

S3441

SPONSOR'S STATEMENT: (Begins on page 4 of introduced bill) Yes

COMMITTEE STATEMENT:

ASSEMBLY: No

SENATE: Yes Law & Public Safety
Budget & Appropriations

(Audio archived recordings of the committee meetings, corresponding to the date of the committee statement, *may possibly* be found at www.njleg.state.nj.us)

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: Yes 1/8/2020
1/16/2020

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

To check for circulating copies, contact New Jersey State Government Publications at the State Library (609) 278-2640 ext.103 or <mailto:refdesk@njstatelib.org>

REPORTS: No

HEARINGS: No

NEWSPAPER ARTICLES: Yes

"Gov. signs bill giving early parole to some non-violent inmates," The Times, January 21, 2020
"Murphy signs criminal justice reform bills," The Star-Ledger, January 21, 2020

Rwh/cl

P.L. 2019, CHAPTER 371, *approved January 20, 2020*
Assembly, 4970 (*Third Reprint*)

1 AN ACT concerning asset forfeiture proceedings and amending
2 N.J.S.2C:64-3, N.J.S.2C:64-4, and N.J.S.2C:64-5.

3
4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6
7 ²[1. N.J.S.2C:64-3 is amended to read as follows:

8 2C:64-3. Forfeiture procedures. a. Whenever any property
9 other than prima facie contraband is subject to forfeiture under this
10 chapter, **[such]** the forfeiture may be enforced by a civil action,
11 instituted within 90 days of the seizure and commenced by the State
12 and against the property sought to be forfeited.

13 b. The complaint shall be verified on oath or affirmation. It
14 shall describe with reasonable particularity the property that is the
15 subject matter of the action and the value of the property, and shall
16 contain allegations setting forth the reason or reasons the article
17 sought to be or which has been seized is contraband.

18 c. Notice of the action shall be given to any person known to
19 have a property interest in the article. In addition, the notice
20 requirements of the Rules of Court for an in rem action shall be
21 followed.

22 d. The claimant of the property that is the subject of an action
23 under this chapter shall file and serve **[his]** the claim in the form of
24 an answer in accordance with the Rules of Court. The answer shall
25 be verified on oath or affirmation, and shall state the interest in the
26 property by virtue of which the claimant demands its restitution and
27 the right to defend the action. If the claim is made in behalf of the
28 person entitled to possession by an agent, bailee, or attorney, it shall
29 state that **[he]** the claimant is duly authorized to make the claim.

30 e. If no answer is filed and served within the applicable time,
31 the property seized shall be disposed of pursuant to N.J.S.2C:64-6.

32 f. If an answer is filed, the Superior **[or county district]** court
33 shall set the matter down for a summary hearing as soon as
34 practicable. Upon application of the State or claimant, if **[he be]**
35 the claimant is a defendant in a criminal proceeding arising out of
36 the seizure, the Superior **[or county district]** court may stay
37 proceedings in the forfeiture action until the criminal proceedings
38 have been concluded by an entry of final judgment.

39 g. Any person with a property interest in the seized property,
40 other than a defendant who is being prosecuted in connection with
41 the seizure of property may secure its release pending the forfeiture

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ALP committee amendments adopted February 7, 2019.

²Senate SLP committee amendments adopted December 9, 2019.

³Senate SBA committee amendments adopted January 9, 2020.

1 action unless the article is dangerous to the public health, safety,
2 and welfare or the State can demonstrate that the property will
3 probably be lost or destroyed if released or employed in subsequent
4 criminal activity. Any person with **【such】** a property interest other
5 than a defendant who is being prosecuted, prior to the release of
6 **【said】** that property shall post a bond with the court in the amount
7 of the market value of the seized item.

8 h. The prosecuting agency with approval of the entity funding
9 **【such】** the agency, or any other entity, with the approval of the
10 prosecuting agency, where the other entity's law enforcement
11 agency participated in the surveillance, investigation or arrest which
12 is the subject of the forfeiture action, may apply to the Superior
13 Court for an order permitting use of seized property, pending the
14 disposition of the forfeiture action provided, however, that **【such】**
15 the property shall be used solely for law enforcement purposes.
16 Approval shall be liberally granted but shall be conditioned upon
17 the filing of a bond in an amount equal to the market value of the
18 item seized or a written guarantee of payment for property which
19 may be subject to return, replacement or compensation as to
20 reasonable value in the event that the forfeiture is refused or only
21 partial extinguishment of property rights is ordered by the court.

22 i. If the property is of such nature that substantial difficulty
23 may result in preserving its value during the pendency of the
24 forfeiture action, the Superior **【or county district】** court may
25 appoint a trustee to protect the interests of all parties involved in the
26 action.

27 j. **【Evidence】** Except in circumstances in which a conviction is
28 required for the forfeiture of seized property pursuant to this
29 chapter, evidence of a conviction of a criminal offense in which
30 seized property was either used or provided an integral part of the
31 State's proofs in the prosecution shall be considered in the forfeiture
32 proceeding as creating a rebuttable presumption that the property
33 was utilized in furtherance of an unlawful activity.

34 (cf: P.L.1989, c.279, s.1)²

35
36 ¹1. N.J.S.2C:64-3 is amended to read as follows:

37 2C:64-3. Forfeiture procedures. a. Whenever any property
38 other than prima facie contraband is subject to forfeiture under this
39 chapter, **【such】** the forfeiture may be enforced by a civil action,
40 instituted within 90 days of the seizure and commenced by the State
41 and against the property sought to be forfeited.

42 b. The complaint shall be verified on oath or affirmation. It
43 shall describe with reasonable particularity the property that is the
44 subject matter of the action and shall contain allegations setting
45 forth the reason or reasons the article sought to be or which has
46 been seized is contraband.

47 c. Notice of the action shall be given to any person known to
48 have a property interest in the article. In addition, the notice

1 requirements of the Rules of Court for an in rem action shall be
2 followed.

3 d. The claimant of the property that is the subject of an action
4 under this chapter shall file and serve **【his】** the claim in the form of
5 an answer in accordance with the Rules of Court. The answer shall
6 be verified on oath or affirmation, and shall state the interest in the
7 property by virtue of which the claimant demands its restitution and
8 the right to defend the action. If the claim is made in behalf of the
9 person entitled to possession by an agent, bailee, or attorney, it shall
10 state that **【he】** the claimant is duly authorized to make the claim.

11 e. If no answer is filed and served within the applicable time,
12 the property seized shall be disposed of pursuant to N.J.S.2C:64-6.

13 f. If an answer is filed, the Superior **【or county district】** court
14 shall set the matter down for a summary hearing as soon as
15 practicable. **【Upon】** ³**【Prior to the filing of an answer, upon】** **Upon**³
16 application of the State or claimant, if **【he be】** the claimant is a
17 defendant in a criminal proceeding arising out of the seizure, the
18 Superior **【or county district】** court may stay proceedings in the
19 forfeiture action until the criminal proceedings have been concluded
20 by an entry of final judgment.

21 g. Any person with a property interest in the seized property,
22 other than a defendant who is being prosecuted in connection with
23 the seizure of property may secure its release pending the forfeiture
24 action unless the article is dangerous to the public health, safety,
25 and welfare or the State can demonstrate that the property will
26 probably be lost or destroyed if released or employed in subsequent
27 criminal activity. Any person with **【such】** a property interest other
28 than a defendant who is being prosecuted, prior to the release of
29 **【said】** that property shall post a bond with the court in the amount
30 of the market value of the seized item.

31 h. The prosecuting agency with approval of the entity funding
32 **【such】** the agency, or any other entity, with the approval of the
33 prosecuting agency, where the other entity's law enforcement
34 agency participated in the surveillance, investigation or arrest which
35 is the subject of the forfeiture action, may apply to the Superior
36 Court for an order permitting use of seized property, pending the
37 disposition of the forfeiture action provided, however, that **【such】**
38 the property shall be used solely for law enforcement purposes.
39 Approval shall be liberally granted but shall be conditioned upon
40 the filing of a bond in an amount equal to the market value of the
41 item seized or a written guarantee of payment for property which
42 may be subject to return, replacement or compensation as to
43 reasonable value in the event that the forfeiture is refused or only
44 partial extinguishment of property rights is ordered by the court.

45 i. If the property is of **【such】** the nature that substantial
46 difficulty may result in preserving its value during the pendency of
47 the forfeiture action, the Superior **【or county district】** court may

1 appoint a trustee to protect the interests of all parties involved in the
2 action.

3 j. Evidence of a conviction of a criminal offense in which
4 seized property was either used or provided an integral part of the
5 State's proofs in the prosecution shall be considered in the forfeiture
6 proceeding as creating a rebuttable presumption that the property
7 was utilized in furtherance of an unlawful activity.

8 k. Seized property other than prima facie contraband shall not
9 be subject to forfeiture pursuant to the provisions of this chapter if
10 there are no criminal charges arising out of or related to the
11 property seizure or a criminal prosecution arising out of or related
12 to the property seizure terminates with no criminal culpability
13 unless:

14 (1) there is no known owner of the seized property and no
15 person credibly asserts an ownership interest in the seized property;
16 or

17 (2) the State establishes by a preponderance of the evidence, in
18 the case of seized property in the form of cash, negotiable
19 instruments, or other cash equivalents, that the property has a value
20 of greater than \$1,000, or in the case of seized property other than
21 cash, negotiable instruments, or other cash equivalent, that the
22 property has a value of greater than \$10,000.

23 l. For the purposes of this section, a criminal prosecution
24 arising out of or related to the property seizure terminates with no
25 criminal culpability if, with respect to all criminal charges
26 involving the seized property, the prosecution resulted in:

27 (1) an acquittal;

28 (2) a dismissal with prejudice, excluding a dismissal with
29 prejudice in which the defendant was admitted into a program of
30 supervisory treatment pursuant to the provisions of N.J.S.2C:43-12
31 through N.J.S.2C:43-22 or any other law or functionally equivalent
32 program of another state or the United States pursuant to which an
33 offense was dismissed or a felony conviction avoided or eliminated
34 from the record when the defendant successfully completed the
35 program; or

36 (3) a finding of not guilty by reason of insanity.¹

37 (cf: P.L.1989, c.279, s.1)

38

39 ²[2. N.J.S.2C:64-4 is amended to read as follows:

40 a. Nothing in this chapter shall impair the right of the State to
41 retain evidence pending a criminal prosecution.

42 b. ¹【The fact that a】 A¹ prosecution involving seized property
43 ¹that¹ terminates without a conviction 【does not】 shall preclude
44 forfeiture proceedings against 【the】 property 【 pursuant to this
45 chapter】 with a value of:

46 (1) \$1,000 or less in the case of property in the form of cash,
47 negotiable instruments, or other cash equivalents; or

1 (2) \$25,000 or less in the case of property other than cash,
2 negotiable instruments, or other cash equivalent.

3 (cf: P.L.1981, c.290, s.49)]²

4
5 ¹2. N.J.S.2C:64-4 is amended to read as follows:

6 a. Nothing in this chapter shall impair the right of the State to
7 retain evidence pending a criminal prosecution.

8 b. The fact that a prosecution involving seized property other than
9 prima facie contraband terminates [without a conviction does not]
10 with no criminal culpability shall preclude forfeiture proceedings
11 against the property pursuant to this chapter if the State fails to
12 establish by a preponderance of evidence that the seized property has a
13 value of more than \$1,000 in the case of property in the form of cash,
14 negotiable instruments, or other cash equivalents or more than \$10,000
15 in the case of property other than cash, negotiable instruments, or other
16 cash equivalent; otherwise, the fact that a prosecution involving seized
17 property other than prima facie contraband terminates with no criminal
18 culpability shall not preclude forfeiture proceedings against the
19 property pursuant to this chapter.

20 c. For the purposes of this section, a criminal prosecution arising
21 out of or related to the property seizure terminates with no criminal
22 culpability if, with respect to all criminal charges involving the seized
23 property, the prosecution resulted in:

24 (1) an acquittal;

25 (2) a dismissal with prejudice, excluding a dismissal with
26 prejudice in which the defendant was admitted into a program of
27 supervisory treatment pursuant to the provisions of N.J.S.2C:43-12
28 through N.J.S.2C:43-22 or any other law or functionally equivalent
29 program of another state or the United States pursuant to which an
30 offense was dismissed or a felony conviction avoided or eliminated
31 from the record when the defendant successfully completed the
32 program; or

33 (3) a finding of not guilty by reason of insanity.¹

34 (cf: P.L.1981, c.290, s.49)

35
36 ²[3. N.J.S.2C:64-5 is amended to read as follows:

37 Seized Property; Rights of Owners and Others Holding Interests.

38 a. No forfeiture under this chapter shall affect the rights of any
39 lessor in the ordinary course of business or any person holding a
40 perfected security interest in property subject to seizure unless [it
41 shall appear that such] , in the case of property in the form of cash,
42 negotiable instruments, or other cash equivalents with a value of
43 greater than \$1,000, or in the case of property other than cash,
44 negotiable instruments, or other cash equivalent with a value of
45 greater than \$25,000, the State establishes, by clear and convincing
46 evidence, that the person had knowledge of or consented to any act
47 or omission upon which the right of forfeiture is based. [Such]
48 These rights are only to the extent of interest in the seized property

1 and at the option of the entity funding the prosecuting agency
2 involved may be extinguished by appropriate payment.

3 b. (1) Property other than prima facie contraband seized
4 under this chapter shall not be subject to forfeiture **【if】** unless a
5 prosecution involving property in the form of cash, negotiable
6 instruments, or other cash equivalents with a value of \$1,000 or
7 less, or property, other than cash, negotiable instruments, or other
8 cash equivalent valued at \$25,000 or less terminates with a
9 conviction; or

10 (2) Property other than prima facie contraband seized under this
11 chapter shall not be subject to forfeiture unless, in the case of seized
12 property in the form of cash, negotiable instruments, or other cash
13 equivalents with a value of greater than \$1,000, or in the case of
14 property other than cash, negotiable instruments, or other cash
15 equivalent valued at greater than \$25,000, the **【owner of the**
16 **property】** State establishes by **【a preponderance of the】** clear and
17 convincing evidence that the owner of the property was **【not】**
18 involved in or aware of the unlawful activity and that the owner had
19 done all that could reasonably be expected to prevent the proscribed
20 use of the property by an agent. A person who uses or possesses
21 property with the consent or knowledge of the owner is deemed to
22 be the agent of the owner for purposes of this chapter.

23 c. Property seized under this chapter shall not be subject to
24 forfeiture if the property is seized while entrusted to a person by the
25 owner or the agent of the owner when the property has been
26 entrusted to the person for repairs, restoration or other services to
27 be performed on the property, and that person, without the owner's
28 knowledge or consent, uses the property for unlawful purposes.

29 (cf: P.L.1986, c.79, s.1)²

30
31 ¹3. N.J.S.2C:64-5 is amended to read as follows:

32 Seized Property; Rights of Owners and Others Holding Interests.

33 a. **【No forfeiture under】** Forfeiture pursuant to this chapter shall
34 not affect the rights of any lessor in the ordinary course of business or
35 any person holding a perfected security interest in property subject to
36 seizure unless it shall appear that **【such】** the person had knowledge of
37 or consented to any act or omission upon which the right of forfeiture
38 is based. **【Such】** These rights are only to the extent of interest in the
39 seized property and at the option of the entity funding the prosecuting
40 agency involved may be extinguished by appropriate payment.

41 b. Property seized under this chapter shall not be subject to
42 forfeiture if:

43 (1) **【owner of the property establishes】** prosecutor fails to
44 establish by a preponderance of the evidence that the owner of the
45 property was **【not】** involved in or aware of the unlawful activity
46 **【and】**: or

1 (2) the prosecutor establishes by a preponderance of the
2 evidence that the owner of the property was involved in or aware of
3 the unlawful activity, but the owner establishes by a preponderance
4 of the evidence that the owner had done all that could reasonably be
5 expected to prevent the proscribed use of the property by an agent. A
6 person who uses or possesses property with the consent or knowledge
7 of the owner is deemed to be the agent of the owner for purposes of
8 this chapter.

9 c. Property seized under this chapter shall not be subject to
10 forfeiture if the property is seized while entrusted to a person by the
11 owner or the agent of the owner when the property has been entrusted
12 to the person for repairs, restoration or other services to be performed
13 on the property, and that person, without the owner's knowledge or
14 consent, uses the property for unlawful purposes.¹

15 (cf: P.L.1986, c.79, s.1)

16

17 4. This act shall take effect immediately.

18

19

20

21

22 Revises law governing forfeiture of certain seized property.

ASSEMBLY, No. 4970

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED JANUARY 28, 2019

Sponsored by:

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Assemblywoman SHAVONDA E. SUMTER

District 35 (Bergen and Passaic)

Assemblywoman NANCY J. PINKIN

District 18 (Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



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

1 AN ACT concerning asset forfeiture proceedings and amending
2 N.J.S.2C:64-3, N.J.S.2C:64-4, and N.J.S.2C:64-5.

3

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

6

7 1. N.J.S.2C:64-3 is amended to read as follows:

8 2C:64-3. Forfeiture procedures. a. Whenever any property
9 other than prima facie contraband is subject to forfeiture under this
10 chapter, **[such]** the forfeiture may be enforced by a civil action,
11 instituted within 90 days of the seizure and commenced by the State
12 and against the property sought to be forfeited.

13 b. The complaint shall be verified on oath or affirmation. It
14 shall describe with reasonable particularity the property that is the
15 subject matter of the action and the value of the property, and shall
16 contain allegations setting forth the reason or reasons the article
17 sought to be or which has been seized is contraband.

18 c. Notice of the action shall be given to any person known to
19 have a property interest in the article. In addition, the notice
20 requirements of the Rules of Court for an in rem action shall be
21 followed.

22 d. The claimant of the property that is the subject of an action
23 under this chapter shall file and serve **[his]** the claim in the form of
24 an answer in accordance with the Rules of Court. The answer shall
25 be verified on oath or affirmation, and shall state the interest in the
26 property by virtue of which the claimant demands its restitution and
27 the right to defend the action. If the claim is made in behalf of the
28 person entitled to possession by an agent, bailee, or attorney, it shall
29 state that **[he]** the claimant is duly authorized to make the claim.

30 e. If no answer is filed and served within the applicable time,
31 the property seized shall be disposed of pursuant to N.J.S.2C:64-6.

32 f. If an answer is filed, the Superior **[or county district]** court
33 shall set the matter down for a summary hearing as soon as
34 practicable. Upon application of the State or claimant, if **[he be]**
35 the claimant is a defendant in a criminal proceeding arising out of
36 the seizure, the Superior **[or county district]** court may stay
37 proceedings in the forfeiture action until the criminal proceedings
38 have been concluded by an entry of final judgment.

39 g. Any person with a property interest in the seized property,
40 other than a defendant who is being prosecuted in connection with
41 the seizure of property may secure its release pending the forfeiture
42 action unless the article is dangerous to the public health, safety,
43 and welfare or the State can demonstrate that the property will
44 probably be lost or destroyed if released or employed in subsequent
45 criminal activity. Any person with **[such]** a property interest other

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 than a defendant who is being prosecuted, prior to the release of
2 **【said】** that property shall post a bond with the court in the amount
3 of the market value of the seized item.

4 h. The prosecuting agency with approval of the entity funding
5 **【such】** the agency, or any other entity, with the approval of the
6 prosecuting agency, where the other entity's law enforcement
7 agency participated in the surveillance, investigation or arrest which
8 is the subject of the forfeiture action, may apply to the Superior
9 Court for an order permitting use of seized property, pending the
10 disposition of the forfeiture action provided, however, that **【such】**
11 the property shall be used solely for law enforcement purposes.
12 Approval shall be liberally granted but shall be conditioned upon
13 the filing of a bond in an amount equal to the market value of the
14 item seized or a written guarantee of payment for property which
15 may be subject to return, replacement or compensation as to
16 reasonable value in the event that the forfeiture is refused or only
17 partial extinguishment of property rights is ordered by the court.

18 i. If the property is of such nature that substantial difficulty
19 may result in preserving its value during the pendency of the
20 forfeiture action, the Superior **【or county district】** court may
21 appoint a trustee to protect the interests of all parties involved in the
22 action.

23 j. **【Evidence】** Except in circumstances in which a conviction is
24 required for the forfeiture of seized property pursuant to this
25 chapter, evidence of a conviction of a criminal offense in which
26 seized property was either used or provided an integral part of the
27 State's proofs in the prosecution shall be considered in the forfeiture
28 proceeding as creating a rebuttable presumption that the property
29 was utilized in furtherance of an unlawful activity.

30 (cf: P.L.1989, c.279, s.1)

31

32 2. N.J.S.2C:64-4 is amended to read as follows:

33 a. Nothing in this chapter shall impair the right of the State to
34 retain evidence pending a criminal prosecution.

35 b. The fact that a prosecution involving seized property
36 terminates without a conviction **【does not】** shall preclude forfeiture
37 proceedings against **【the】** property **【 pursuant to this chapter】** with
38 a value of:

39 (1) \$1,000 or less in the case of property in the form of cash,
40 negotiable instruments, or other cash equivalents; or

41 (2) \$25,000 or less in the case of property other than cash,
42 negotiable instruments, or other cash equivalent.

43 (cf: P.L.1981, c.290, s.49)

44

45 3. N.J.S.2C:64-5 is amended to read as follows:

46 Seized Property; Rights of Owners and Others Holding Interests.

47 a. No forfeiture under this chapter shall affect the rights of any
48 lessor in the ordinary course of business or any person holding a

1 perfected security interest in property subject to seizure unless [it
2 shall appear that such] , in the case of property in the form of cash,
3 negotiable instruments, or other cash equivalents with a value of
4 greater than \$1,000, or in the case of property other than cash,
5 negotiable instruments, or other cash equivalent with a value of
6 greater than \$25,000, the State establishes, by clear and convincing
7 evidence, that the person had knowledge of or consented to any act
8 or omission upon which the right of forfeiture is based. [Such]
9 These rights are only to the extent of interest in the seized property
10 and at the option of the entity funding the prosecuting agency
11 involved may be extinguished by appropriate payment.

12 b. (1) Property other than prima facie contraband seized under
13 this chapter shall not be subject to forfeiture **[if] unless** a
14 prosecution involving property in the form of cash, negotiable
15 instruments, or other cash equivalents with a value of \$1,000 or
16 less, or property, other than cash, negotiable instruments, or other
17 cash equivalent valued at \$25,000 or less terminates with a
18 conviction; or

19 (2) Property other than prima facie contraband seized under this
20 chapter shall not be subject to forfeiture unless, in the case of seized
21 property in the form of cash, negotiable instruments, or other cash
22 equivalents with a value of greater than \$1,000, or in the case of
23 property other than cash, negotiable instruments, or other cash
24 equivalent valued at greater than \$25,000, the **[owner of the**
25 **property]** State establishes by **[a preponderance of the]** clear and
26 convincing evidence that the owner of the property was **[not]**
27 involved in or aware of the unlawful activity and that the owner had
28 done all that could reasonably be expected to prevent the proscribed
29 use of the property by an agent. A person who uses or possesses
30 property with the consent or knowledge of the owner is deemed to
31 be the agent of the owner for purposes of this chapter.

32 c. Property seized under this chapter shall not be subject to
33 forfeiture if the property is seized while entrusted to a person by the
34 owner or the agent of the owner when the property has been
35 entrusted to the person for repairs, restoration or other services to
36 be performed on the property, and that person, without the owner's
37 knowledge or consent, uses the property for unlawful purposes.

38 (cf: P.L. 1986, c.79, s.1)

39

40 4. This act shall take effect immediately.

41

42

43

STATEMENT

44

45 This bill revises procedures related to certain asset forfeiture
46 proceedings and requires a criminal conviction for forfeiture of
47 certain seized property.

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

10 Under current law, a prosecution involving seized property that
11 terminates without a conviction does not preclude forfeiture
12 proceedings against the property. Under the bill, seized property,
13 other than prima facie contraband, is not to be subject to forfeiture
14 unless a prosecution involving: (1) property in the form of cash,
15 negotiable instruments, or other cash equivalents with a value of
16 \$1,000 or less; or (2) property, other than cash, negotiable
17 instruments, or cash equivalent, valued at \$25,000 or less terminates
18 with a conviction. A criminal conviction is not required for other
19 seized property. However, consistent with current law, a conviction
20 creates a rebuttable presumption that the property was used in
21 furtherance of unlawful activity.

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

ASSEMBLY LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 4970

with committee amendments

STATE OF NEW JERSEY

DATED: FEBRUARY 7, 2019

The Assembly Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 4970.

As amended and reported by the committee, Assembly Bill No. 4970 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.

COMMITTEE AMENDMENTS:

The committee made a technical amendment to the bill.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4970

STATE OF NEW JERSEY

DATED: MAY 20, 2019

The Assembly Appropriations Committee reports favorably Assembly Bill No. 4970 (1R).

Assembly Bill No. 4970 (1R) 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 IMPACT:

The Office of Legislative Services concludes that this bill will result in a decrease in State and local revenue by indeterminate amounts by forestalling asset forfeiture in certain prosecutions that do not result in a conviction. The bill may also result in decreased forfeiture filings, which may reduce by an indeterminate amount expenditures of the Judiciary, the Department of Law and Public Safety and county prosecutors associated with those proceedings.

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

[First Reprint]

ASSEMBLY, No. 4970

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2019

The Senate Law and Public Safety Committee reports favorably and with committee amendments Assembly Bill No. 4970 (1R).

As amended and reported by the committee, Assembly Bill No. 4970 (1R) clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

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. A prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property.

Specifically, the amended bill prohibits forfeiture of seized property, other than prima facie contraband, if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. No criminal culpability exists if the prosecution results in an acquittal, a dismissal with prejudice (excluding supervisory treatment), or a finding of not guilty by reason of insanity.

There are two exceptions to the general rule against forfeiture under the amended bill. Forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property. The other exception is when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000. The amended bill specifically precludes forfeiture

proceedings if the State fails to prove that the value of the seized property exceeds the threshold amounts required for forfeiture.

Finally, the amended bill clarifies that in regard to leased seized property, the property is not subject to forfeiture if the prosecutor fails to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity. If the prosecutor does establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, the property may be forfeited unless the owner establishes by a preponderance of the evidence that he or she had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.

As amended and reported by the committee, this bill is identical to Senate Bill No. 3441, as amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

For procedural reasons, the first three sections of the introduced bill were deleted and three new sections were inserted, effectively establishing a substitute for the introduced bill.

Under the introduced bill, if there was a criminal conviction, forfeiture was precluded if seized cash property had a value of \$1,000 or less, or seized property other than cash had a value of \$25,000 or less. Forfeiture also was precluded under the introduced bill if there was no conviction and seized cash property had a value of \$1,000 or less, or seized property other than cash had a value of \$25,000 or less. But if there was no conviction and the value of the property exceeded these threshold amounts, the property was subject to forfeiture if the State established by clear and convincing that the owner was involved in or aware of the unlawful activity, shifting the burden from the owner being required to prove by a preponderance of the evidence that the owner wasn't involved or aware of unlawful activity.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[Second Reprint]

ASSEMBLY, No. 4970

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 2020

The Senate Budget and Appropriations Committee reports favorably Assembly Bill No. 4970 (2R), with committee amendments.

This bill, as amended, clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

Under current law, a civil forfeiture action against forfeited property may be instituted by the State against the forfeited property within 90 days of the seizure. If the claimant files an answer to the State's complaint, the court is to schedule a summary hearing as soon as practicable. If the claimant of the property is a defendant in a criminal case arising out of the forfeiture, the court may stay proceedings until an entry of final judgement is entered in the criminal case. Currently, the court may issue the stay upon application by the State or the claimant. The bill changed current law to provide that the court may issue a stay *prior to the filing of an answer by the defendant*. This provision is removed under these amendments.

As amended and reported by the committee, this bill is identical to Senate Bill No. 3441 (1R), also amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

These committee amendments revert back to current law the provision authorizing the court to stay proceedings in a civil forfeiture action by removing the court's authority to issue a stay under the bill *prior to the defendant filing an answer* to the State's complaint. These amendments are in response to the New Jersey Supreme Court's January 8, 2020 decision in State v. Melendez.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that exempting certain types of seized property from forfeiture if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates

with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases. 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.

The OLS notes that the Judiciary would 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.

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.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

ASSEMBLY, No. 4970

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JANUARY 8, 2020

SUMMARY

- Synopsis:** Revises law governing forfeiture of certain seized property.
- Type of Impact:** Annual expenditure and revenue decreases to State and local governments.
- Agencies Affected:** Department of Law and Public Safety; the 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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.
- 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 clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

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. A prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property.

Specifically, the bill prohibits forfeiture of seized property, other than prima facie contraband, if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. No criminal culpability exists if the prosecution results in an acquittal, a dismissal with prejudice (excluding supervisory treatment), or a finding of not guilty by reason of insanity.

There are two exceptions to the general rule against forfeiture under the bill. Forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property. The other exception is when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000. The bill specifically precludes forfeiture proceedings if the State fails to prove that the value of the seized property exceeds the threshold amounts required for forfeiture.

Finally, the bill clarifies that in regard to leased seized property, the property is not subject to forfeiture if the prosecutor fails to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity. If the prosecutor does establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, the property may be forfeited unless the owner establishes by a preponderance of the evidence that he or she had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.

This bill is identical to Senate Bill No. 3441 (1R).

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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.

Under the bill, forfeiture of seized property, other than prima facie contraband, is prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. There are two exceptions to this general rule: 1) forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property; and 2) when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000.

The OLS does not have sufficient information to quantify the decrease in annual cases that would result from this bill. 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. Under the bill, forfeiture would be prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability and the seized property is cash or a cash equivalent valued at less than \$1,000 or seized property other than cash that is valued at less than \$10,000. The 362 forfeiture filings in 2017 and the 319 forfeiture filings in 2018 would include seized property that would be precluded from forfeiture under this bill.

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.).

LEGISLATIVE FISCAL ESTIMATE

[Third Reprint]

ASSEMBLY, No. 4970

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JANUARY 16, 2020

SUMMARY

- Synopsis:** Revises law governing forfeiture of certain seized property.
- Type of Impact:** Annual expenditure and revenue decreases to State and local governments.
- Agencies Affected:** Department of Law and Public Safety; the 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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.
- 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 clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

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. A prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property.

Specifically, the bill prohibits forfeiture of seized property, other than prima facie contraband, if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. No criminal culpability exists if the prosecution results in an acquittal, a dismissal with prejudice (excluding supervisory treatment), or a finding of not guilty by reason of insanity.

There are two exceptions to the general rule against forfeiture under the bill. Forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property. The other exception is when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000. The bill specifically precludes forfeiture proceedings if the State fails to prove that the value of the seized property exceeds the threshold amounts required for forfeiture.

Finally, the bill clarifies that in regard to leased seized property, the property is not subject to forfeiture if the prosecutor fails to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity. If the prosecutor does establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, the property may be forfeited unless the owner establishes by a preponderance of the evidence that he or she had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.

This bill is identical to Senate Bill No. 3441 (2R).

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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.

Under the bill, forfeiture of seized property, other than prima facie contraband, is prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. There are two exceptions to this general rule: 1) forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property; and 2) when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000.

The OLS does not have sufficient information to quantify the decrease in annual cases that would result from this bill. 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. Under the bill, forfeiture would be prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability and the seized property is cash or a cash equivalent valued at less than \$1,000 or seized property other than cash that is valued at less than \$10,000. The 362 forfeiture filings in 2017 and the 319 forfeiture filings in 2018 would include seized property that would be precluded from forfeiture under this bill.

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.).

SENATE, No. 3441

STATE OF NEW JERSEY
218th LEGISLATURE

INTRODUCED FEBRUARY 7, 2019

Sponsored by:

Senator JOSEPH P. CRYAN

District 20 (Union)

Senator DECLAN J. O'SCANLON, JR.

District 13 (Monmouth)

Senator LINDA R. GREENSTEIN

District 14 (Mercer and Middlesex)

SYNOPSIS

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

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/10/2019)

1 AN ACT concerning asset forfeiture proceedings and amending
2 N.J.S.2C:64-3, N.J.S.2C:64-4, and N.J.S.2C:64-5.

3

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

6

7 1. N.J.S.2C:64-3 is amended to read as follows:

8 2C:64-3. Forfeiture procedures. a. Whenever any property
9 other than prima facie contraband is subject to forfeiture under this
10 chapter, **[such]** the forfeiture may be enforced by a civil action,
11 instituted within 90 days of the seizure and commenced by the State
12 and against the property sought to be forfeited.

13 b. The complaint shall be verified on oath or affirmation. It
14 shall describe with reasonable particularity the property that is the
15 subject matter of the action and the value of the property, and shall
16 contain allegations setting forth the reason or reasons the article
17 sought to be or which has been seized is contraband.

18 c. Notice of the action shall be given to any person known to
19 have a property interest in the article. In addition, the notice
20 requirements of the Rules of Court for an in rem action shall be
21 followed.

22 d. The claimant of the property that is the subject of an action
23 under this chapter shall file and serve **[his]** the claim in the form of
24 an answer in accordance with the Rules of Court. The answer shall
25 be verified on oath or affirmation, and shall state the interest in the
26 property by virtue of which the claimant demands its restitution and
27 the right to defend the action. If the claim is made in behalf of the
28 person entitled to possession by an agent, bailee, or attorney, it shall
29 state that **[he]** the claimant is duly authorized to make the claim.

30 e. If no answer is filed and served within the applicable time,
31 the property seized shall be disposed of pursuant to N.J.S.2C:64-6.

32 f. If an answer is filed, the Superior **[or county district]** court
33 shall set the matter down for a summary hearing as soon as
34 practicable. Upon application of the State or claimant, if **[he be]**
35 the claimant is a defendant in a criminal proceeding arising out of
36 the seizure, the Superior **[or county district]** court may stay
37 proceedings in the forfeiture action until the criminal proceedings
38 have been concluded by an entry of final judgment.

39 g. Any person with a property interest in the seized property,
40 other than a defendant who is being prosecuted in connection with
41 the seizure of property may secure its release pending the forfeiture
42 action unless the article is dangerous to the public health, safety,
43 and welfare or the State can demonstrate that the property will
44 probably be lost or destroyed if released or employed in subsequent
45 criminal activity. Any person with **[such]** a property interest other

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 than a defendant who is being prosecuted, prior to the release of
2 **【said】** that property shall post a bond with the court in the amount
3 of the market value of the seized item.

4 h. The prosecuting agency with approval of the entity funding
5 **【such】** the agency, or any other entity, with the approval of the
6 prosecuting agency, where the other entity's law enforcement
7 agency participated in the surveillance, investigation or arrest which
8 is the subject of the forfeiture action, may apply to the Superior
9 Court for an order permitting use of seized property, pending the
10 disposition of the forfeiture action provided, however, that **【such】**
11 the property shall be used solely for law enforcement purposes.
12 Approval shall be liberally granted but shall be conditioned upon
13 the filing of a bond in an amount equal to the market value of the
14 item seized or a written guarantee of payment for property which
15 may be subject to return, replacement or compensation as to
16 reasonable value in the event that the forfeiture is refused or only
17 partial extinguishment of property rights is ordered by the court.

18 i. If the property is of such nature that substantial difficulty
19 may result in preserving its value during the pendency of the
20 forfeiture action, the Superior **【or county district】** court may
21 appoint a trustee to protect the interests of all parties involved in the
22 action.

23 j. **【Evidence】** Except in circumstances in which a conviction is
24 required for the forfeiture of seized property pursuant to this
25 chapter, evidence of a conviction of a criminal offense in which
26 seized property was either used or provided an integral part of the
27 State's proofs in the prosecution shall be considered in the forfeiture
28 proceeding as creating a rebuttable presumption that the property
29 was utilized in furtherance of an unlawful activity.

30 (cf: P.L.1989, c.279, s.1)

31

32 2. N.J.S.2C:64-4 is amended to read as follows:

33 a. Nothing in this chapter shall impair the right of the State to
34 retain evidence pending a criminal prosecution.

35 b. The fact that a prosecution involving seized property
36 terminates without a conviction **【does not】** shall preclude forfeiture
37 proceedings against **【the】** property **【pursuant to this chapter】** with
38 a value of:

39 (1) \$1,000 or less in the case of property in the form of cash,
40 negotiable instruments, or other cash equivalents; or

41 (2) \$25,000 or less in the case of property other than cash,
42 negotiable instruments, or other cash equivalent.

43 (cf: P.L.1981, c.290, s.49)

44

45 3. N.J.S.2C:64-5 is amended to read as follows:

46 Seized Property; Rights of Owners and Others Holding Interests.

1 a. No forfeiture under this chapter shall affect the rights of any
2 lessor in the ordinary course of business or any person holding a
3 perfected security interest in property subject to seizure unless [it
4 shall appear that such] , in the case of property in the form of cash,
5 negotiable instruments, or other cash equivalents with a value of
6 greater than \$1,000, or in the case of property other than cash,
7 negotiable instruments, or other cash equivalent with a value of
8 greater than \$25,000, the State establishes, by clear and convincing
9 evidence, that the person had knowledge of or consented to any act
10 or omission upon which the right of forfeiture is based. [Such]
11 These rights are only to the extent of interest in the seized property
12 and at the option of the entity funding the prosecuting agency
13 involved may be extinguished by appropriate payment.

14 b. (1) Property other than prima facie contraband seized under
15 this chapter shall not be subject to forfeiture **[if]** unless a
16 prosecution involving property in the form of cash, negotiable
17 instruments, or other cash equivalents with a value of \$1,000 or
18 less, or property, other than cash, negotiable instruments, or other
19 cash equivalent valued at \$25,000 or less terminates with a
20 conviction; or

21 (2) Property other than prima facie contraband seized under this
22 chapter shall not be subject to forfeiture unless, in the case of seized
23 property in the form of cash, negotiable instruments, or other cash
24 equivalents with a value of greater than \$1,000, or in the case of
25 property other than cash, negotiable instruments, or other cash
26 equivalent valued at greater than \$25,000, the [owner of the
27 property] State establishes by **[a preponderance of the]** clear and
28 convincing evidence that the owner of the property was **[not]**
29 involved in or aware of the unlawful activity and that the owner had
30 done all that could reasonably be expected to prevent the proscribed
31 use of the property by an agent. A person who uses or possesses
32 property with the consent or knowledge of the owner is deemed to
33 be the agent of the owner for purposes of this chapter.

34 c. Property seized under this chapter shall not be subject to
35 forfeiture if the property is seized while entrusted to a person by the
36 owner or the agent of the owner when the property has been
37 entrusted to the person for repairs, restoration or other services to
38 be performed on the property, and that person, without the owner's
39 knowledge or consent, uses the property for unlawful purposes.

40 (cf: P.L. 1986, c.79, s.1)

41

42 4. This act shall take effect immediately.

43

44

STATEMENT

45

46 This bill revises procedures related to certain asset forfeiture
47 proceedings and requires a criminal conviction for forfeiture of
48 certain seized property.

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

10 Under current law, a prosecution involving seized property that
11 terminates without a conviction does not preclude forfeiture
12 proceedings against the property. Under the bill, seized property,
13 other than prima facie contraband, is not to be subject to forfeiture
14 unless a prosecution involving: (1) property in the form of cash,
15 negotiable instruments, or other cash equivalents with a value of
16 \$1,000 or less; or (2) property, other than cash, negotiable
17 instruments, or cash equivalent, valued at \$25,000 or less terminates
18 with a conviction. A criminal conviction is not required for other
19 seized property. However, consistent with current law, a conviction
20 creates a rebuttable presumption that the property was used in
21 furtherance of unlawful activity.

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

SENATE LAW AND PUBLIC SAFETY COMMITTEE

STATEMENT TO

SENATE, No. 3441

with committee amendments

STATE OF NEW JERSEY

DATED: DECEMBER 9, 2019

The Senate Law and Public Safety Committee reports favorably and with committee amendments Senate Bill No. 3441.

As amended and reported by the committee, Senate Bill No. 3441 clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

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. A prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property.

Specifically, the amended bill prohibits forfeiture of seized property, other than prima facie contraband, if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. No criminal culpability exists if the prosecution results in an acquittal, a dismissal with prejudice (excluding supervisory treatment), or a finding of not guilty by reason of insanity.

There are two exceptions to the general rule against forfeiture under the amended bill. Forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property. The other exception is when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000. The amended bill specifically precludes forfeiture proceedings if the State fails to prove that the value of the seized property exceeds the threshold amounts required for forfeiture.

Finally, the amended bill clarifies that in regard to leased seized property, the property is not subject to forfeiture if the prosecutor fails

to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity. If the prosecutor does establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, the property may be forfeited unless the owner establishes by a preponderance of the evidence that he or she had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4970 (1R), as amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

For procedural reasons, the first three sections of the introduced bill were deleted and three new sections were inserted, effectively establishing a substitute for the introduced bill.

Under the introduced bill, if there was a criminal conviction, forfeiture was precluded if seized cash property had a value of \$1,000 or less, or seized property other than cash had a value of \$25,000 or less. Forfeiture also was precluded under the introduced bill if there was no conviction and seized cash property had a value of \$1,000 or less, or seized property other than cash had a value of \$25,000 or less. But if there was no conviction and the value of the property exceeded these threshold amounts, the property was subject to forfeiture if the State established by clear and convincing that the owner was involved in or aware of the unlawful activity, shifting the burden from the owner being required to prove by a preponderance of the evidence that the owner wasn't involved or aware of unlawful activity.

SENATE BUDGET AND APPROPRIATIONS COMMITTEE

STATEMENT TO

[First Reprint]

SENATE, No. 3441

with committee amendments

STATE OF NEW JERSEY

DATED: JANUARY 9, 2020

The Senate Budget and Appropriations Committee reports favorably Senate Bill No. 3441 (1R), with committee amendments.

This bill, as amended, clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

Under current law, a civil forfeiture action against forfeited property may be instituted by the State against the forfeited property within 90 days of the seizure. If the claimant files an answer to the State's complaint, the court is to schedule a summary hearing as soon as practicable. If the claimant of the property is a defendant in a criminal case arising out of the forfeiture, the court may stay proceedings until an entry of final judgement is entered in the criminal case. Currently, the court may issue the stay upon application by the State or the claimant. The bill changed current law to provide that the court may issue a stay *prior to the filing of an answer by the defendant*. This provision is removed under these amendments.

As amended and reported by the committee, this bill is identical to Assembly Bill No. 4970 (2R), also amended and reported by the committee on this same date.

COMMITTEE AMENDMENTS:

These committee amendments revert back to current law the provision authorizing the court to stay proceedings in a civil forfeiture action by removing the court's authority to issue a stay under the bill *prior to the defendant filing an answer* to the State's complaint. These amendments are in response to the New Jersey Supreme Court's January 8, 2020 decision in State v. Melendez.

FISCAL IMPACT:

The Office of Legislative Services (OLS) projects that exempting certain types of seized property from forfeiture if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates

with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases. 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.

The OLS notes that the Judiciary would 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.

LEGISLATIVE FISCAL ESTIMATE

[First Reprint]

SENATE, No. 3441 STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JANUARY 8, 2020

SUMMARY

- Synopsis:** Revises law governing forfeiture of certain seized property.
- Type of Impact:** Annual expenditure and revenue decreases to State and local governments.
- Agencies Affected:** Department of Law and Public Safety; the 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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.
- 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 clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

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. A prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property.

Specifically, the bill prohibits forfeiture of seized property, other than prima facie contraband, if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. No criminal culpability exists if the prosecution results in an acquittal, a dismissal with prejudice (excluding supervisory treatment), or a finding of not guilty by reason of insanity.

There are two exceptions to the general rule against forfeiture under the bill. Forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property. The other exception is when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000. The bill specifically precludes forfeiture proceedings if the State fails to prove that the value of the seized property exceeds the threshold amounts required for forfeiture.

Finally, the bill clarifies that in regard to leased seized property, the property is not subject to forfeiture if the prosecutor fails to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity. If the prosecutor does establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, the property may be forfeited unless the owner establishes by a preponderance of the evidence that he or she had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.

This bill is identical to Assembly Bill No. 4970 (2R).

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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.

Under the bill, forfeiture of seized property, other than prima facie contraband, is prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. There are two exceptions to this general rule: 1) forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property; and 2) when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000.

The OLS does not have sufficient information to quantify the decrease in annual cases that would result from this bill. 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. Under the bill, forfeiture would be prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability and the seized property is cash or a cash equivalent valued at less than \$1,000 or seized property other than cash that is valued at less than \$10,000. The 362 forfeiture filings in 2017 and the 319 forfeiture filings in 2018 would include seized property that would be precluded from forfeiture under this bill.

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.).

LEGISLATIVE FISCAL ESTIMATE

[Second Reprint]

SENATE, No. 3441

STATE OF NEW JERSEY 218th LEGISLATURE

DATED: JANUARY 16, 2020

SUMMARY

- Synopsis:** Revises law governing forfeiture of certain seized property.
- Type of Impact:** Annual expenditure and revenue decreases to State and local governments.
- Agencies Affected:** Department of Law and Public Safety; the 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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.
- 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 clarifies when certain seized property, other than prima facie contraband, may be forfeited when there are no criminal charges or when the criminal prosecution terminates with no criminal culpability.

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. A prosecution involving seized property that terminates without a conviction does not preclude forfeiture proceedings against the property.

Specifically, the bill prohibits forfeiture of seized property, other than prima facie contraband, if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. No criminal culpability exists if the prosecution results in an acquittal, a dismissal with prejudice (excluding supervisory treatment), or a finding of not guilty by reason of insanity.

There are two exceptions to the general rule against forfeiture under the bill. Forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property. The other exception is when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000. The bill specifically precludes forfeiture proceedings if the State fails to prove that the value of the seized property exceeds the threshold amounts required for forfeiture.

Finally, the bill clarifies that in regard to leased seized property, the property is not subject to forfeiture if the prosecutor fails to establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity. If the prosecutor does establish by a preponderance of the evidence that the owner of the property was involved in or aware of the unlawful activity, the property may be forfeited unless the owner establishes by a preponderance of the evidence that he or she had done all that could reasonably be expected to prevent the proscribed use of the property by an agent.

This bill is identical to Assembly Bill No. 4970 (3R).

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.

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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 if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability, would result in indeterminate annual State expenditure and revenue decreases.

Under the bill, forfeiture of seized property, other than prima facie contraband, is prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability. There are two exceptions to this general rule: 1) forfeiture of the property is not precluded if there is no known owner of the seized property and no person credibly asserts an ownership interest in the seized property; and 2) when the State establishes by a preponderance of the evidence that the seized property is cash or a cash equivalent valued at more than \$1,000 or seized property other than cash that is valued at more than \$10,000.

The OLS does not have sufficient information to quantify the decrease in annual cases that would result from this bill. 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. Under the bill, forfeiture would be prohibited if there are no criminal charges arising out of or related to the property seizure or if a criminal prosecution arising out of or related to the property seizure terminates with no criminal culpability and the seized property is cash or a cash equivalent valued at less than \$1,000 or seized property other than cash that is valued at less than \$10,000. The 362 forfeiture filings in 2017 and the 319 forfeiture filings in 2018 would include seized property that would be precluded from forfeiture under this bill.

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.).

On Martin Luther King, Jr. Day, Governor Murphy Signs Criminal Justice Reform Legislation

01/20/2020

ELIZABETH – On Martin Luther King, Jr. Day, Governor Phil Murphy today signed three pieces of legislation to reform New Jersey’s criminal justice system. The bills will streamline New Jersey’s parole system, reform requirements for civil asset forfeiture, and fund violence reduction initiatives.

“In New Jersey, we are proud to continue Martin Luther King, Jr.’s fight for justice,” **said Governor Murphy**. “We are deeply committed to ensuring fairness and justice in our criminal justice system, and today we are taking critical steps to ensure the scales of justice work equally for all New Jerseyans. I am proud to sign legislation streamlining our parole system and reforming requirements for civil asset forfeiture, two historic steps to give New Jerseyans the second chance they deserve and ensure accountability and transparency within our system. I am also proud to enact legislation that will fund gun violence prevention programs in our hardest hit-neighborhoods, helping stem the cycle of violence and rebuild communities. Today we honor MLK’s legacy not just by celebrating his achievements in the fight for equality and justice, but by continuing the difficult work he left us to do.”

S761, also known as the “Earn Your Way Out Act,” requires the Department of Corrections to develop a re-entry plan for each inmate and streamlines New Jersey’s parole system. The bill creates “administrative parole,” which will streamline the parole process by allowing certain inmates convicted of nonviolent offenses to be released on parole after a review by a hearing officer and certification for release by a member of the State Parole Board. This process will permit eligible inmates to forgo a full parole consideration hearing thereby moving them through the complicated parole process faster.

S761 also requires the Department of Corrections and the State Parole Board to coordinate reentry preparation efforts and other rehabilitative services for inmates in State correctional facilities. The Departments must engage inmates to develop and implement their individualized, comprehensive reentry plans.

The bill was sponsored by Senators Sandra Cunningham and M. Teresa Ruiz, and Assemblymembers Shavonda Sumter, Jamel Holley, Patricia Egan Jones, and Benjie Wimberly.

A4970 reforms requirements for civil asset forfeiture. Currently, an individual subject to civil asset forfeiture does not have to be found guilty in order for property and cash to be confiscated by authorities, as the current system only requires a preponderance of evidence to make a seizure. With limited exceptions, A4970 bans asset forfeiture if there are no criminal charges related to the seized asset or if the prosecution related to the seized assets ends without a conviction. The exceptions apply only when there is no known owner of the seized asset or the State proves by a preponderance of the evidence that the seized asset is cash worth more than \$1,000 or non-cash property worth more than \$10,000. This law will make it easier for individuals with dismissed or acquitted cases to recover seized money and valuables.

Today’s signing builds upon Governor Murphy’s signing last week of S1963, which will require comprehensive disclosure and transparency requirements for civil asset forfeitures.

The bill was sponsored by Assemblymembers Nicholas Chiaravalloti, Shavonda Sumter, and Nancy Pinkin, and Senators Joe Cryan, Declan O’Scanlon, and Linda Greenstein.

S3309 establishes the New Jersey Violence Intervention Program in the Office of the Attorney General to fund violence reduction initiatives. The New Jersey Violence Intervention Program will award grants to municipalities, health agencies, law enforcement agencies, and non-profit organizations that implement effective, evidence-based violence intervention initiatives in communities with disproportionately high rates of gun violence.

The bill was sponsored by Senators Joe Vitale and Linda Greenstein, and Assemblymembers Lou Greenwald, Eliana Pintor Marin, and Verlina Reynolds-Jackson.

“The bills signed by Governor Murphy today will not only ensure fairness and equity in our criminal justice system, but will also help make our communities safer,” **said Attorney General Gurbir S. Grewal**. “In particular, I want to thank Governor Murphy and the legislature for recognizing the groundbreaking gun violence prevention work we are doing at the Attorney General’s office by codifying it with the ‘New Jersey Violence Intervention Program.’ With today’s legislation, we honor Dr. King by continuing to bend that long arc of the moral universe further towards justice.”

“Governor Murphy has made criminal justice reform a key objective of his since the day he took office,” **said New Jersey State Parole Board Chairman Samuel J. Plumeri, Jr.** “Such reform is also widely recognized as important—evidenced by the successful passage of the Earn Your Way Out Act. As the New Jersey State Parole Board continues to meet its dual missions of ensuring public safety and creating sustainable reentry practices and programs for offenders seeking to re-assimilate into society, our agency also welcomes fair and meaningful support that will assist these individuals as they transition out of prison and back into the community.”

“By establishing this office under the Attorney General, New Jersey can begin to harness federal funds to target communities hardest hit by violence,” **said Senator Vitale**. “Grant funding passed on to those doing the work on the ground every day will help these communities begin to heal with evidence-based prevention measures and assistance to those experiencing trauma.”

“This will help bring balance and fairness to the legal process,” **said Senator Cryan, a former Union County Sheriff**. “I want to thank all the groups and organizations that participated in making this legislation law, including the law enforcement community.”

“For too long our criminal justice system has focused on punishment, rather than rehabilitation,” **said Senator Ruiz**. “This law will place a greater focus on reentry allowing us to reduce recidivism and improve individuals ability to integrate back into their communities.”

“The majority of the more than 10,000 inmates who are released from prison each year in New Jersey will be rearrested, and two in five will return to prison. In addition to the direct impact this has on their own lives, it also affects their families, their communities and the entire state,” **said Assemblywoman Sumter**. “It’s critical that we stop this woeful pattern by making sure that these men and women have the education, job skills and other resources they need in order to be productive members of society after leaving prison.”

“For far too long, we have allowed the school-to-prison pipeline to remain intact,” **said Assemblyman Holley**. “Now, we have a law that will finally allow us to break this pipeline, and help make incarcerated New Jerseyans truly gain a second chance.”

“The Earn Your Way Out Act is supportive of second chances,” **said Assemblywoman Egan Jones**. “Preparing a pathway to reentry and providing access to needed resources is the only way to help these individuals during their next steps in life.”

“This is where our emphasis should be when it comes to reforming the system, reducing crime and shutting the revolving door on prisons,” **said Assemblyman Wimberly**. “Comprehensive and effective rehabilitation programs will restore hope, dignity, and provide former inmates the second chance they deserve to do better once released. There’s a lot more to be done; however, this is a critical step to stabilizing families, reforming a broken system that has burdened our state and society with unquantifiable costs.”

“Far too often, individuals involved in cases of this nature face the onerous task of reclaiming their property in a system that can make doing so more expensive than the property itself,” **said Assemblymembers Chiaravalloti, Sumter, and Pinkin**. “This new statute is designed to ensure that barring a criminal conviction, an owner can reclaim their property more readily and fairly.”

“We’ve seen acts of mass gun violence in two major U.S. cities, Virginia Beach and our own state capitol claim too many lives and left numerous injured,” **said Assembly Majority Leader Greenwald**. “If we’re going to address this gun violence epidemic we have to turn our attention to the violence that rarely makes the headline yet it’s impact is the same. We know that evidence-based violence intervention programs, like the one at University Hospital in Newark, can be an effective tool to combat gun violence. By investing in the New Jersey Violence Intervention Program, we can support victims and help those most at risk to break the cycles of gun violence.”

“Increasing access to services and supporting program initiatives for victims of gun violence will help those affected by it right in their own communities,” **said Assemblywoman Pintor Marin**. “Funding is a critical part of encouraging gun violence reduction initiatives throughout the state.”

“In Trenton, we understand the impact that gun violence has on a community every day. We see permanent effects of retaliatory behavior and the need to help hospitals close the revolving door of gunshot victims as a result,” **said Assemblywoman Reynolds-Jackson**. “The New Jersey Violence Intervention Program will help statewide and community initiatives make an impact on reducing gun violence in New Jersey.”