

# ASSEMBLY, No. 4969

## STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 28, 2019

**Sponsored by:**

**Assemblywoman LISA SWAIN**

**District 38 (Bergen and Passaic)**

**Assemblyman NICHOLAS CHIARAVALLOTI**

**District 31 (Hudson)**

**Assemblywoman NANCY J. PINKIN**

**District 18 (Middlesex)**

**Co-Sponsored by:**

**Assemblyman Wimberly and Assemblywoman Sumter**

**SYNOPSIS**

Establishes “Fairness in Asset Forfeiture Proceedings Task Force.”

**CURRENT VERSION OF TEXT**

As introduced.



**(Sponsorship Updated As Of: 2/8/2019)**

1 AN ACT establishing a task force concerning the need for  
2 representation in asset forfeiture proceedings.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State  
5 of New Jersey:

6

7 1. a. There is established the “Fairness in Asset Forfeiture  
8 Proceedings Task Force” to study the nature, extent, and  
9 consequences of the lack of legal representation for certain State  
10 residents in asset forfeiture proceedings.

11 b. The purpose of the task force is to examine, on a Statewide  
12 basis, the impact that the lack of access to legal counsel in asset  
13 forfeiture proceedings has on the ability of State residents to be  
14 protected from the potentially devastating consequences that can  
15 result from the seizure of property.

16

17 2. a. The task force shall be comprised of 14 members, as  
18 follows:

19 (1) two public members appointed by the Governor, one of  
20 whom shall be a representative of a pro bono program organized by  
21 a law firm located in the State, and one of whom shall be a State  
22 resident who has been a pro se litigant who has appeared as a  
23 defendant in an asset forfeiture proceeding in the State;

24 (2) two public members appointed by the President of the  
25 Senate, one of whom shall be the representative of a non-profit  
26 organization dedicated to the services and assistance of defendants  
27 in civil asset forfeiture proceedings and one of whom shall be a  
28 duly licensed attorney of this State;

29 (3) two public members appointed by the Speaker of the General  
30 Assembly, one of whom shall be a director of a legal clinic program  
31 of a law school located in the State and one of whom shall be a  
32 State resident who has been a pro se litigant who had an ownership  
33 interest in seized property but was not a criminal defendant who  
34 was prosecuted in connection with the seizure of property in a civil  
35 asset forfeiture proceeding in the New Jersey State courts;

36 (4) one member appointed by the Chief Justice, who shall be a  
37 judge of the Superior Court assigned to the Civil Division or had  
38 been assigned to the Civil Division in the three-year period prior to  
39 the effective date of this act;

40 (5) the Chief Justice, or the Chief Justice’s designee;

41 (6) the Public Defender, or the Public Defender’s designee, who  
42 shall serve ex officio;

43 (7) the Attorney General, or the Attorney General’s designee,  
44 who shall serve ex officio;

45 (8) the dean of Seton Hall University School of Law, or the  
46 dean’s designee;

47 (9) the co-dean of Rutgers Law School, Newark Campus, or the  
48 co-dean’s designee;

1 (10) the co-dean of Rutgers Law School, Camden Campus, or the  
2 co-dean's designee; and

3 (11) the executive director of New Jersey Legal Services, or the  
4 executive director's designee.

5 b. The task force may meet and hold hearings at the places it  
6 designates during the sessions or recesses of the Legislature. The  
7 task force shall meet at the call of the co-chairs, and the presence of  
8 eight members of the task force shall constitute a quorum at any  
9 meeting of the task force.  
10

11 3. The task force shall be co-chaired as follows: one co-chair  
12 shall be the Attorney General, or the Attorney General's designee,  
13 and the other co-chair shall be appointed by the Governor from  
14 among the public members and shall serve at the pleasure of the  
15 Governor.  
16

17 4. Vacancies in the membership of the task force shall be filled  
18 in the same manner as the original appointments were made. The  
19 members of the task force shall serve without compensation, but  
20 shall be eligible for reimbursement for necessary and reasonable  
21 expenses incurred in the performance of their official duties within  
22 the limits of funds appropriated or otherwise made available of the  
23 commission for its purposes.  
24

25 5. The Attorney General's Office shall provide staff and related  
26 support services as the task force requires to carry out its work.  
27

28 6. The task force shall be entitled to call to its assistance and  
29 avail itself of the services of the employees of any State, county, or  
30 municipal department, board, bureau, commission, or agency as it  
31 may require and as may be available to it for its purposes, and to  
32 incur such traveling and other miscellaneous expenses as it may  
33 deem necessary for the proper execution of its duties and as may be  
34 within the limits of funds appropriated or otherwise made available  
35 to it for these purposes.  
36

37 7. The task force shall present a report of its findings and  
38 recommendations to the Governor and, pursuant to section 2 of  
39 P.L.1991, c.164 (C.52:14-19.1), to the Legislature no later than 18  
40 months after the organization of the task force. The  
41 recommendations shall include mechanisms to:

42 a. secure access to justice and legal representation in civil asset  
43 forfeiture proceedings by increasing the availability of legal  
44 assistance with civil asset forfeiture matters throughout the State;

45 b. institute a review of New Jersey's Rules of Professional  
46 Conduct and Unauthorized Practice of Law rules with the purpose  
47 of identifying revisions that expand the ability of law students to  
48 provide pro bono assistance to persons of limited means; and

1 c. encourage increased pro bono service by the State’s legal  
2 community.

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4 8. The task force shall dissolve three months after presenting  
5 the report.

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7 9. This act shall take effect immediately.

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STATEMENT

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12 This bill establishes the “Fairness in Asset Forfeiture  
13 Proceedings Task Force” for the purpose of studying the nature,  
14 extent, and consequences of the lack of legal representation of  
15 certain State residents in asset forfeiture proceedings.

16 A civil asset forfeiture proceeding is an action by the  
17 government seeking ownership of personal property either used as  
18 an instrumentality of a crime or which represents the proceeds of  
19 criminal activity. New Jersey allows the practice of asset forfeiture  
20 when law enforcement officers can meet the “preponderance of  
21 evidence” standard that property was used in the commission of a  
22 crime. Forfeited proceeds are required to be used solely for law  
23 enforcement purposes and are required to be designated for the  
24 exclusive use of the law enforcement agency that contributed to the  
25 surveillance, investigation, arrest, or prosecution resulting in the  
26 forfeiture.

27 Certain civil liberty groups have criticized civil asset forfeiture  
28 as a means for law enforcement entities to obtain an individual’s  
29 personal property for the purpose of funding law enforcement  
30 initiatives. Many citizens are either unaware of their right to  
31 oppose a civil asset forfeiture or do not have the financial  
32 wherewithal to do so.

33 According to a recent American Civil Liberties Union-New  
34 Jersey (ACLU) report, between January and June of 2016, there  
35 were approximately 1,860 civil forfeiture cases initiated by county  
36 prosecutors in the State, mostly in low-income areas. These cases  
37 involved more than \$5.5 million, 234 cars, and a home. Of these  
38 1,860 cases, the defendants in only 50 of them appeared in court to  
39 oppose the forfeiture. The ACLU report further notes that public  
40 defenders are prohibited from representing defendants in civil  
41 matters and most legal services providers in this State do not offer  
42 assistance to defendants in civil asset forfeiture matters.

43 The 14 member task force would submit a report of its findings  
44 and recommendations to the Governor and Legislature within 18  
45 months of its organization.

46 The membership of the commission would be as follows:

47 (1) two public members appointed by the Governor, one of  
48 whom shall be a representative of a pro bono program organized by

1 a law firm located in the State, and one of whom shall be a State  
2 resident who has been a pro se litigant who has appeared as a  
3 defendant in an asset forfeiture proceeding in the State;

4 (2) two public members appointed by the President of the  
5 Senate, one of whom shall be the representative of a non-profit  
6 organization dedicated to the services and assistance of defendants  
7 in civil asset forfeiture proceedings and one of whom shall be a  
8 duly licensed attorney of this State;

9 (3) two public members appointed by the Speaker of the General  
10 Assembly, one of whom shall be a director of a legal clinic program  
11 of a law school located in the State and one of whom shall be a  
12 State resident who has been a pro se litigant who had an ownership  
13 interest in seized property but was not a criminal defendant who  
14 was being prosecuted in connection with the seizure of property in a  
15 civil asset forfeiture proceeding in the New Jersey State courts;

16 (4) one member appointed by the Chief Justice, who is required  
17 to be a judge of the Superior Court assigned to the Civil Division or  
18 had been assigned to the Civil Division in the three-year period  
19 prior to the effective date of the bill;

20 (5) the Chief Justice, or the Chief Justice's designee;

21 (6) the Public Defender, or the Public Defender's designee, who  
22 shall serve ex officio;

23 (7) the Attorney General, or the Attorney General's designee,  
24 who shall serve ex officio;

25 (8) the dean of Seton Hall University School of Law, or the  
26 dean's designee;

27 (9) the co-dean of Rutgers Law School, Newark Campus, or the  
28 co-dean's designee;

29 (10) the co-dean of Rutgers Law School, Camden Campus, or the  
30 co-dean's designee; and

31 (11) the executive director of New Jersey Legal Services, or the  
32 executive director's designee.

33 The task force would be co-chaired: one co-chair would be the  
34 Attorney General, or the Attorney General's designee, and the other  
35 co-chair would be appointed by the Governor from among the  
36 public members and would serve at the pleasure of the Governor.

37 The task force may meet and hold hearings at the places it  
38 designates during the sessions or recesses of the Legislature. The  
39 task force would meet at the call of the co-chairs. The presence of  
40 eight members of the task force would constitute a quorum at any  
41 task force meeting.