

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

ASSEMBLY, No. 4235

STATE OF NEW JERSEY
219th LEGISLATURE

DATED: AUGUST 31, 2020

SUMMARY

Synopsis:	Requires public health emergency credits to be awarded to certain inmates and parolees during public health emergency; prohibits contact with victim upon release of inmate awarded credits.
Type of Impact:	Periodic State expenditure decrease; potential periodic State expenditure
Agencies Affected:	Department of Corrections, State Parole Board, Juvenile Justice Commission.

Office of Legislative Services Estimate

Fiscal Impact	
Periodic State Cost Decrease	Indeterminate
Potential Periodic State Cost Increase	Indeterminate

- The Office of Legislative Services (OLS) concludes that accelerating the release date of certain inmates and juvenile offenders and reducing the parole term of certain parolees by up to eight months by awarding them public health emergency credits could lower the operating expenditures of the Department of Corrections (DOC), the State Parole Board (SPB), and the Juvenile Justice Commission (JJC) during times when a public health emergency is declared. However, the OLS is unable to quantify the savings from housing an offender or supervising parolees for a reduced period of time due to lack of sufficient data.
- The OLS lacks sufficient information to quantify the overall fiscal impact as it is unclear as to how many offenders and parolees would be impacted by the provisions of this bill, and the frequency of such widespread infectious diseases resulting in a public health emergency cannot be accurately forecast. In general, however, the bill should result in lower State operating expenses during times when a public health emergency is declared.
- The OLS concurs with the DOC that the State may incur some cost for COVID-19 testing under the provisions of the bill. However, the OLS is unable to project the number of inmates who would be eligible for early release and need testing.

BILL DESCRIPTION

The bill requires public health emergency credits to be awarded to certain inmates, juveniles, and parolees during a public health emergency declared by the Governor to provide remission of time from an inmate's or juvenile's sentence, and a parolee's term of parole. The bill also prohibits contact with any identifiable victim following the release of an inmate or juvenile awarded credits, and requires certain reentry information to be provided prior to release.

The bill provides for public health emergency credits to be awarded to an inmate in the custody of the DOC or a juvenile in the custody of the JJC who is scheduled to be released from custody within one year. The credits are to be awarded if a public health emergency is declared by the Governor in response to a communicable or infectious disease, and results in substantial modification to department-wide correctional facility operations. The credits would reduce the inmate or juvenile's sentence at the rate of four months for each month, or portion of each month, served during the declared emergency, with a maximum of eight months of remission to be awarded for any declared emergency period. The bill also provides that an award of public health emergency credits is not to limit or affect an inmate's eligibility for parole consideration. Public health emergency credits are not to be awarded to an inmate or juvenile who has been deemed a repetitive, compulsive sex offender.

Under the bill, an inmate or juvenile who is released following an award of credits is prohibited from making contact with any victim of the crime for which the inmate or juvenile was serving a sentence. This contact prohibition is to remain in force from the date the inmate or juvenile is released until the date the inmate or juvenile was scheduled to be released from custody prior to the award of credits. Specifically, the bill would prohibit any contact, either personally or through an agent, that includes personal, written, electronic, or telephone contact with the victim, or entering the victim's residence, property, school, or place of employment.

The court is required to establish procedures for filing a petition to dissolve the contact prohibition. An inmate or juvenile who purposely or knowingly violates the contact prohibition is guilty of a crime of the fourth degree, which is punishable by a term of imprisonment of up to 18 months, a fine of up to \$10,000 or both.

The DOC is required under the bill to provide inmates, prior to release, with information concerning reentry organizations and programs. The DOC also is required, within 30 days prior to releasing an inmate following an award of credits, to provide any available information related to the inmate's eligibility for Medicaid, housing information, identification information, and eligibility for any other benefits and services. Subject to the availability of DOC testing resources, the DOC is required to test an inmate for COVID-19 prior to release following an award of public health emergency credits if the inmate is released during the Public Health Emergency and State of Emergency declared by the Governor in Executive Order 103 of 2020 concerning the coronavirus disease 2019 pandemic.

The provisions of the bill also require the DOC or JJC, as appropriate, to notify the appropriate court and the prosecutor of the county in which the inmate was convicted or the Attorney General if the matter was prosecuted by the Attorney General of: the name of any inmate or juvenile who is scheduled to be released from custody within 12 months as a result of the award of credits; the date the inmate or juvenile is scheduled to be released; and the date the inmate or juvenile was scheduled to be released prior to the award of credits.

Information concerning the procedures for filing an application for a domestic violence restraining order, resources for victims of domestic violence, and the procedures for filing a petition to dissolve the contact prohibition established under the bill are to be made available in both English and Spanish on the DOC, JJC, and Department of Law and Public Safety websites.

The prosecutor or Attorney General is required, not less than five days prior to the scheduled release date, to use any reasonable means available to notify an identifiable victim of: the crime for which the inmate or juvenile is serving a sentence of the inmate's or juvenile's scheduled release date, the law prohibiting the inmate or juvenile from having any contact the victim, the date the contact prohibition will expire, the penalties imposed for a violation; information concerning the procedures for filing an application to dissolve the contact prohibition, the procedures for filing an application for a domestic violence restraining order, and resources for victims of domestic violence.

The provisions of the bill also require public health emergency credits to be awarded to a parolee whose term expires within one year if a public health emergency is declared by the Governor that arises as a result of a communicable or infectious disease. The credits would reduce the parolee's term of supervision at the rate of four months for each month, or portion of each month, of the parolee's term served during the declared emergency, with a maximum of eight months of remission awarded for any declared emergency period.

A parolee who has been sentenced to a special sentence of community supervision for life or parole supervision for life, or a parole for a whom a warrant has been issued or parole revocation proceedings have been initiated, is ineligible to receive credits under the bill. The bill further clarifies that the award of public health emergency credits are not to interfere with the award of compliance credits to be awarded to a parolee under current law. Likewise, an award of compliance credits is not to interfere with the award of public health emergency credits under the bill.

FISCAL ANALYSIS

EXECUTIVE BRANCH

The OLS has not received a formal fiscal note on this bill. However, upon request, the DOC has indicated to the OLS that the bill may have some fiscal impact with regard to the provision on COVID-19 testing. The DOC notes that the cost of one COVID-19 test kit is currently \$65.00. However, the DOC has been advised that as of September 1, 2020 the cost will be increased to \$81.25. The DOC estimates an additional salary cost for staff to administer the test. The DOC estimates that at least one staff member, at a cost of \$40/hour, and one supervisor, at a cost of \$43.86/hour, will be needed to administer the COVID-19 inmate testing. DOC estimates that staff can complete about ten tests of inmates for COVID-19 per hour.

OFFICE OF LEGISLATIVE SERVICES

The OLS concludes that accelerating the release date of certain inmates and juvenile offenders and reducing the parole term of certain parolees by up to eight months by awarding them public health emergency credits could lower the operating expenditures of the DOC, the JJC, and the SPB during times when a public health emergency is declared. However, the OLS is unable to quantify the likely reduction in housing costs due to lack of sufficient information and the unpredictability of the frequency of such widespread infectious diseases. Data obtained from the DOC indicate that the average annual cost to house an inmate in a State prison facility during FY 2019 totaled \$50,191. However, this total savings would not be realized unless the population declines by a number large enough for the DOC to lower bed space capacity and reduce its fixed costs. Savings to be generated by a small number of inmates released early from State prison and not reducing

bed spaces would total \$8.60 per day or \$2,064 for a maximum credit of eight months per inmate in marginal costs for food, wages and clothing.

The State may receive revenue from additional fines and penalties imposed on individuals convicted of the new crime established by the bill. An inmate or juvenile who purposely or knowingly violates a “no contact” order is guilty of a crime of the fourth degree. A crime of the fourth degree is punishable by imprisonment of up to 18 months, a fine of up to \$10,000, or both. However, it is not possible to forecast the number of offenders likely to violate the “no contact” order. The OLS also notes that many fines go unpaid because of the financial condition of the offenders.

The OLS concurs with the DOC that the State may incur some cost for COVID-19 testing. Under the provisions of the bill and subject to the availability of DOC testing resources, the DOC is required to test an inmate for COVID-19 prior to release following an award of public health emergency credits. The OLS is unable to project the number of inmates who would need testing due to early release from public health emergency credits during the current pandemic or what kind of testing would be needed in the future in case of a pandemic.

Section: *Judiciary*
Analyst: *Anuja Pande Joshi*
 Assistant Research Analyst
Approved: *Frank W. Haines III*
 Legislative Budget and Finance Officer

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.).