monetary conditions of release, or combination thereof imposed on the person would reasonably assure the person's appearance in court, the protection of the safety of any other person or the community, or that the person would not obstruct or attempt to obstruct the criminal justice system.

Denial of pretrial release / pretrial detention

Concerning the new authority for denying a person pretrial release (if approved by constitutional amendment), a prosecutor could file a motion seeking the pretrial detention of a person who was charged with certain crimes. The prosecutor, in seeking a pretrial detention proceeding for which there is no indictment, would be required to establish probable cause that the person committed the predicate offense.

Upon the filing of the motion for pretrial detention, and during any continuance of such motion, the person would be detained in jail, unless the person was previously released from custody, in which case the court would instead issue a notice to compel the person's appearance at the pretrial detention hearing.

The court would hold a hearing to determine whether any amount of monetary bail, non-monetary conditions, or combination thereof could reasonably assure the person's future court appearance, the protection of the safety of any other person or the community, or that the person would not obstruct or attempt to obstruct the criminal justice process.

The court, in making its determination for or against pretrial detention, could rely upon such factors as the nature and circumstances of the offense charged, the weight of evidence against the person, the person's history and characteristics, and the recommendations concerning appropriate pretrial release determinations by the Statewide Pretrial Services Program risk assessment.

Court fees to support pretrial assessments, other court-related services and programs

The bill provides that the Supreme Court may adopt Rules of Court to revise or supplement filing fees and other statutory fees payable to the court for the purpose of funding: (1) the development, maintenance, and administration of the above described Statewide Pretrial Services Program; (2) the development, maintenance, and administration of a Statewide digital e-court information system; and (3) the provision of legal assistance to the poor in civil matters by Legal Services of New Jersey. All existing filing and statutory fees could not be increased or supplemented more than \$50 in the aggregate for each such fee.

The bill would establish in the General Fund a dedicated, non-lapsing fund to be known as the "21st Century Justice Improvement Fund." This fund would be annually credited with a sum equal to the yearly revenue to be derived from the incremental amounts of any fees payable to the court that are revised or supplemented pursuant to the bill and the related fee revisions as provided by operation of N.J.S.22A:2-5 (fees payable in the Appellate Division, designated to be the same as those payable in the Supreme Court) and section 2 of P.L.1993, c.74 (C.22A:5-1) (fees payable in the Tax Court, designated to be the same as those payable in the Superior Court). The fund would be administered by the State Treasurer.

Monies annually credited in the "21st Century Justice Improvement Fund" would be allocated as follows:

(1) \$22 million would be appropriated annually to the Judiciary to be used for the Statewide Pretrial Services Program;

(2) \$10 million would be appropriated annually to the Judiciary for the Statewide digital e-court information system;

(3) \$10.1 million would be appropriated annually to the Department of the Treasury for distribution to Legal Services of New Jersey and its affiliates to facilitate the provision to the poor of legal assistance in civil matters; and

(4) Any remaining amounts still in the fund would be retained by the Judiciary for the purpose of developing, maintaining, and administering the Statewide Pretrial Services Program or for court information technology.

No later than the sixth month after the end of each State fiscal year the Administrative Director of the Courts would submit a report to the Governor, the President of the Senate, and the Speaker of the General Assembly describing the Judiciary's use of funding provided through the bill and its progress toward the development, maintenance and administration of the Statewide Pretrial Services Program and Statewide digital e-court information system. In addition, for the reports submitted next following the fifth and tenth anniversaries of the implementation of (1) the speedy trial deadlines, (2) bail and other pretrial release reforms, and (3) pretrial detention proceedings, the director would provide information about the impact of the bill's provisions on the Judiciary's administration of criminal justice.

Legal Services of New Jersey also would submit a detailed financial statement to the Governor and legislative leadership, as well as the State Auditor, describing how funds provided pursuant to the bill were used for the provision of legal assistance to the poor in civil matters.

Additionally, the bill requires that the use of public funds appropriated to Legal Services of New Jersey would be subject to oversight by the State Auditor.

The authority of the Supreme Court to revise or supplement any filing fees and other statutory fees would expire approximately seven months after the enactment of those sections of the bill establishing that authority, except that any fees that have been revised or supplemented would continue in effect, subject to the following:

Within 30 days of the fifth anniversary of the effective date of the Rules of Court first adopted concerning any fees, and additionally within 30 days of the tenth anniversary of that effective date, the Supreme Court could review all such fees revised or supplemented utilizing its rulemaking process, which includes a reasonable opportunity for public comment, to determine if the fees should remain unchanged as originally adopted pursuant to the bill or be reduced to reflect the funding needs associated with the purposes set forth in the bill for which the “21st Century Justice Improvement Fund” provides monies.

Finally, concerning court fees, as well as judicially imposed financial obligations, and related charges owed to a court when such are processed using credit cards, debit cards, or any other accepted electronic method, the bill updates existing law to authorize, pursuant to Rules of Court, the Administrative Office of the Courts to assess, collect, and pay service charges and other costs resulting from the collection and processing of such fees, obligations, and charges. Any service charges and other costs assessed and collected by the Administrative Office of the Courts, with the exception of those charges or costs assessed and collected on behalf of municipal courts, would be deposited in the “Court Computer Information System Fund” established by subsection c. of section 1 of P.L.1994, c.54 (C.2B:1-4).

Reporting and commission review

The bill provides that not later than the sixth month after the end of each fiscal year, the Administrative Director of the Courts would submit two reports. The first report, describing the Judiciary’s use of the funding and progress toward the development, maintenance and administration of a Statewide digital e-court information system, would be submitted to the Governor, the Senate President, and the Speaker of the General Assembly. The second report, concerning the development and administration of the Statewide Pretrial Services Program, would be submitted to the same parties, as well as to the Pretrial Services Program Review Commission that would newly created by the bill.

The commission would consist of the following 17 members: the Attorney General, or his designee; two members of the Senate, who would each be of different political parties, appointed by the Senate President; two members of the General Assembly, who would each be of different political parties, appointed by the Speaker of the General Assembly; the Administrative Director of the Courts, or his designee; two county prosecutors, appointed by the Governor based upon the recommendation of the County Prosecutors Association of the State of New Jersey; the Public Defender, or his designee; the following ex-officio public members: the President of the New Jersey State Conference of the National Association for the Advancement of Colored People, the President of the Latino Action Network, the Executive Director of the American Civil Liberties Union of New Jersey, the New Jersey State Director of the Drug Policy Alliance, and the President and Chief Executive Officer of the New Jersey Institute for Social Justice; and the following appointed public members: a county or municipal law enforcement officer appointed by the Governor, and two additional members having experience with, possessing a background in, or demonstrating a specialized knowledge of, the legal, policy, or social aspects of criminal justice pretrial release and detention programs, one appointed by the Governor upon the recommendation of the President of the Senate, and one appointed by the Governor upon the recommendation of the Speaker of the General Assembly.

The commission would meet from time to time and review the annual report on the Pretrial Services Program submitted by the Administrative Director of the Courts, examine the provisions of the bill once enacted into law concerning pretrial release and detention, and research release and detention programs from other states and jurisdictions. It would file an annual report with the Governor, Legislature, and Supreme Court on its activities, along with any findings and recommendations for legislation resulting from its work.

FISCAL ANALYSIS

EXECUTIVE BRANCH

No information was provided.

JUDICIAL BRANCH

The AOC informed the OLS that it anticipates increasing revenue by \$42.1 million, which would be annually dedicated for a Statewide Pretrial Services Program (\$22 million), a Statewide digital e-court information system (\$10 million), and Legal Services of New Jersey (\$10.1 million).

The AOC further stated that the bill would require the Judiciary to establish a new Pretrial Services Program to administer risk assessments to the approximately 85,000 eligible defendants. The Judiciary estimated that the results of the risk assessment would require pretrial monitoring of 25,000 defendants by the Pretrial Services Program. The AOC notes that the Judiciary would need approximately 400 new employees to administer risk assessments and monitor defendants pending trial. In addition, funds would be necessary for electronic monitoring, drug testing, and treatment services at a cost of \$35 million plus an additional \$2.4 million in initial costs to establish a fully integrated information technology system dedicated to the work of the Pretrial Services Unit.

The AOC added that this estimate did not encompass the fiscal impact of the speedy trial provision contained in the bill. To accomplish this, the Judiciary would need an unknown number of additional staff.

OFFICE OF LEGISLATIVE SERVICES

Based in part on the estimates of revenue and expenditures provided by the AOC, OLS concludes that the aggregate fiscal impact of Senate No. 946 (3R), as well as the timing of portions of that impact, is indeterminate. The OLS estimates that State revenue will increase by \$42.1 million annually, as has been indicated by the Judiciary. The OLS also estimates that State costs will increase by up to \$10.1 million annually due to the dedication of increased judicial revenues to increased State funding for Legal Services of New Jersey and its affiliates. Expenditures by the Judiciary on a Statewide digital e-court information system will also increase by up to \$10 million annually, due to the dedication of increased judicial revenues. The bill will also result in additional State costs of an indeterminate amount, and will also have an indeterminate impact on county costs, if an amendment to the State Constitution authorizing the courts to deny pretrial release of certain defendants is approved.

Revenues: the AOC estimates that the increase in fees to be enacted by court rule as authorized by section 12 of the bill will result in \$42.1 million annually for deposit in the “21st Century Justice Improvement Fund” to fund the Statewide Pretrial Services Program, a statewide digital

e-court information system, and Legal Services of New Jersey. The OLS has utilized that estimate to illustrate the bill's potential impact, but notes that the AOC has not provided any detailed data upon which the estimate is based. Absent information on which filing and other fees would be increased or supplemented and the actual amount of those increases or supplements, the OLS notes the possibility that actual revenues could vary from the AOC's estimate. The OLS further notes that the projected annual revenue increase may not be achieved in the first fiscal year if the effective date of fee increases is significantly delayed by the rule adoption process.

State expenditures: The bill increases State expenditures by \$10.1 million annually, due to the dedication of increased judicial revenues to increased State funding for Legal Services of New Jersey and its affiliates. Expenditures by the Judiciary on a Statewide digital e-court information system will also increase by up to \$10 million annually, due to the dedication of increased judicial revenues and the bill's stipulation that the appropriation of dedicated revenues shall not replace appropriation from mother sources for Judiciary information technology.

A Statewide Pretrial Services Program, the outcome of the speedy trial and bail reform provisions of the bill, could be implemented only after adoption of an amendment to the New Jersey Constitution modifying the current constitutional right to bail for all persons (see N.J. Const. (1947), Article I, paragraph 11). It is thus uncertain if and when additional costs to the State would result from those provisions of the bill. The AOC's estimate of the need for additional staff to administer risk assessments and monitor defendants pending trial (including electronic monitoring, drug testing, and treatment services) and its estimate of the associated costs of establishing and operating the Statewide Pretrial Services Program assumes approval of the requisite constitutional amendment in the near future. The OLS notes that these estimates may understate the cost if the requisite constitutional amendment is not enacted until several years after the bill is approved.

Neither the Department of Law and Public Safety nor the Office of the Public Defender provided the OLS with any estimate of the bill's impact on the prosecutorial costs of the Division of Criminal Justice and provision of services to the Pretrial Services Program Review Commission, and the provision of legal representation to defendants in criminal cases, respectively. The implementation of the speedy trial provisions enumerated in the bill would impose additional responsibilities upon those State agencies, increasing State costs by unknown amounts.

The OLS concludes that, assuming full implementation of all of the bill's provisions and given the estimates of revenue and costs that would result, the additional costs to the State will exceed the amount of additional State revenue by at least \$13 million annually. However, in each fiscal year following approval of the bill until the requisite constitutional amendment is approved, the additional State revenue resulting from the bill will exceed additional State costs by about \$22 million annually. The OLS notes that this revenue is dedicated to the future costs of implementing establishing and operating the Statewide Pretrial Services Program should the constitution be amended as required for that unit's responsibilities to commence, so if a constitutional amendment does not occur in the near future, the point at which this net State impact has the same impact on State budgeting will be postponed.

County expenditures: The OLS concludes that the implementation of speedy trial deadlines and bail reforms would most likely decrease the number of individuals incarcerated in the county jails awaiting trials thus generating an indeterminate savings for the counties. Each county's savings would be determined by the number of individuals released as a result of this bill.

Information obtained from the New Jersey Association of Counties indicates that there are about 13,000 inmates housed in county jails on any given day. About 12 percent, or 1,560 of these inmates are non-violent offenders who cannot make bail of \$2,500 or less. The average length of stay for an inmate who cannot make bail and is pending trial is about 314 days. The New Jersey Association of Counties notes that it costs the counties about \$100 per day to house an inmate in a county correctional facility. The OLS notes that, assuming that individuals who are released under the provisions of this bill would have served 314 days in jail, at a cost of \$100 per day, for every individual who is released from county jails, county governments could save about \$31,400. While these data would suggest a savings to counties of about \$49 million, the actual impact could be considerably less, depending on the distribution of inmates and the difference between average and marginal cost of incarceration. This also assumes approval of the requisite constitutional amendment in the near future; if a substantial amount of time elapses before that occurs, this actual impact could vary significantly from this estimate.

The OLS further notes that these savings could be offset in small, perhaps insignificant degree by the bill's requirement that all persons committed to jail after being arrested on warrant remain incarcerated up to 48 hours until the AOC conducts risk assessments and the courts conduct hearings for pretrial release or pretrial detention. Under current law and practice there are some instances where individuals can obtain release more quickly than would occur under the bill's provisions.

Section: Judiciary

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This fiscal estimate has been prepared pursuant to P.L.1980, c.67 (C.52:13B-6 et seq.).