



**152nd GENERAL ASSEMBLY
FISCAL NOTE**

BILL:	HOUSE BILL NO. 115
SPONSOR:	Representative K. Williams
DESCRIPTION:	AN ACT TO AMEND TITLES 11 AND 16 RELATING TO CIVIL ASSET FORFEITURE.

Assumptions:

1. This Act becomes effective on January 1 following its enactment, upon signature by the Governor.
2. This Act proposes changes to the State's Civil Asset Forfeiture program. Provisions of this Act relevant to this fiscal projection include:
 - a. changes to the process that requires a hearing and a conviction before forfeiture and puts the burden on the State to provide all facts by clear and convincing evidence.
 - b. requires the State to pay reasonable attorney fees and costs for the forfeiture to a prevailing party in a proceeding.
 - c. directs that forfeiture proceeds be deposited to the General Fund instead of the Special Law Enforcement Assistance Fund (SLEAF).
 - d. directs the Office of Defense Services (ODS) to provide representation in forfeiture proceedings to a defendant represented in a related criminal matter or if referred by the Court for eligibility determination for representation.
 - e. provides that the General Assembly may appropriate funds for the SLEAF.
3. A review of filings for return of property hearings during Fiscal Years 2020, 2021, and 2022 shows that, on average, there have been 109 filings annually during a three-year period, with as many as 500 pending or potential cases during the same period. It is unclear how many existing cases may be eligible for relief under this Act or how many additional cases may occur post-implementation.
4. The Department of Justice (DOJ) anticipates the need for additional staff statewide to handle the increased forfeiture proceedings and significant caseload work by shifting the burden of proof to the State. The estimated Fiscal Year 2025 personnel costs, including OECs at a rate of 32.25%, for 2.0 FTE, Deputy Attorney General V, and 3.0 Legal Assistant III, are estimated at \$451,814. One-time funding of \$16,500 for projected technology, furniture, and other startup costs associated with the new positions.
5. The DOJ currently utilizes reimbursement of funding from the SLEAF as its sole source of funds for the department's Witness Protection Program, which is routinely relied upon to protect vulnerable victims of violent crime. The highest annual amount reimbursed in recent years has been \$290,457, but for purposes of this analysis, a 5-year average was used, which is \$85,055 in annual costs that will be paid from General Funds upon implementation.
6. The ODS anticipates the need for additional staff statewide to handle defendant representation in forfeiture proceedings, as this Act would expand upon the duties of the office. The estimated Fiscal Year 2025 personnel costs, including OECs at a rate of 32.25%, for 4.0 FTE, Assistant Public Defender V, and 3.0 FTE, Legal Assistant III, are estimated at \$717,185, an additional annual cost of \$487,341 is estimated for Fleet Vehicle costs, lease, membership dues, contractual funding for conflict attorneys for the Office of Conflicts Counsel (OCC), and supplies and materials costs. One-time funding of \$25,340 for projected technology, furniture, and other startup costs associated with the new positions.

7. Presently, SLEAF funding is used to "...enhance the suppression, investigation and prosecution of criminal activity, promote office safety, facilitate the training of law-enforcement personnel, further public safety, public education, and community awareness and improve victim services..." ([11 Del. C. § 4110](#)). The funding is held as a Non-appropriated Special Fund (NSF) account. The disbursement of funds may only be made only upon written application by a law-enforcement agency, reviewed by a periodic meeting of the SLEAF Committee, and upon authorization by the Attorney General with the concurrence of the Director of the Office of Management and Budget and the Controller General.
 - a. Over the past several years, funding from the SLEAF has been provided to local and state law enforcement agencies for various applicable uses. The highest annual amount disbursed in recent years has been \$1,774,563, but for purposes of this analysis, a 5-year average was used, which is \$1,240,712. Under this Act, proceeds would now be deposited to the General Fund instead of the SLEAF.
 - b. It is anticipated that due to the Act's proposed changes to the forfeiture program, revenue deposited to the General Fund is uncertain but would likely be less or decrease over a period of time. The General Assembly may continue the SLEAF program should funding be appropriated in future years. For purposes of this analysis, an appropriation amount has not been included in the overall cost estimate for this Act.
8. The costs for the payment of reasonable attorney fees and costs for the forfeiture to a prevailing party in a proceeding are indeterminable and have not been included in the overall cost estimate for this Act.
9. All Fiscal Year 2025 personnel costs have been estimated for nine months of funding, with the annualization of the remaining three months incorporated into subsequent year estimates. Additionally, a 2% inflation cost has been included for projected increases in salary, health insurance, and OECs.

Cost:

	<u>One-Time</u>	<u>Recurring/Operating</u>
Fiscal Year 2025:	\$41,840	\$1,741,395
Fiscal Year 2026:		\$2,162,235
Fiscal Year 2027:		\$2,194,032

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