

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

ASSEMBLY, No. 4970

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: MAY 24, 2019

SUMMARY

Synopsis: Revises procedures for certain asset forfeiture proceedings and requires criminal conviction for forfeiture of certain seized property.

Type of Impact: Annual expenditure and revenue decreases to State General Fund.

Agencies Affected: Department of Law and Public Safety; Judiciary; local law enforcement agencies.

Office of Legislative Services Estimate

Fiscal Impact	<u>Annual</u>
State Cost Decrease	Indeterminate
Local Cost Decrease	Indeterminate
State Revenue Decrease	Indeterminate
Local Revenue Decrease	Indeterminate

- The Office of Legislative Services (OLS) projects that exempting certain types of seized property from forfeiture unless a prosecution terminates with a conviction would result in indeterminate annual expenditure decreases to the Judiciary, the Department of Law and Public Safety, and county prosecutors' offices.
- The Judiciary would also receive indeterminate less annual revenue from filing fees.
- Law enforcement agencies would also experience an indeterminate annual revenue loss since there will be less proceeds resulting from fewer forfeiture proceedings.
- The OLS lacks sufficient information to quantify the fiscal impacts, as it is unclear how many fewer forfeiture cases would be filed in accordance with the provisions of the bill in any given fiscal year.

BILL DESCRIPTION

The bill revises procedures related to certain asset forfeiture proceedings and requires a criminal conviction for forfeiture of certain seized property.

Under current law, a forfeiture action may be enforced by a civil action for seized property, other than prima facie contraband. Prima facie contraband refers to controlled dangerous substances; firearms which are unlawfully possessed, carried, acquired or used; illegally possessed gambling devices; untaxed or otherwise contraband cigarettes or tobacco products; untaxed special fuel; unlawful sound recordings and audiovisual works; and items bearing a counterfeit mark. This bill requires the complaint initiating the action to include the value of the seized property.

Under current law, a prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property. Under the bill, the following types of seized property, other than prima facie contraband, are not subject to forfeiture unless a prosecution terminates with a conviction: (1) property in the form of cash, negotiable instruments, or other cash equivalents with a value of \$1,000 or less; or (2) property, other than cash, negotiable instruments, or cash equivalent, valued at \$25,000 or less. A criminal conviction is not required for other seized property. However, consistent with current law, a conviction creates a rebuttable presumption that the property was used in furtherance of unlawful activity.

The bill further provides that seized property other than prima facie contraband is not to be subject to forfeiture unless: (1) in the case of seized property in the form of cash, negotiable instruments, or other cash equivalents with a value of greater than \$1,000; or (2) in the case of property other than cash, negotiable instruments, or other cash equivalent, valued at greater than \$25,000, the State establishes, by clear and convincing evidence, that the owner of the property was involved in or aware of the unlawful activity and the owner did all that could reasonably be expected to prevent the unlawful use of the property. Current law places the burden on the owner of the property rather than the State to establish, by a preponderance of the evidence, that the owner was not involved in or aware of the unlawful activity.

FISCAL ANALYSIS

JUDICIAL BRANCH

The Administrative Office of the Courts (AOC) provided information on the amount of forfeiture filings filed in the Law Division, Civil Part of Superior Court (Law Division) and in the Law Division, Special Civil Part of Superior Court (Special Civil Part-DC docket) in 2017 and 2018.

Civil cases in which the amount in controversy is more than \$15,000 are heard in the Law Division. Cases in which the amount in controversy is up to \$15,000 are heard in the Special Civil Part-DC docket.

In 2017 there were 270 forfeiture filings in the Law Division and 99 of these filings had answers filed. There were also 3,643 forfeiture filings in the Special Civil Part and 362 of these filings had answers filed.

In 2018 there were 263 forfeiture filings in the Law Division and 82 of these filings had answers filed. There were also 3,291 forfeiture filings in the Special Civil Part and 319 filings had answers filed.

OFFICE OF LEGISLATIVE SERVICES

The OLS projects that exempting certain types of seized property from forfeiture unless a prosecution terminates with a conviction would result in indeterminate annual State expenditure and revenue decreases.

The OLS does not have sufficient information to quantify the decrease in annual cases that would result from this bill. In 2017 in the Law Division 99 out of a total 270 forfeiture filings had answers filed in the Law Division. In 2018 82 out of a total of 263 forfeiture filings had answers filed in the Law Division. For purposes of this analysis it is the 99 forfeiture filings in 2017 and the 82 forfeiture filings in 2018 that would most likely include cases involving seized property, other than cash, negotiable instruments, or cash equivalent, valued at least \$15,000 that terminate without a conviction.

Asset forfeiture cases in which the amount in controversy is up to \$15,000 are heard in the Special Civil Part-DC docket. In 2017 in the Special Civil Part-DC docket 362 out of a total 3,643 forfeiture filings had answers filed. In 2018 319 out of a total 3,291 forfeiture filings had answers filed in the Special Civil Part-DC docket. The 362 forfeiture filings in 2017 and the 319 forfeiture filings in 2018 would most likely include cases involving seized property in the form of cash, negotiable instruments, or other cash equivalents with a value of \$1,000 or less that terminate without a conviction.

The OLS anticipates that the decrease in annual cases would result in a decrease in annual expenditures for the Judiciary, the Department of Law and Public Safety, and county prosecutors' offices, as county prosecutors would have to prosecute less cases and the Judiciary would have a decreased civil caseload. The OLS also projects that the Judiciary will receive indeterminate less annual revenue from a decrease in court filing fees. In addition, the OLS projects that law enforcement agencies would experience an indeterminate annual revenue loss since there will be less proceeds resulting from fewer forfeiture proceedings.

Section: *Judiciary*

Analyst: *Sarita Welsh*
 Associate Counsel

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.).