

ASSEMBLY, No. 2090

STATE OF NEW JERSEY

219th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

Sponsored by:

Assemblywoman LISA SWAIN

District 38 (Bergen and Passaic)

Assemblyman NICHOLAS CHIARAVALLOTI

District 31 (Hudson)

Co-Sponsored by:

Assemblyman Wimberly and Assemblywoman Sumter

SYNOPSIS

Establishes “Fairness in Asset Forfeiture Proceedings Task Force.”

CURRENT VERSION OF TEXT

Introduced Pending Technical Review by Legislative Counsel.



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

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

6
7 1. a. There is established the “Fairness in Asset Forfeiture
8 Proceedings Task Force” to study the right to legal representation in
9 asset forfeiture proceedings; the nature, extent, and consequences of
10 the lack of legal representation; and methods to obtain funding for
11 or secure pro bono legal representation and services for certain
12 State residents in asset forfeiture proceedings.

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

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

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

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

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

38 (4) one member appointed by the Chief Justice, who shall be a
39 retired judge of the Superior Court who had been assigned to the
40 Civil Division;

41 (5) the Administrative Director of the Courts, or the
42 administrator’s designee;

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

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

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

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

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

5 (11) the Executive Director of Legal Services of New Jersey, or
6 the executive director's designee.

7 b. The task force shall organize as soon after the appointment
8 of its members as is practicable and may meet and hold hearings at
9 the places it designates during the sessions or recesses of the
10 Legislature. The task force shall meet at the call of the co-chairs,
11 and the presence of eight members of the task force shall constitute
12 a quorum at any meeting of the task force.

13

14 3. The task force shall be co-chaired as follows: one co-chair
15 shall be the Attorney General, or the Attorney General's designee,
16 and the other co-chair shall be appointed by the Governor from
17 among the public members and shall serve at the pleasure of the
18 Governor. The co-chairs shall appoint a secretary who need not be a
19 member of the task force.

20

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

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

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

40

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

46 a. secure access to justice and legal representation in civil asset
47 forfeiture proceedings by providing funding for and increasing the

1 availability of legal assistance with civil asset forfeiture matters
2 throughout the State;

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

7 c. increase the availability of pro bono representation and
8 services by the State's legal community.

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10 8. The task force shall dissolve three months after presenting
11 the report.

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13 9. This act shall take effect immediately.

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15 STATEMENT

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17 This bill establishes the "Fairness in Asset Forfeiture
18 Proceedings Task Force" for the purpose of studying the right to
19 legal representation in asset forfeiture proceedings; the nature,
20 extent, and consequences of the lack of legal representation; and
21 methods to obtain funding for or secure *pro bono* legal
22 representation and services for certain State residents in asset
23 forfeiture proceedings.

24 A civil asset forfeiture proceeding is an action by the
25 government seeking ownership of personal property either used as
26 an instrumentality of a crime or which represents the proceeds of
27 criminal activity. New Jersey allows the practice of asset forfeiture
28 when law enforcement officers can meet the "preponderance of
29 evidence" standard that property was used in the commission of a
30 crime. Forfeited proceeds are required to be used solely for law
31 enforcement purposes and are required to be designated for the
32 exclusive use of the law enforcement agency that contributed to the
33 surveillance, investigation, arrest, or prosecution resulting in the
34 forfeiture.

35 Certain civil liberty groups have criticized civil asset forfeiture
36 as a means for law enforcement entities to obtain an individual's
37 personal property for the purpose of funding law enforcement
38 initiatives. Many citizens are either unaware of their right to
39 oppose a civil asset forfeiture or do not have the financial
40 wherewithal to do so.

41 According to a recent American Civil Liberties Union-New
42 Jersey (ACLU) report, between January and June of 2016, there
43 were approximately 1,860 civil forfeiture cases initiated by county
44 prosecutors in the State, mostly in low-income areas. These cases
45 involved more than \$5.5 million, 234 cars, and a home. Of these
46 1,860 cases, the defendants in only 50 of them appeared in court to
47 oppose the forfeiture. The ACLU report further notes that public
48 defenders are prohibited from representing defendants in civil

1 matters and most legal services providers in this State do not offer
2 assistance to defendants in civil asset forfeiture matters.

3 The 14-member task force would submit a report of its findings
4 and recommendations to the Governor and Legislature within 18
5 months of its organization.

6 The membership of the task force would be as follows:

7 (1) two public members appointed by the Governor; one is to be
8 a representative of a pro bono program organized by a law firm
9 located in the State, and the other is to be a State resident who has
10 been a *pro se* litigant appearing as a defendant in an asset forfeiture
11 proceeding in the State;

12 (2) two public members appointed by the President of the
13 Senate; one is to be the representative of a non-profit organization
14 dedicated to the services and assistance of defendants in civil asset
15 forfeiture proceedings and the other is to be a duly licensed attorney
16 of this State;

17 (3) two public members appointed by the Speaker of the General
18 Assembly, one is to be a director of a legal clinic program of a law
19 school located in the State and one is to be a State resident who has
20 been a *pro se* litigant with an ownership interest in seized property
21 but was not a criminal defendant who was being prosecuted in
22 connection with the seizure of property in a civil asset forfeiture
23 proceeding in New Jersey State courts;

24 (4) one member appointed by the Chief Justice, who is required
25 to be a retired judge of the Superior Court who had been assigned to
26 the Civil Division;

27 (5) the Administrative Director of the Courts or a designee;

28 (6) the Public Defender, or the Public Defender's designee, who
29 is to serve ex officio;

30 (7) the Attorney General, or the Attorney General's designee,
31 who is to serve ex officio;

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

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

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

38 (11) the Executive Director of Legal Services of New Jersey, or
39 the executive director's designee.

40 The task force is to be co-chaired: one co-chair is the Attorney
41 General, or the Attorney General's designee, and the other co-chair
42 is to be appointed by the Governor from among the public members
43 and would serve at the pleasure of the Governor.

44 The task force may meet and hold hearings at the places it
45 designates during the sessions or recesses of the Legislature. The
46 task force would meet at the call of the co-chairs. The presence of
47 eight members of the task force would constitute a quorum at any
48 task force meeting.