

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
93rd General Assembly
Regular Session, 2021

A Bill

SENATE BILL 197

By: Senator A. Clark

For An Act To Be Entitled

AN ACT TO REFORM THE CIVIL ASSET FORFEITURE PROCESS;
CONCERNING PROPERTY USED IN THE COMMISSION OF AN
OFFENSE THAT IS SEIZED AND FORFEITED AS A RESULT OF A
CRIMINAL INVESTIGATION; AND FOR OTHER PURPOSES.

Subtitle

TO REFORM THE CIVIL ASSET FORFEITURE
PROCESS; CONCERNING PROPERTY USED IN THE
COMMISSION OF AN OFFENSE THAT IS SEIZED
AND FORFEITED AS A RESULT OF A CRIMINAL
INVESTIGATION.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. DO NOT CODIFY. Legislative intent.

(a) The General Assembly generally disfavors forfeiture of real or personal property.

(b) It is the intent of the General Assembly to consolidate, standardize, simplify, and to end the civil asset forfeiture and replace it with a criminal forfeiture process used by the state to seize and forfeit real property or personal property used in the commission of an offense.

SECTION 2. Arkansas Code Title 5, Chapter 5, Subchapter 2, is repealed.

~~Subchapter 2 — Forfeiture of Conveyances Used in Commission of Certain Crimes~~

~~5-5-201. Forfeiture requirement — Exceptions.~~



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~~(a) Upon conviction, any conveyance, including an aircraft, motor vehicle, or vessel, is subject to forfeiture under this subchapter if it is used in the commission or attempt of:~~

- ~~(1) A burglary;~~
- ~~(2) A robbery;~~
- ~~(3) A theft;~~
- ~~(4) An arson; or~~
- ~~(5) Trafficking of persons, § 5-18-103.~~

~~(b) However:~~

~~(1) A conveyance used by any person as a common carrier in the transaction of business as a common carrier is not subject to forfeiture under this subchapter unless it appears that the owner or other person in charge of the conveyance was a consenting party or privy to the commission or attempt to commit the offense;~~

~~(2) A conveyance is not subject to forfeiture under this subchapter by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent and without the knowledge or consent of any person having possession, care, or control of the conveyance with the owner's permission; and~~

~~(3) A forfeiture of a conveyance encumbered by a security interest is subject to the security interest of the secured party if the secured party neither had knowledge of nor consented to the use of the conveyance in the commission or attempt to commit the offense.~~

~~(c)(1) A person who uses or possesses one (1) or more of the following items or conveyances in the commission of a second or subsequent offense for criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, that occurs within five (5) years of a prior offense of criminal trespass, § 5-39-203, or criminal trespass on premises located in an unincorporated area, § 5-39-305, is subject to that item's or conveyance's being seized and forfeited under this subchapter:~~

- ~~(A) An all-terrain vehicle, as defined under § 27-21-102;~~
- ~~(B) A conveyance, including an aircraft, motor vehicle, or vessel;~~

~~vessel;~~

- ~~(C) A harvesting device, as defined under § 5-39-101;~~
- ~~(D) A killing device, as defined under § 5-39-101; or~~
- ~~(E) A tool or other implement.~~

~~(2) A person or entity that has a valid security interest in an item or conveyance subject to seizure and forfeiture under this subsection is entitled to notice of any forfeiture proceeding as well as the right to intervene in the forfeiture proceeding in order to secure and represent the person's or entity's interest in the item or conveyance to be forfeited.~~

~~5-5-202. Seizure of conveyances.~~

~~(a) A conveyance subject to forfeiture under this subchapter may be seized by any law enforcement agent upon process issued by any circuit court having jurisdiction over the conveyance upon a petition filed by the prosecuting attorney of the judicial district.~~

~~(b) Seizure without process may be made if:~~

~~(1) The seizure is incident to an arrest or a search under a search warrant; or~~

~~(2) Any law enforcement officer has probable cause to believe that the conveyance was used in the commission or attempt of:~~

~~(A) A burglary;~~

~~(B) A robbery;~~

~~(C) A theft;~~

~~(D) An arson; or~~

~~(E) Trafficking of persons, § 5-18-103.~~

~~5-5-203. Control of seized conveyances.~~

~~(a) When a conveyance is seized under this subchapter, the conveyance shall remain in the custody of the seizing law enforcement agency.~~

~~(b)(1) The conveyance is not subject to replevin.~~

~~(2) However, the conveyance is subject only to an order or decree of the circuit court having jurisdiction over the conveyance.~~

~~5-5-204. Use or sale of conveyances — Disposition of sale proceeds.~~

~~(a)(1)(A) Upon conviction and a hearing, when the circuit court having jurisdiction over the conveyance seized finds by a preponderance of the evidence that a ground for a forfeiture exists under this subchapter, the circuit court may enter an order to sell the conveyance.~~

~~(B) After allowance for reasonable expenses of seizure and maintenance of custody of the conveyance, the proceeds from a sale under~~

~~subdivision (a)(1)(A) of this section shall be used to satisfy any outstanding restitution under § 5-4-205 owed to a victim of an offense for which the conveyance was used, if the victim files a petition with the circuit court or makes a request to the circuit court within thirty (30) days of the filing of the judgment and commitment order of the convicted defendant.~~

~~(2) If there is not a victim of an offense owed restitution under § 5-4-205, the circuit court shall enter an order to:~~

~~(A) Permit the law enforcement agency or the prosecuting attorney for the judicial district in which the conveyance was seized to retain the conveyance for official use; or~~

~~(B)(i) Permit the law enforcement agency to sell the conveyance at a public or private sale.~~

~~(ii) In the event of a sale, the circuit court shall provide by order that the proceeds be used for payment of any proper expense of the proceeding for forfeiture and sale, including expenses of:~~

~~(a) Investigation;~~

~~(b) Seizure;~~

~~(c) Maintenance of custody;~~

~~(d) Advertising; and~~

~~(e) Court costs.~~

~~(b) Any proceeds from the sale of a forfeited conveyance under subdivision (a)(2)(B) of this section, or if there was a victim of an offense owed restitution under § 5-4-205, the proceeds remaining after the satisfaction of the victim's restitution under § 5-4-205 in excess of a proper expense shall be distributed as follows:~~

~~(1) Forty percent (40%) to be deposited into the State Treasury as special revenues to the credit of the Department of Arkansas State Police Fund;~~

~~(2)(A) Forty percent (40%) to the law enforcement agency that perfected the arrest.~~

~~(B) However, if a federal agency perfected the arrest, the forty percent (40%) under subdivision (b)(2)(A) of this section shall be distributed to the county sheriff's office of the county responsible for the prosecution; and~~

~~(3) Twenty percent (20%) to the county sheriff's office of the~~

~~county responsible for the prosecution.~~

SECTION 3. Arkansas Code Title 5, Chapter 5, Subchapter 3, is repealed.

~~Subchapter 3 — Forfeiture of Property Due to Theft of Livestock~~

~~5-5-301. Definitions.~~

~~As used in this subchapter:~~

~~(1)(A) — “Contraband property” means property of any nature, including personal property, tangible property, or intangible property.~~

~~(B) — “Contraband property” does not include real property;~~

~~(2) — “Livestock” means:~~

~~(A) — Cattle or swine or a sheep, goat, horse, or mule; and~~

~~(B) — Any carcass, skin, or part of cattle or swine or a sheep, goat, horse, or mule; and~~

~~(3) — “Theft of livestock” means a theft of property:~~

~~(A) — That is classified as a felony violation pursuant to § 5-36-103; and~~

~~(B) — In which the property taken was livestock.~~

~~5-5-302. Property subject to forfeiture.~~

~~(a) — The following property is subject to forfeiture pursuant to this subchapter:~~

~~(1) — Contraband property used or intended to be used in the commission of theft of livestock;~~

~~(2) — The proceeds gained from the commission of theft of livestock;~~

~~(3) — Personal property acquired with proceeds gained from the commission of theft of livestock;~~

~~(4)(A) — Any conveyance, including an aircraft, vessel, vehicle, or horse that is used or intended for use to transport or in any manner to facilitate the transportation for the purpose of the commission of theft of livestock.~~

~~(B) — No conveyance used by any person as a common carrier in the transportation of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other~~

~~person in charge of the conveyance is a consenting party or privy to a violation of this subchapter.~~

~~(C) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without the owner's knowledge or consent.~~

~~(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the bona fide security interest of the secured party;~~

~~(5) Any book, record, or research product or material including microfilm, tape, or data that is used or intended for use in the theft of livestock; and~~

~~(6)(A)(i) Anything of value furnished or intended to be furnished or traded or used as payment or invested for anything of value in return for the commission of the theft of livestock.~~

~~(ii) However, subdivision (a)(6)(A)(i) of this section does not include real property.~~

~~(B) It may be presumed that property described in subdivision (a)(6)(A)(i) of this section was acquired with proceeds gained from the commission of theft of livestock and is subject to forfeiture.~~

~~(b) Property that is used in the commission of theft of livestock that has title of ownership with two (2) parties on the title or a cosigner is subject to forfeiture if one (1) party on the title uses the property in the commission of theft of livestock or receives titled property as the proceeds of the commission of theft of livestock, even if the second party claims that he or she did not have knowledge or involvement in the commission of theft of livestock.~~

~~(c)(1) Any money, coin, or currency found in possession of a person arrested for the theft of livestock or found in, on, or in close proximity to any forfeited property used or intended for the use in the theft of livestock is presumed to be forfeitable under this section.~~

~~(2) The burden of proof is upon a claimant of property described in subdivision (c)(1) of this section to rebut the presumption under subdivision (c)(1) of this section.~~

~~5-5-303. Petition for forfeiture—Order.~~

~~(a)(1) The prosecuting attorney of the judicial district within whose jurisdiction there is property that is sought to be forfeited pursuant to § 5-5-302 shall promptly proceed against the property by filing in the circuit court having jurisdiction of the property a petition for an order to show cause why the circuit court should not order forfeiture of the property.~~

~~(2) The petition shall be verified and shall set forth:~~

~~(A) A statement that the action is brought pursuant to § 5-5-302;~~

~~(B) The law enforcement agency bringing the action;~~

~~(C) A description of the property sought to be forfeited;~~

~~(D) A statement that on or about a date certain the property was used or intended to be used in a criminal act constituting theft of livestock or that a criminal act constituting theft of livestock took place in, upon, or by means of the property;~~

~~(E) A statement detailing the facts in support of subsection (a) of this section; and~~

~~(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.~~

~~(b)(1) Upon receipt of a petition complying with the requirements of subsection (a) of this section, the circuit judge of the court having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.~~

~~(2) In addition, the order shall set a date at least forty-one (41) days from the date of first publication of the order pursuant to subsection (c) of this section for any person claiming an interest in the property to file such pleadings as the person desires as to why the circuit court should not order the forfeiture of the property to use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.~~

~~(3) The circuit court shall further order that any person who does not appear on that date is deemed to have defaulted and waived any claim to the property.~~

~~(c)(1) The prosecuting attorney shall give notice of the forfeiture proceedings by:~~

~~(A) Causing to be published a copy of the order to show~~

~~cause two (2) times each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located; and~~

~~(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to any person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:~~

~~(i) The property is of a type for which title or registration is required by law;~~

~~(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or~~

~~(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.~~

~~(2) The law enforcement agency is obligated only to make diligent search and inquiry as to the owner of the property and if, after diligent search and inquiry, the law enforcement agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to a person having a perfected security interest in the property is not applicable.~~

~~(d) At the hearing on the matter, the petitioner has the burden to establish that the property is subject to forfeiture as provided in § 5-5-302.~~

~~(e) The final order of forfeiture by the circuit court perfects in the law enforcement agency right, title, and interest in and to the property and relates back to the date of the seizure.~~

~~(f) Physical seizure of property is not necessary in order to allege in a petition under this section that property is forfeitable.~~

~~(g) Upon filing the petition, the prosecuting attorney for the judicial district may also seek such protective order as is necessary to prevent the transfer, encumbrance, or other disposal of any property named in the petition.~~

~~5-5-304. Disposition of forfeited property.~~

~~(a) Subject to the provisions of subsection (c) of this section, if property forfeited pursuant to § 5-5-302 is harmful to the public health or is required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:~~

~~(1) Require the sheriff of the county to take custody of the property and remove it to any appropriate location for disposition in accordance with law; or~~

~~(2) Forward the property to the Department of Arkansas State Police for disposition.~~

~~(b) Subject to the provisions of subsection (c) of this section, if property forfeited pursuant to § 5-5-302 is not harmful to the public health and is not required by law to be destroyed, the law enforcement agency to which the property is forfeited shall:~~

~~(1) Sell the property in accordance with subsection (d) of this section; or~~

~~(2) Retain the property for official use if the property is not subject to a lien that has been preserved by the circuit court.~~

~~(c) If the property is a controlled substance, the law enforcement agency to which the property is forfeited shall transfer it to the Drug Enforcement Administration of the United States Department of Justice or the Department of Health for disposition or destruction.~~

~~(d)(1) If a law enforcement agency desires to sell property forfeited to it pursuant to § 5-5-302, the law enforcement agency shall first cause notice of the sale to be made by publication at least two (2) times a week for two (2) consecutive weeks in a newspaper having general circulation in the county and sending a copy of the notice of the sale by certified mail, return receipt requested, to any person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, if:~~

~~(A) The property is of a type for which title or registration is required by law;~~

~~(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or~~

~~(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.~~

~~(2) The notice of the sale shall include the time, place, and conditions of the sale and a description of the property to be sold.~~

~~(3) The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.~~

~~5-5-305. Disposition of proceeds.~~

~~(a) The proceeds of any sale pursuant to § 5-5-304 and any moneys forfeited pursuant to § 5-5-302 shall be applied to payment of the:~~

~~(1) Balance due on any lien preserved by the circuit court in the forfeiture proceeding;~~

~~(2) Cost incurred by the seizing law enforcement agency in connection with the storage, maintenance, security, and forfeiture of the property;~~

~~(3) Cost incurred by the prosecuting attorney or attorney for the law enforcement agency approved by the prosecuting attorney to which the property is forfeited; and~~

~~(4) Cost incurred by the circuit court.~~

~~(b) The remaining proceeds or moneys shall be disposed of as follows:~~

~~(1) If the law enforcement agency is a state agency, the entire amount shall be deposited into the State Treasury into the fund for that state agency for the law enforcement purposes for that state agency; and~~

~~(2)(A) If the law enforcement agency is a:~~

~~(i) County sheriff's office, the entire amount shall be deposited into the county treasury and credited to a special law enforcement forfeiture fund in the county treasury; or~~

~~(ii) City or town police agency, the entire amount shall be deposited into the city or town treasury and credited to a special law enforcement forfeiture fund in the city or town treasury.~~

~~(B) Moneys in the special law enforcement forfeiture fund in the county, city, or town treasury shall be expended only upon appropriation to the county sheriff's office or to the city or town police agency by the county quorum court or governing body of the city or town:~~

~~(i) To defray the cost of a protracted investigation;~~

~~(ii) To provide additional technical equipment or expertise;~~

~~(iii) To provide matching funds to obtain a federal grant; or~~

~~(iv) For such other law enforcement purposes as the county quorum court or governing body of the city or town deems appropriate.~~

~~(C) Moneys in the special law enforcement forfeiture fund~~

~~in the county, city, or town treasury shall not be considered a source of revenue to meet a normal operating expense.~~

~~5-5-306. When more than one agency involved.~~

~~(a) If more than one (1) law enforcement agency is substantially involved in effecting a forfeiture pursuant to § 5-5-302, the circuit court having jurisdiction over the forfeiture proceeding shall equitably distribute the property among the law enforcement agencies.~~

~~(b) Any forfeited money or any proceeds remaining after the sale of the property shall be equitably distributed:~~

~~(1) To the county, city, or town for deposit into the respective county, city, or town treasury and credited to the special law enforcement forfeiture fund provided in § 5-5-305; and~~

~~(2) In the manner as provided in § 5-5-305.~~

SECTION 4. Arkansas Code Title 5, Chapter 5, Subchapter 4, is repealed.

~~Subchapter 4 — Forfeiture of Weapons and Ammunition~~

~~5-5-401. Definitions.~~

~~As used in this subchapter, “weapon” means any firearm, bomb, explosive, metal knuckles, sword, spear, or other device employed as an instrument of crime by subjecting another to physical harm or fear of physical harm.~~

~~5-5-402. Transfer to State Crime Laboratory.~~

~~(a)(1) Notwithstanding any other provision of this chapter, a weapon or ammunition seized by any agency of the State of Arkansas or any local law enforcement agency in the state, and that is forfeited pursuant to law, may be transferred to the State Crime Laboratory.~~

~~(2) However, no transfer of a weapon or ammunition shall be made pursuant to this section until there is a final determination concerning the disposition of the weapon or ammunition by the court having jurisdiction over the weapon or ammunition.~~

~~(b) In addition to a forfeited weapon or ammunition, any other weapon or ammunition held by an agency of the state or a local law enforcement~~

~~agency for which the agency has no use may be transferred to the laboratory under the procedures prescribed in this subchapter.~~

~~(c) Nothing contained in this subchapter shall be construed to preclude a voluntary transfer to the State Crime Laboratory by an individual, entity, or agency of the United States Government.~~

~~5-5-403. Authority of State Crime Laboratory to receive.~~

~~The State Crime Laboratory may:~~

~~(1) Receive a weapon or ammunition pursuant to this subchapter;~~

~~and~~

~~(2) Use a weapon or ammunition received pursuant to this subchapter for:~~

~~(A) Testing;~~

~~(B) Training;~~

~~(C) Data compilation; or~~

~~(D) Such other appropriate purposes as are determined by the Executive Director of the State Crime Laboratory.~~

~~5-5-404. Receipts.~~

~~(a)(1) When any weapon or ammunition is transferred and delivered to the State Crime Laboratory, the laboratory shall provide a receipt to be signed by the transferor or donor and the laboratory officer or employee accepting the weapon or ammunition.~~

~~(2) The receipt shall contain the following information:~~

~~(A) A list of any weapon by type, make, and caliber;~~

~~(B) The serial number of a weapon, when available;~~

~~(C) The case number of the case in which the weapon was involved, when available; and~~

~~(D) The type, caliber, and make of the ammunition, when available.~~

~~(b) A copy of the receipt shall be retained by the laboratory and a copy of the receipt shall be delivered to the agency, individual, or other entity transferring or donating a weapon or ammunition.~~

~~5-5-405. Destruction.~~

~~When the Executive Director of the State Crime Laboratory determines~~

~~that any weapon or ammunition transferred or donated pursuant to a provision of this subchapter is no longer useful to the State Crime Laboratory, the weapon, piece of weapon, or ammunition shall be destroyed.~~

SECTION 5. Arkansas Code Title 5, Chapter 5, is amended to add an additional subchapter to read as follows:

Subchapter 6 – Arkansas Criminal Forfeiture Act of 2021

5-5-601. Title.

This subchapter shall be known and may be cited as the "Arkansas Criminal Forfeiture Act of 2021".

5-5-602. Scope – Purpose.

(a)(1) This subchapter governs all cases in which real property or personal property or moneys are forfeited in connection with a criminal investigation.

(2) Forfeiture under this subchapter is a criminal proceeding and is not considered a civil proceeding.

(b) The purpose of this subchapter is to:

(1) Deter criminal activity by reducing its economic incentives;

(2) Confiscate real property and personal property used in the commission of an offense and remove any benefit of illegal conduct; and

(3) Protect the due process rights of real property and personal property owners.

5-5-603. Jurisdiction.

(a) A court having jurisdiction over a criminal proceeding associated with the real property or personal property subject to forfeiture has jurisdiction over the forfeiture proceeding under this subchapter.

(b) A forfeiture proceeding under this subchapter:

(1) Is part of the criminal proceeding; and

(2) May only proceed:

(A) Following the finding of a defendant's guilt in the criminal proceeding; or

(B) At the discretion of the court.

5-5-604. Definitions.As used in this subchapter:

(1)(A) "Abandoned property" means personal property left by an owner who relinquishes all rights to control of the personal property.

(B) "Abandoned property" does not include real property;

(2) "Actual knowledge" means direct and clear awareness of information, a fact, or a condition;

(3) "Contraband" means personal property that is unlawful to possess, including a scheduled controlled substance without a valid prescription and a firearm that is illegal to possess;

(4)(A) "Conveyance" means personal property used for transportation, including without limitation a motor vehicle, trailer, snowmobile, airplane, vessel, or any equipment attached to a motor vehicle, trailer, snowmobile, airplane, or vessel.

(B) "Conveyance" does not include personal property that is stolen in violation of the law;

(5)(A) "Innocent owner" means an owner, an owner-in-joint-tenancy, or a defendant's heir or assigns of real property or personal property subject to forfeiture who does not have actual knowledge of the use of the real property or personal property in an offense that authorizes the forfeiture of the real property or personal property.

(B) "Innocent owner" does not include a defendant or a secured interest holder;

(6) "Instrumentality" means real property or personal property otherwise lawful to possess that is used in an offense, including without limitation:

(A) Land;

(B) A building;

(C) A container;

(D) A conveyance;

(E) Equipment;

(F) Materials;

(G) A product;

(H) A tool;

(I) A computer;

(J) Computer software;

(K) A telecommunications device;

(L) A firearm;

(M) Ammunition; and

(N) An ammunition or firearm accessory;

(7) "Proceeds" means money, securities, negotiable instruments, or other means of exchange obtained from the sale of real property or personal property or contraband;

(8) "Real property" means land and anything growing on, attached to, or erected on the land, including a building; and

(9)(A) "Secured interest holder" means a person who is a secured creditor, mortgagee, lienholder, or other person who has a valid claim, security interest, mortgage, lien, rental agreement, leasehold, lease, or other agreement or interest in the real property or personal property subject to forfeiture.

(B) "Secured interest holder" does not include a defendant or an innocent owner.

5-5-605. Seizure of personal property with process.

Subject to the Arkansas Rules of Criminal Procedure, at the request of the prosecuting attorney, a court may issue an ex parte order to attach, seize, or secure personal property for which forfeiture is sought and to provide for custody of the personal property.

5-5-606. Seizure of personal property without process.

Subject to the Arkansas Rules of Criminal Procedure, personal property may be seized as part of a lawful search without a court order if:

(1) The personal property subject to forfeiture is seized incident to a lawful arrest;

(2) The state has probable cause to believe the delay caused by the necessity of obtaining a court order would result in the removal or destruction of the personal property that is forfeitable under this subchapter; or

(3) The personal property is the subject of a prior and valid judgment of forfeiture in favor of the state.

5-5-607. Seizure or restraint of real property with process.(a) Subject to the Arkansas Rules of Criminal Procedure:

(1) Real property shall not be seized or restrained without a court order; and

(2) A court may not issue an order to seize real property unless the defendant and any other person with a known interest in the real property first receive proper notice and are given an opportunity for a contested hearing to determine the existence of probable cause for the seizure.

(b)(1) This section does not prohibit the prosecuting attorney from seeking a lis pendens or restraining order to delay the sale or destruction of real property.

(2) However, if the prosecuting attorney obtains a lis pendens or restraining order, the prosecuting attorney shall notify the defendant and any other person with a known interest in the real property within thirty (30) days of the prosecuting attorney obtaining the lis pendens or restraining order.

5-5-608. Contraband – No property right.

(a) A property right does not exist in contraband.

(b) Contraband is subject to seizure and shall:

(1) Not be returned to the owner of the contraband; and

(2) Be disposed of according to law.

5-5-609. Receipt for seized property.

(a) When real property or personal property is seized, the seizing law enforcement agency shall give an itemized receipt to the person possessing the real property or personal property at the time of the seizure.

(b) If the person possessing the real property or personal property is not present, the law enforcement agency shall leave a receipt in the place where the real property or personal property was seized, if possible.

5-5-610. Property exempt from seizure and forfeiture.

(a) The following are exempt from seizure and forfeiture under this subchapter:

(1) Real property claimed as a homestead;

(2) United States currency totaling two hundred dollars (\$200)

or less, except as provided in subsection (b) of this section; and

(3)(A) A motor vehicle with a market value of less than two thousand dollars (\$2,000), except as provided in subsection (b) of this section.

(B) The prosecuting attorney shall establish which publications or other valuation services shall be used to establish the market value of a motor vehicle; and

(b) The prosecuting attorney may establish higher dollar amount thresholds in subdivisions (a)(2) and (a)(3)(A) if the prosecuting attorney determines the interests of justice and efficient use of governmental resources are served in the jurisdiction based on:

(1) The type and number of occurrences of offenses that include the seizure of property; and

(2) The average value of seized property less the costs to seize and forfeit the property.

5-5-611. Probable cause and United States currency.

Subject to federal law, state law, and the Arkansas Rules of Criminal Procedure, the presence or possession of United States currency, without other indicia of an offense that authorizes the forfeiture of the United States currency, is insufficient probable cause for the seizure of United States currency.

5-5-612. Prohibition against waiver.

(a) A law enforcement officer, other than the prosecuting attorney, may not request, require, coerce, or induce a person to waive, for purpose of forfeiture, the person's interest in real property or personal property.

(b) A document purporting to waive interest or rights in seized real property or personal property is void and, subject to the Arkansas Rules of Evidence, inadmissible in court.

5-5-613. Title of property – Vesting.

(a)(1) Title to the real property or personal property subject to forfeiture automatically vests with the state when the court issues a forfeiture judgment in favor of the state.

(2) Title to the real property or personal property that has

automatically vested with the state under subsection (a) of this section relates back to the time when the state seized or restrained the real property or personal property.

(b) Title to substitute assets under § 5-5-625 vests at the time the court issues an order forfeiting substitute assets to the state.

5-5-614. Counsel permitted.

If the defendant in the prosecution that had led to a forfeiture action under this subchapter is represented by a public defender, the Executive Director of the Arkansas Public Defender Commission may authorize representation of the defendant in the forfeiture proceeding and any other related proceeding.

5-5-615. Forfeiture procedure – Notice to other known owners.

(a) The prosecuting attorney shall perform a reasonable search of public records to identify any person, other than the defendant, known to have an interest in the real property or personal property subject to forfeiture under this subchapter.

(b)(1) The prosecuting attorney shall provide notice to any person identified as having an interest in the real property or personal property subject to forfeiture under this subchapter who is not charged or indicted.

(2) Notice shall be given in the same manner as is required under the Arkansas Rules of Civil Procedure.

(c) The following language shall substantially and conspicuously appear in the notice:

"WARNING: You may lose the right to be heard in court if you do not file promptly a statement of interest or ownership in the property subject to forfeiture. You do not have to pay a filing fee to file your notice."

(d) If notice is not served on any person appearing to have an interest in the real property or personal property and no time extension is granted or the extension period has expired, the prosecuting attorney or court shall order the return of the real property or personal property to the person who has made a valid request for the return of the real property or personal property, unless personal property is contraband, in which case the personal property shall not be returned.

5-5-616. Forfeiture procedure – Prompt post-seizure hearing.

(a) Following the seizure of real property or personal property subject to forfeiture, a defendant or any other person with an interest in the real property or personal property has a right to a prompt post-seizure hearing and may petition the court for a hearing.

(b) The court may hold a prompt post-seizure hearing:

(1) As a separate hearing; or

(2) At the same time as a probable-cause determination, a post-arraignment or omnibus hearing, or other pretrial hearing.

(c) After a hearing, the court shall order the return of real property or personal property subject to the hearing if the court finds:

(1) The seizure was invalid;

(2) An information or indictment has not been filed and no extension of the filing period is available;

(3) The real property or personal property is not reasonably required to be held as evidence;

(4) The final judgment likely will be in favor of the defendant or any other person with an interest in the real property or personal property; or

(5) The personal property is the only reasonable means for the defendant to pay for legal representation unless the prosecuting attorney shows by clear and convincing evidence that the personal property is the instrumentality of or proceeds derived directly from the offense for which the defendant is charged.

(d) The court may order the partial return of funds and personal property that are not needed as evidence to the defendant to allow for the defendant to obtain his or her counsel of choice.

5-5-617. Forfeiture procedure – Allegation and filing.

(a)(1) In a case in which the state seeks forfeiture of real property or personal property, the prosecuting attorney shall include a statement in the original or amended information or indictment that certain real property or personal property has been seized and an intent to institute forfeiture proceedings against the defendant concerning the seized real property or personal property.

(2) The following shall be included in the original or an

amended information or indictment:

(A) A description of the real property or personal property seized;

(B) The time, date, and place of the seizure; and

(C) A description of how the real property or personal property was used in or derived from the alleged offense.

(3) The prosecuting attorney may also allege the forfeiture of real property or personal property as a sanction related to the offense for which the defendant is charged, as part of sentencing consideration, or through other means to effectuate the forfeiture of the real property or personal property.

(b) The state, in accordance with the Arkansas Rules of Criminal Procedure, may amend the information or indictment or file an ancillary charge alleging that real property or personal property is subject to forfeiture at any time before trial.

(c) The prosecuting authority shall serve the information or any amended information or indictment as provided by law.

(d) The court shall order the return of the real property or personal property to the owner if the prosecuting attorney does not file an information or indictment as provided by the Arkansas Rules of Criminal Procedure.

5-5-618. Forfeiture procedure – Disposition – Conviction required – Standard of proof.

(a) Seized real property or personal property may be forfeited under this subchapter if:

(1) The defendant is convicted of an offense that authorizes the forfeiture of the real property or personal property; and

(2) The state proves by clear and convincing evidence at a hearing after the defendant is convicted before the sentencing judge that the seized real property or personal property is an instrumentality of or proceeds derived directly from the offense for which the defendant was convicted.

(b) Except as provided for under § 5-5-610, this subchapter does not prevent real property or personal property from being forfeited as part of:

(1) A negotiated plea agreement; or

(2) A grant of immunity or reduced punishment, with or without the filing of an information or indictment, in exchange for testifying or assisting a law enforcement investigation or prosecution.

(c) All real property or personal property remains subject to:

(1) Claims by a person, other than the defendant, with an interest in the real property or personal property as provided in this subchapter;

(2) Distribution of forfeited real property or personal property according to this subchapter; and

(3) Reporting requirements under this subchapter.

5-5-619. Forfeiture procedure – Exceptions to conviction requirement.

(a) The requirement under § 5-5-618 that a defendant be convicted of an offense before seized real property or personal property may be forfeited does not apply if the prosecuting attorney files a motion no less than ninety (90) days after the real property or personal property has been seized and shows by clear and convincing evidence that, before conviction, the defendant:

(1) Died;

(2) Was deported by the United States Government;

(3) Abandoned the real property or personal property; or

(4) Fled the jurisdiction.

(b) If the state proves that one (1) or more of the situations described in subsection (a) of this section exist, the court may grant permanent title of the real property or personal property to the state.

(c) All real property or personal property remains subject to:

(1) Claims by a person, other than the defendant, with an interest in the real property or personal property as provided in this subchapter;

(2) Distribution of forfeited real property or personal property according to this subchapter; and

(3) Reporting requirements under this subchapter.

5-5-620. Forfeiture procedure – Proportionality – Value.

(a)(1) A defendant may petition the court to determine, before or at trial, whether the forfeiture under this subchapter is unconstitutionally

excessive under either the United States Constitution or the Arkansas Constitution.

(2) The defendant has the burden of establishing that the forfeiture under this subchapter is unconstitutionally excessive by a preponderance of the evidence at a hearing conducted by the court without a jury present.

(3) In determining whether the forfeiture under this subchapter is unconstitutionally excessive, the court may consider all relevant factors, including:

(A) The seriousness of the offense and its impact on the community, including the duration of the activity giving rise to the offense and the extent of the harm caused by the defendant;

(B) The extent to which the defendant participated in the offense;

(C) The extent to which the real property or personal property was used in committing the offense;

(D) The sentence imposed for committing the offense;

(E) Whether the offense was completed or attempted;

(F) The hardship to the defendant if the forfeiture were realized and if the forfeiture would deprive the defendant of the defendant's livelihood; and

(G) The hardship from the loss of the real property or personal property to the defendant's family members or other dependents if the real property or personal property were forfeited.

(b)(1) In determining the value of the real property or personal property subject to forfeiture, the court may consider all relevant factors related to the fair market value of the real property or personal property.

(2) The court may not consider the value of the real property or personal property to the state in determining whether the forfeiture is unconstitutionally excessive.

5-5-621. Forfeiture procedure – Judgment.

(a) If the prosecuting attorney fails to meet his or her burden as to a claim in the criminal proceeding or forfeiture proceeding under this subchapter, the court shall enter judgment dismissing the forfeiture proceeding and ordering the return of the real property or personal property

to the rightful owner, unless the owner's possession of the real property or personal property is unlawful.

(b) If the prosecuting attorney meets his or her burden as to all claims, the court shall enter judgment forfeiting the real property or personal property.

(c) A court may enter judgment under subsection (b) of this section following a hearing, following a stipulation or plea agreement, or at the court's discretion.

5-5-622. Secured interest holder.

(a) Real property or personal property encumbered by a security secured interest holder's interest shall not be forfeited.

(b) The prosecuting attorney shall summarily return real property or personal property to a secured interest holder up to the value of the interest.

(c)(1) If the real property or personal property is not summarily returned, the secured interest holder may petition the court at any time before the court enters judgment in the criminal proceeding or grants the motion under § 5-5-619.

(2)(A) The court shall hear the petition under subdivision (c)(1) of this section within thirty (30) days after its filing or at the court's discretion.

(B) The hearing shall be held before the court without a jury.

(C) The court may consolidate the hearing on the petition with any other hearing before the court in the case.

(d) The secured interest holder shall establish by clear and convincing evidence the validity of the claim, security interest, mortgage, lien, rental agreement, leasehold, lease, or other agreement or interest.

(e) If the secured interest holder alleges a valid interest but the prosecuting attorney seeks to proceed, the prosecuting attorney shall prove by clear and convincing evidence that:

(1) The interest is invalid; or

(2) The secured interest holder consented to the use of the real property or personal property in the offense for which the defendant is charged.

(f) If the state fails to meet its burden under subsection (e) of this section, the court shall order the state to relinquish claims to the real property or personal property, up to the value of the secured interest holder's interest, and return the interest to the secured interest holder.

5-5-623. Innocent owner.

(a) Real property or personal property of an innocent owner shall not be forfeited.

(b) The prosecuting authority shall summarily return real property or personal property to an innocent owner.

(c) If the real property or personal property is not summarily returned, an innocent owner may petition the court at any time before the court enters judgment in the criminal proceeding or grants the motion under § 5-5-619.

(d) The innocent owner shall file with the court a statement in a petition that states:

(1) The innocent owner's right, title, or interest in the real property or personal property;

(2) The time and circumstances of the innocent owner's acquisition of the interest in the real property or personal property;

(3) Additional facts supporting the innocent owner's claim; and

(4) The relief sought by the innocent owner.

(e) The filing fee for the petition under this section is waived.

(f)(1) The court shall hear the petition under subsection (d) of this section within thirty (30) days after its filing or at the court's discretion.

(2) The hearing shall be held before the court without a jury.

(3) The court may consolidate the hearing on the petition with any other hearing before the court in the case.

(g)(1) The innocent owner shall establish by clear and convincing evidence the validity of the innocent owner's interest in the real property or personal property.

(2) If the innocent owner has filed a petition under subdivision (g)(1) of this section and the prosecuting attorney seeks to proceed, the prosecuting attorney shall prove by clear and convincing evidence that the innocent owner is not an innocent owner because:

(A) The innocent owner's interest in the real property or personal property is invalid;

(B) The innocent owner had actual knowledge the real property or personal property was used in or derived directly from the offense for which the defendant is charged; or

(C) The innocent owner was not a bona fide purchaser without notice of any defect in title and for valuable consideration.

(3) If the state fails to meet the state's burden under subdivision (g)(2) of this section, the court shall order the state to relinquish all claims and return the real property or personal property to the innocent owner.

(h) Information in the innocent owner's statement under subsection (d) of this section shall not be used as evidence against a defendant in the prosecution for an offense underlying the criminal proceeding.

(i) This section does not prohibit an innocent owner from providing information to any party or testifying in any trial as to facts the innocent owner knows.

5-5-624. Right against self-incrimination – Marital privilege.

(a) A defendant or convicted person may invoke the right against self-incrimination or the marital privilege during a forfeiture proceeding under this subchapter.

(b) The trier of fact may draw an adverse inference from the invocation of the right against self-incrimination or the marital privilege.

5-5-625. Substitution of assets.

Upon the prosecuting attorney's motion following conviction or at the court's discretion, the court may order the forfeiture of substitute real property or personal property owned solely by the defendant up to the value of the real property or personal property that is beyond the court's jurisdiction or cannot be located through due diligence, only if the state proves by a preponderance of the evidence that the defendant purposely:

(1) Dissipated the real property or personal property;

(2) Transferred, sold, or deposited the real property or personal property with a third party to avoid forfeiture;

(3) Diminished substantially the value of the real property or

personal property; or

(4) Commingled real property or personal property with other real property or personal property that cannot be divided without difficulty.

5-5-626. Additional remedies – Prohibited.

The state may not seek personal money judgments or other remedies related to the forfeiture of real property or personal property not provided for in this subchapter.

5-5-627. Joint and several liability – Prohibited.

(a) A defendant is not jointly and severally liable for forfeiture awards under this subchapter that are owed by other codefendants.

(b) When ownership of real property or personal property is unclear, a court may order each codefendant to forfeit real property or personal property on a pro rata basis or by another means the court finds equitable.

5-5-628. Appeals.

(a) A party to a forfeiture proceeding under this subchapter, other than the defendant, may appeal the court's decision regarding the seizure or forfeiture of real property or personal property.

(b) The defendant may appeal the court's decision regarding the seizure or forfeiture of real property or personal property following final judgment in the forfeiture proceeding.

5-5-629. Attorney's fees and interest.

In a proceeding in which an owner of real property or personal property prevails in his or her claim by recovering at least one-half (1/2), by value, of the real property or personal property claimed, the seizing law enforcement agency shall be liable for:

(1) Reasonable attorney's fees and other litigation costs incurred by the claimant;

(2) Post-judgment interest; and

(3) In cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale, any interest actually paid from the date of seizure.

5-5-630. Return of property – Damages and costs.

(a) If the court orders the return of real property or personal property, the law enforcement agency holding the real property or personal property shall return the real property or personal property to the rightful owner within a reasonable period not to exceed five (5) days after the date of the order.

(b) The rightful owner shall not be subject to any expenses related to towing, storage, or preservation of the real property or personal property.

(c) The law enforcement agency holding the real property or personal property is responsible for any damages, storage fees, and related costs applicable to real property or personal property returned under this section.

5-5-631. Disposition of property and proceeds.

(a) At any time when contraband is no longer needed as evidence, the court may order that the contraband be destroyed according to law.

(b) At any time when abandoned property or real property or personal property seized from a defendant who flees the jurisdiction is no longer needed as evidence, the court may order that the abandoned property or seized real property or personal property be sold.

(c) If a forfeiture under this subchapter is granted, the court shall order the sale of forfeited real property or personal property other than currency.

(d) The court may order that forfeited currency and proceeds from the sale of forfeited real property or personal property be used to:

(1) Pay restitution to the victim related to the underlying offense;

(2) Satisfy recorded liens, mortgages, or filed security interests in the forfeited real property or personal property;

(3) Pay reasonable costs for the towing, storage, maintenance, repairs, advertising and sale, and other operating costs related to the forfeited property;

(4) Reimburse the seizing law enforcement agency for non-personnel operating costs, including moneys used to buy controlled substances, related to the investigation of the underlying offense;

(5) Reimburse the seizing law enforcement agency for the salaries, benefits, and overtime pay of uniformed personnel expended in the

seizure of the real property or personal property and investigation of the underlying offense;

(6) Reimburse the prosecuting attorney's office and the Arkansas Public Defender Commission for the salaries, benefits, and overtime pay expended in the prosecution of the underlying offense and the subsequent real property or personal property litigation; and

(7) Be deposited in the following manner and amounts:

(A) Eighty percent (80%) of the remaining proceeds, after subdivision (d)(6) of this section has been satisfied, into the drug control fund of the retaining law enforcement agency or prosecuting attorney; and

(B) Twenty percent (20%) of the remaining proceeds, after subdivision (d)(6) of this section has been satisfied, into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund.

5-5-632. Restriction on sale of forfeited property.

A law enforcement agency shall not sell forfeited real property or personal property directly or indirectly to:

(1) An employee of the law enforcement agency;

(2) A person related to an employee of the law enforcement agency by blood or marriage; or

(3) Another law enforcement agency.

5-5-633. Limitation on federal adoption.

(a) A law enforcement agency shall not offer for adoption real property or personal property seized under state law to a United States Government agency for the purpose of forfeiture under the Comprehensive Drug Abuse Prevention and Control Act of 1970, Pub.L. No. 91-513, or other federal law unless the seized real property or personal property includes United States currency that exceeds five thousand dollars (\$5,000).

(b)(1) This section does not restrict a law enforcement agency from collaborating with a United States Government agency in a joint state and federal task force.

(2) A prosecuting attorney may establish guidelines for joint task forces with the United States Government in the prosecuting attorney's jurisdiction.

SECTION 6. Arkansas Code § 5-42-204(c)(3), concerning a civil action a prosecuting attorney may bring against a person convicted of criminal use of property or laundering criminal proceeds, is amended to read as follows:

(3) The procedures for forfeiture and distribution ~~in the asset forfeiture law, § 5-64-505,~~ of lawfully forfeited assets apply.

SECTION 7. Arkansas Code § 5-64-405(d)(3), concerning a civil action a prosecuting attorney may bring against a person convicted of the offense of engaging in a continuing criminal enterprise, is amended to read as follows:

(3) The procedures ~~in the asset forfeiture law, § 5-64-505,~~ shall for forfeiture and distribution of lawfully forfeited assets apply.

SECTION 8. Arkansas Code § 5-64-505 is repealed.

~~5-64-505. Property subject to forfeiture—Procedure—Disposition of property.~~

~~(a) Items Subject to Forfeiture. The following are subject to forfeiture upon the initiation of a civil proceeding filed by the prosecuting attorney and when so ordered by the circuit court in accordance with this section, however no property is subject to forfeiture based solely upon a misdemeanor possession of a Schedule III, Schedule IV, Schedule V, or Schedule VI controlled substance:~~

~~(1) Any controlled substance or counterfeit substance that has been manufactured, distributed, dispensed, or acquired in violation of this chapter;~~

~~(2) Any raw material, product, or equipment of any kind that is used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance or counterfeit substance in violation of this chapter;~~

~~(3) Any property that is used, or intended for use, as a container for property described in subdivision (a)(1) or subdivision (a)(2) of this section;~~

~~(4) Any conveyance, including an aircraft, vehicle, or vessel that is used or intended for use to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (a)(1) or subdivision (a)(2) of this section, however:~~

~~(A) No conveyance used by any person as a common carrier~~

~~in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;~~

~~(B)(i) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner of the conveyance to have been committed or omitted without his or her knowledge or consent.~~

~~(ii) Upon a showing described in subdivision (a)(4)(B)(i) of this section by the owner or interest holder, the conveyance may nevertheless be forfeited if the prosecuting attorney establishes that the owner or interest holder either knew or should reasonably have known that the conveyance would be used to transport or in any manner to facilitate the transportation for the purpose of sale or receipt of property described in subdivision (a)(1) or subdivision (a)(2) of this section;~~

~~(C) A conveyance is not subject to forfeiture for a violation of §§ 5-64-419 and 5-64-441; and~~

~~(D) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission;~~

~~(5) Any book, record, or research product or material, including a formula, microfilm, tape, or data that is used, or intended for use, in violation of this chapter;~~

~~(6)(A) Anything of value, including firearms, furnished or intended to be furnished in exchange for a controlled substance or counterfeit substance in violation of this chapter, any proceeds or profits traceable to the exchange, and any money, negotiable instrument, or security used, or intended to be used, to facilitate any violation of this chapter.~~

~~(B) However, no property shall be forfeited under this subdivision (a)(6) to the extent of the interest of an owner by reason of any act or omission established by him or her, by a preponderance of the evidence, to have been committed or omitted without his or her knowledge or consent;~~

~~(7) Rebuttable Presumptions.~~

~~(A) Any money, coin, currency, or firearms found in close proximity to a forfeitable controlled substance, a counterfeit substance,~~

~~forfeitable drug manufacturing or distributing paraphernalia, or a forfeitable record of an importation, manufacture, or distribution of a controlled substance or counterfeit substance is presumed to be forfeitable under this subdivision (a)(7).~~

~~(B) The burden of proof is upon a claimant of the property to rebut this presumption by a preponderance of the evidence; and~~

~~(8) Real property may be forfeited under this chapter if it substantially assisted in, facilitated in any manner, or was used or intended for use in the commission of any act prohibited by this chapter, however:~~

~~(A) No real property is subject to forfeiture under this chapter by reason of any act or omission established by the owner of the real property by a preponderance of the evidence to have been committed or omitted without his or her knowledge or consent;~~

~~(B) Real property is not subject to forfeiture for a violation of § 5-64-419, if the offense is a Class C felony or less, or § 5-64-441;~~

~~(C) A forfeiture of real property encumbered by a mortgage or other lien is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the unlawful act or omission;~~

~~(D) Upon conviction, when the circuit court having jurisdiction over the real property seized finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this section, the court shall enter an order consistent with subsection (h) of this section;~~

~~(E) When any court orders a forfeiture of real property under this chapter, the order shall be filed of record on the day issued and shall have prospective effect only;~~

~~(F) A forfeiture of real property ordered under a provision of this chapter does not affect the title of a bona fide purchaser who purchased the real property prior to the issuance of the order, and the order has no force or effect on the title of the bona fide purchaser; and~~

~~(G) Any lis pendens filed in connection with any action pending under a provision of this chapter that might result in the forfeiture of real property is operative only from the time filed and has no retroactive effect.~~

~~(b) Seizure and Summary Forfeiture of Contraband. The following items~~

~~are deemed contraband and may be seized and summarily forfeited to the state;~~

~~(1) A controlled substance listed in Schedule I that is possessed, transferred, sold, or offered for sale in violation of this chapter and a controlled substance listed in Schedule I that is seized or comes into the possession of the state and the owner of the controlled substance is unknown;~~

~~(2)(A) A species of a plant from which a controlled substance in Schedule I, Schedule II, or Schedule VI may be derived and:~~

~~(i) The plant has been planted or cultivated in violation of this chapter;~~

~~(ii) The plant's owner or cultivator is unknown; or~~

~~(iii) The plant is a wild growth.~~

~~(B) Upon demand by a seizing law enforcement agency, the failure of a person in occupancy or in control of land or premises where the species of plant is growing or being stored, to produce an appropriate registration or proof that he or she is the holder of an appropriate registration, constitutes authority for the seizure and forfeiture of the plant; and~~

~~(3) Any drug paraphernalia or counterfeit substance except in the possession or control of a practitioner in the course of professional practice or research.~~

~~(c) Seizure of Property. Property subject to forfeiture under this chapter may be seized by any law enforcement agent upon process issued by any circuit court having jurisdiction over the property on petition filed by the prosecuting attorney of the judicial circuit. Seizure without process may be made if:~~

~~(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;~~

~~(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;~~

~~(3) The seizing law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or~~

~~(4) The seizing law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of~~

~~this chapter.~~

~~(d) Transfer of Property Seized by State or Local Agency to Federal Agency.~~

~~(1) No state or local law enforcement agency may transfer any property seized by the state or local agency to any federal entity for forfeiture under federal law unless the circuit court having jurisdiction over the property enters an order, upon petition by the prosecuting attorney, authorizing the property to be transferred to the federal entity.~~

~~(2) The transfer shall not be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one (1) state or the nature of the investigation or seizure would be better pursued under federal law.~~

~~(e) Custody of Property Pending Disposition.~~

~~(1) Property seized for forfeiture under this section is not subject to replevin, but is deemed to be in the custody of the seizing law enforcement agency subject only to an order or decree of the circuit court having jurisdiction over the property seized.~~

~~(2) Subject to any need to retain the property as evidence, when property is seized under this chapter the seizing law enforcement agency may:~~

~~(A) Remove the property to a place designated by the circuit court;~~

~~(B) Place the property under constructive seizure posting notice of pending forfeiture on it, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of pending forfeiture in any appropriate public record relating to the property;~~

~~(C) Remove the property to a storage area for safekeeping or, if the property is a negotiable instrument or money, or is not needed for evidentiary purposes, deposit it in an interest-bearing account; or~~

~~(D) Provide for another agency or custodian, including an owner, secured party, mortgagee, or lienholder, to take custody of the property and service, maintain, and operate it as reasonably necessary to maintain its value in any appropriate location within the jurisdiction of the court.~~

~~(3)(A) In any case of transfer of property, a transfer receipt shall be prepared by the transferring agency.~~

~~(B) The transfer receipt shall:~~

~~(i) List a detailed and complete description of the property being transferred;~~

~~(ii) State to whom the property is being transferred and the source or authorization for the transfer; and~~

~~(iii) Be signed by both the transferor and the transferee.~~

~~(C) Both transferor and transferee shall maintain a copy of the transfer receipt.~~

~~(4) A person who acts as custodian of property under this section is not liable to any person on account of an act done in a reasonable manner in compliance with an order under this chapter.~~

~~(f) Inventory of Property Seized — Referral to Prosecuting Attorney.~~

~~(1) Any property seized by a state or local law enforcement officer who is detached to, deputized or commissioned by, or working in conjunction with a federal agency remains subject to the provisions of this section.~~

~~(2)(A) When property is seized for forfeiture by a law enforcement agency, the seizing law enforcement officer shall prepare and sign a confiscation report.~~

~~(B)(i) The party from whom the property is seized shall also sign the confiscation report if present and shall immediately receive a copy of the confiscation report.~~

~~(ii) If the party refuses to sign the confiscation report, the confiscation report shall be signed by one (1) additional law enforcement officer, stating that the party refused to sign the confiscation report.~~

~~(C) The original confiscation report shall be:~~

~~(i) Filed with the seizing law enforcement agency within forty-eight (48) hours after the seizure; and~~

~~(ii) Maintained in a separate file.~~

~~(D) One (1) copy of the confiscation report shall be retained by the seizing law enforcement officer.~~

~~(3) The confiscation report shall contain the following information:~~

~~(A) A detailed description of the property seized including any serial or model numbers and odometer or hour reading of~~

~~vehicles or equipment;~~

~~(B) The date of seizure;~~

~~(C) The name and address from whom the property was seized;~~

~~(D) The reason for the seizure;~~

~~(E) Where the property will be held;~~

~~(F) The seizing law enforcement officer's name; and~~

~~(G) A signed statement by the seizing law enforcement officer stating that the confiscation report is true and complete.~~

~~(4) Within three (3) business days of receiving the confiscation report, the seizing law enforcement agency shall forward a copy of the confiscation report to the prosecuting attorney for the district where the property was seized and to the Arkansas Drug Director.~~

~~(5)(A) Arkansas Legislative Audit shall notify the Arkansas Alcohol and Drug Abuse Coordinating Council and a circuit court in the county of a law enforcement agency, prosecuting attorney, or other public entity that the law enforcement agency, prosecuting attorney, or public entity is ineligible to receive any forfeited funds, forfeited property, or any grants from the council, if Arkansas Legislative Audit determines, by its own investigation or upon written notice from the Arkansas Drug Director, that:~~

~~(i) The law enforcement agency has failed to complete and file the confiscation reports as required by this section;~~

~~(ii) The law enforcement agency, prosecuting attorney, or public entity has not properly accounted for any seized property; or~~

~~(iii) The prosecuting attorney has failed to comply with the notification requirement set forth in subdivision (i)(1) of this section.~~

~~(B) After the notice, the circuit court shall not issue any order distributing seized property to that law enforcement agency, prosecuting attorney, or public entity nor shall any grant be awarded by the council to that law enforcement agency, prosecuting attorney, or public entity until:~~

~~(i) The appropriate officials of the law enforcement agency, prosecuting attorney, or public entity have appeared before the Legislative Joint Auditing Committee; and~~

~~(ii) The Legislative Joint Auditing Committee has adopted a motion authorizing subsequent transfers of forfeited property to the law enforcement agency, prosecuting attorney, or public entity.~~

~~(C)(i) While a law enforcement agency, prosecuting attorney, or other public entity is ineligible to receive forfeited property, the circuit court shall order any money that would have been distributed to that law enforcement agency, prosecuting attorney, or public entity to be transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.~~

~~(ii) If the property is other than cash, the circuit court shall order the property converted to cash pursuant to subdivision (h)(1)(B) of this section and the proceeds transmitted to the Treasurer of State for deposit into the Crime Lab Equipment Fund.~~

~~(D) Moneys deposited into the Crime Lab Equipment Fund pursuant to subdivision (f)(5)(C) of this section are not subject to recovery or retrieval by the ineligible law enforcement agency, prosecuting attorney, or other public entity.~~

~~(6) The Arkansas Drug Director shall establish through rules a standardized confiscation report form to be used by all law enforcement agencies with specific instructions and guidelines concerning the nature and dollar value of all property, including firearms, to be included in the confiscation report and forwarded to the office of the local prosecuting attorney and the Arkansas Drug Director under this subsection.~~

~~(g) Initiation of Forfeiture Proceedings — Notice to Claimants — Judicial Proceedings.~~

~~(1)(A) The prosecuting attorney shall initiate forfeiture proceedings by filing a complaint with the circuit clerk of the county where the property was seized and by serving the complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.~~

~~(B) The complaint may be based on in rem or in personam jurisdiction but shall not be filed in such a way as to avoid the distribution requirements set forth in subdivision (i)(1) of this section.~~

~~(C) The prosecuting attorney shall mail a copy of the complaint to the Arkansas Drug Director within five (5) calendar days after filing the complaint.~~

~~(2)(A) The complaint shall include a copy of the confiscation report and shall be filed within sixty (60) days after receiving a copy of the confiscation report from the seizing law enforcement agency.~~

~~(B) In a case involving real property, the complaint shall be filed within sixty (60) days of the defendant's conviction on the charge giving rise to the forfeiture.~~

~~(3)(A) The prosecuting attorney may file the complaint after the expiration of the time set forth in subdivision (g)(2) of this section only if the complaint is accompanied by a statement of good cause for the late filing.~~

~~(B) However, in no event shall the complaint be filed more than one hundred twenty (120) days after either the date of the seizure or, in a case involving real property, the date of the defendant's conviction.~~

~~(C) If the circuit court determines that good cause has not been established, the circuit court shall order that the seized property be returned to the owner or interest holder. In addition, items seized but not subject to forfeiture under this section or subject to disposition pursuant to law or the Arkansas Rules of Criminal Procedure may be ordered returned to the owner or interest holder. If the owner or interest holder cannot be determined, the court may order disposition of the property in accordance with subsection (h) of this section.~~

~~(4) Within the time set forth in the Arkansas Rules of Civil Procedure, the owner or interest holder of the seized property shall file with the circuit clerk a verified answer to the complaint that shall include:~~

~~(A) A statement describing the seized property and the owner's or interest holder's interest in the seized property, with supporting documents to establish the owner's or interest holder's interest;~~

~~(B) A certification by the owner or interest holder stating that he or she has read the verified answer and that it is not filed for any improper purpose;~~

~~(C) A statement setting forth any defense to forfeiture;~~
and

~~(D) The address at which the owner or interest holder will accept mail.~~

~~(5)(A) If the owner or interest holder fails to file an answer as required by subdivision (g)(4) of this section, the prosecuting attorney~~

may move for default judgment pursuant to the Arkansas Rules of Civil Procedure.

~~(B)(i) — If a timely answer has been filed, the prosecuting attorney has the burden of proving by a preponderance of the evidence that the seized property should be forfeited.~~

~~(ii) — After the prosecuting attorney has presented proof under subdivision (g)(5)(B)(i) of this section, any owner or interest holder of the property seized is allowed to present evidence why the seized property should not be forfeited.~~

~~(iii)(a) — If the circuit court determines that grounds for forfeiting the seized property exist and that no defense to forfeiture has been established by the owner or interest holder, the circuit court shall enter an order pursuant to subsection (h) of this section.~~

~~(b) — However, if the circuit court determines either that the prosecuting attorney has failed to establish that grounds for forfeiting the seized property exist or that the owner or interest holder has established a defense to forfeiture, the court shall order that the seized property be immediately returned to the owner or interest holder.~~

~~(h) — Final Disposition.~~

~~(1) — When the circuit court having jurisdiction over the seized property finds upon a hearing by a preponderance of the evidence that grounds for a forfeiture exist under this chapter, the circuit court shall enter an order:~~

~~(A) — To permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes, subject to the following provisions:~~

~~(i)(a) — Seized property may not be retained for official use for more than two (2) years, unless the circuit court finds that the seized property has been used for law enforcement or prosecutorial purposes and authorizes continued use for those purposes on an annual basis.~~

~~(b) — At the end of the retention period, the seized property shall be sold as provided in subdivision (h)(1)(B) of this section and:~~

~~(1) — Eighty percent (80%) of the proceeds shall be deposited into the drug control fund of the retaining law enforcement agency or prosecuting attorney; and~~

~~(2) Twenty percent (20%) of the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund.~~

~~(c)(1) Nothing prohibits the retaining law enforcement agency or prosecuting attorney from selling the retained seized property at any time during the time allowed for retention.~~

~~(2) However, the proceeds of the sale shall be distributed as set forth in subdivision (h)(1)(A)(i)(b) of this section;~~

~~(ii) If the circuit court determines that retained seized property has been used for personal use or by non-law enforcement personnel for non-law enforcement purposes, the circuit court shall order the seized property to be sold pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund;~~

~~(iii)(a) A drug task force may use forfeited property or money if the circuit court's order specifies that the forfeited property or money is forfeited to the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation.~~

~~(b) After the order, the prosecuting attorney, county sheriff, chief of police, Division of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas Department of Transportation shall:~~

~~(1) Maintain an inventory of the forfeited property or money;~~

~~(2) Be accountable for the forfeited property or money; and~~

~~(3) Be subject to the provisions of subdivision (f)(5) of this section with respect to the forfeited property or money;~~

~~(iv)(a) Any aircraft is forfeited to the office of the Arkansas Drug Director and may only be used for drug eradication or drug interdiction efforts, within the discretion of the Arkansas Drug Director.~~

~~(b) However, if the Arkansas Alcohol and Drug Abuse Coordinating Council determines that the aircraft should be sold, the~~

~~sale shall be conducted pursuant to the provisions of § 5-5-101(e) and (f), and the proceeds of the sale shall be deposited into the Special State Assets Forfeiture Fund;~~

~~(v) Any firearm not retained for official use shall be disposed of in accordance with state and federal law; and~~

~~(vi) Any controlled substance, plant, drug paraphernalia, or counterfeit substance shall be destroyed pursuant to a court order;~~

~~(B)(i) To sell seized property that is not required by law to be destroyed and that is not harmful to the public.~~

~~(ii) Seized property described in subdivision (h)(1)(B)(i) of this section shall be sold at a public sale by the retaining law enforcement agency or prosecuting attorney pursuant to the provisions of § 5-5-101(e) and (f); or~~

~~(C) To transfer a motor vehicle to a school district for use in a driver education course.~~

~~(2) Disposition of forfeited property pursuant to this subsection is subject to the need to retain the forfeited property as evidence in any related proceeding.~~

~~(3) Within three (3) business days of the entry of the order, the circuit clerk shall forward to the Arkansas Drug Director copies of the confiscation report, the circuit court's order, and any other documentation detailing the disposition of the seized property.~~

~~(i) Disposition of Moneys Received. Subject to the provisions of subdivision (f)(5) of this section, the proceeds of sales conducted pursuant to subdivision (h)(1)(B) of this section and any moneys forfeited or obtained by judgment or settlement pursuant to this chapter shall be deposited and distributed in the manner set forth in this subsection. Moneys received from a federal forfeiture shall be deposited and distributed pursuant to subdivision (i)(4) of this section.~~

~~(1) Asset Forfeiture Fund.~~

~~(A) The proceeds of any sale and any moneys forfeited or obtained by judgment or settlement under this chapter shall be deposited into the asset forfeiture fund of the prosecuting attorney and is subject to the following provisions:~~

~~(i) If, during a calendar year, the aggregate amount~~

~~of moneys deposited into the asset forfeiture fund exceeds twenty thousand dollars (\$20,000) per county, the prosecuting attorney shall, within fourteen (14) days of that time, notify the circuit judges in the judicial district and the Arkansas Drug Director;~~

~~(ii) Subsequent to the notification set forth in subdivision (i)(1)(A)(i) of this section, twenty percent (20%) of the proceeds of any additional sale and any additional moneys forfeited or obtained by judgment or settlement under this chapter in the same calendar year shall be deposited into the State Treasury as special revenues to be credited to the Crime Lab Equipment Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney;~~

~~(iii) Failure by the prosecuting attorney to comply with the notification requirement set forth in subdivision (i)(1)(A)(i) of this section renders the prosecuting attorney and any entity eligible to receive forfeited moneys or property from the prosecuting attorney ineligible to receive forfeited moneys or property, except as provided in subdivision (f)(5)(A) of this section; and~~

~~(iv) Twenty percent (20%) of any moneys in excess of twenty thousand dollars (\$20,000) that have been retained but not reported as required by subdivision (i)(1)(A)(i) of this section are subject to recovery for deposit into the Crime Lab Equipment Fund.~~

~~(B) The prosecuting attorney shall administer expenditures from the asset forfeiture fund which is subject to audit by Arkansas Legislative Audit. Moneys distributed from the asset forfeiture fund shall only be used for law enforcement and prosecutorial purposes. Moneys in the asset forfeiture fund shall be distributed in the following order:~~

~~(i) For satisfaction of any bona fide security interest or lien;~~

~~(ii) For payment of any proper expense of the proceeding for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising, and court costs;~~

~~(iii) Any balance under two hundred fifty thousand dollars (\$250,000) shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement or prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of moneys under this~~

~~chapter, and~~

~~(iv) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Arkansas Drug Director to be transferred to the State Treasury for deposit into the Special State Assets Forfeiture Fund for distribution as provided in subdivision (i)(3) of this section.~~

~~(C)(i) For a forfeiture in an amount greater than two hundred fifty thousand dollars (\$250,000) from which expenses are paid for a proceeding for forfeiture and sale under subdivision (i)(1)(B)(ii) of this section, an itemized accounting of the expenses shall be delivered to the Arkansas Drug Director within ten (10) calendar days after the distribution of the funds.~~

~~(ii) The itemized accounting shall include the expenses paid, to whom paid, and for what purposes the expenses were paid.~~

~~(2) Drug Control Fund.~~

~~(A)(i) There is created on the books of law enforcement agencies and prosecuting attorneys a drug control fund.~~

~~(ii) The drug control fund shall consist of any moneys obtained under subdivision (i)(1) of this section and any other revenue as may be provided by law or ordinance.~~

~~(iii) Moneys from the drug control fund may not supplant other local, state, or federal funds.~~

~~(iv) Moneys in the drug control fund are appropriated on a continuing basis and are not subject to the Revenue Stabilization Law, § 19-5-101 et seq.~~

~~(v) Moneys in the drug control fund shall only be used for law enforcement and prosecutorial purposes.~~

~~(vi) The drug control fund is subject to audit by Arkansas Legislative Audit.~~

~~(B) The law enforcement agencies and prosecuting attorneys shall submit to the Arkansas Drug Director on or before January 1 and July 1 of each year a report detailing any moneys received and expenditure made from the drug control fund during the preceding six-month period.~~

~~(3) Special State Assets Forfeiture Fund.~~

~~(A) There is created and established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the~~

~~State a fund to be known as the "Special State Assets Forfeiture Fund".~~

~~(B)(i) The Special State Assets Forfeiture Fund shall consist of revenues obtained under subdivision (i)(1)(B)(iv) of this section and any other revenue as may be provided by law.~~

~~(ii) Moneys from the Special State Assets Forfeiture Fund may not supplant other local, state, or federal funds.~~

~~(C) The Special State Assets Forfeiture Fund is not subject to the provisions of the Revenue Stabilization Law, § 19-5-101 et seq., or the Special Revenue Fund Account of the State Apportionment Fund, § 19-5-203(b)(2)(A).~~

~~(D)(i) The Arkansas Drug Director shall establish through rules a procedure for proper investment, use, and disposition of state moneys deposited into the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this chapter.~~

~~(ii) State moneys in the Special State Assets Forfeiture Fund shall be distributed by the Arkansas Alcohol and Drug Abuse Coordinating Council and shall be distributed for drug interdiction, eradication, education, rehabilitation, the State Crime Laboratory, and drug courts.~~

~~(4) Federal Forfeitures.~~

~~(A)(i)(a) Any moneys received by a prosecuting attorney or law enforcement agency from a federal forfeiture shall be deposited and maintained in a separate account.~~

~~(b) However, any balance over two hundred fifty thousand dollars (\$250,000) shall be distributed as set forth in subdivision (i)(4)(B) of this section.~~

~~(ii) No other moneys may be maintained in the account except for any interest income generated by the account.~~

~~(iii) Moneys in the account shall only be used for law enforcement and prosecutorial purposes consistent with governing federal law.~~

~~(iv) The account is subject to audit by Arkansas Legislative Audit.~~

~~(B)(i) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Division of Arkansas State Police to be transferred to the State Treasury for deposit into the Special State Assets~~

~~Forfeiture Fund in which it shall be maintained separately and distributed consistent with governing federal law and upon the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council.~~

~~(ii) Of the moneys contained in the Special State Assets Forfeiture Fund at the beginning of each fiscal year, no more than:~~

~~(a) Twenty five percent (25%) shall be retained by the Division of Arkansas State Police to be used for law enforcement purposes consistent with governing federal law; and~~

~~(b) Sixty five percent (65%) may be distributed among other state and local law enforcement agencies to be used for law enforcement purposes consistent with federal law.~~

~~(iii) With the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council, the Division of Arkansas State Police shall promulgate rules and procedures for the distribution by an allocation formula of moneys set forth in subdivision (i)(4)(B)(ii)(b) of this section.~~

~~(j) In Personam Proceedings. In personam jurisdiction may be based on a person's presence in the state, or on his or her conduct in the state, as set out in § 16-4-101(C), and is subject to the following additional provisions:~~

~~(1) A temporary restraining order under this section may be entered ex parte on application of the state, upon a showing that:~~

~~(A) There is probable cause to believe that the property with respect to which the order is sought is subject to forfeiture under this section; and~~

~~(B) Notice of the action would jeopardize the availability of the property for forfeiture;~~

~~(2)(A) Notice of the entry of a temporary restraining order and an opportunity for hearing shall be afforded to a person known to have an interest in the property.~~

~~(B) The hearing shall be held at the earliest possible date consistent with Rule 65 of the Arkansas Rules of Civil Procedure and is limited to the issues of whether:~~

~~(i) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the temporary restraining order will result in the property's being destroyed, conveyed, alienated, encumbered, disposed of, received, removed from the jurisdiction~~

~~of the circuit court, concealed, or otherwise made unavailable for forfeiture; and~~

~~(ii) The need to preserve the availability of property through the entry of the requested temporary restraining order outweighs the hardship on any owner or interest holder against whom the temporary restraining order is to be entered;~~

~~(3) The state has the burden of proof by a preponderance of the evidence to show that the defendant's property is subject to forfeiture;~~

~~(4)(A) On a determination of liability of a person for conduct giving rise to forfeiture under this section, the circuit court shall enter a judgment of forfeiture of the property subject to forfeiture as alleged in the complaint and may authorize the prosecuting attorney or any law enforcement officer to seize any property subject to forfeiture pursuant to subsection (a) of this section not previously seized or not then under seizure.~~

~~(B) The order of forfeiture shall be consistent with subsection (h) of this section.~~

~~(C) In connection with the judgment, on application of the state, the circuit court may enter any appropriate order to protect the interest of the state in property ordered forfeited; and~~

~~(5) Subsequent to the finding of liability and order of forfeiture, the following procedures apply:~~

~~(A) The attorney for the state shall give notice of pending forfeiture, in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure, to any owner or interest holder who has not previously been given notice;~~

~~(B) An owner or interest holder in property that has been ordered forfeited and whose claim is not precluded may file a claim within thirty (30) days after initial notice of pending forfeiture or after notice under Rule 4 of the Arkansas Rules of Civil Procedure, whichever is earlier; and~~

~~(C) The circuit court may amend the in personam order of forfeiture if the circuit court determines that a claimant has established that he or she has an interest in the property and that the interest is exempt under subdivision (a)(4), subdivision (a)(6), or subdivision (a)(8) of this section.~~

~~(k) The circuit court shall order the forfeiture of any other property of a claimant or defendant up to the value of the claimant's or defendant's property found by the circuit court to be subject to forfeiture under subsection (a) of this section if any of the forfeitable property had remained under the control or custody of the claimant or defendant and:~~

- ~~(1) Cannot be located;~~
- ~~(2) Was transferred or conveyed to, sold to, or deposited with a third party;~~
- ~~(3) Is beyond the jurisdiction of the circuit court;~~
- ~~(4) Was substantially diminished in value while not in the actual physical custody of the seizing law enforcement agency;~~
- ~~(5) Was commingled with other property that cannot be divided without difficulty; or~~
- ~~(6) Is subject to any interest exempted from forfeiture under this subchapter.~~

~~(1)(1)(A) On the fifth day of each month the Treasurer of State shall transfer to the Department of Community Correction Fund Account twenty percent (20%) of any moneys deposited into the Special State Assets Forfeiture Fund during the previous month.~~

~~(B) However, in no event shall more than eight hundred thousand dollars (\$800,000) be transferred during any one (1) fiscal year.~~

~~(2) Any moneys transferred to the Department of Community Correction Fund Account from the Special State Assets Forfeiture Fund in accordance with this subsection shall:~~

~~(A) Be used for the personal services and operating expenses of the drug courts and for no other purpose; and~~

~~(B) Not be transferred from the Department of Community Correction Fund Account.~~

~~(m)(1) There shall be no civil judgment under this subchapter and no property shall be forfeited unless the person from whom the property is seized is convicted of a felony offense that related to the property being seized and that permits the forfeiture of the property.~~

~~(2) The court may waive the conviction requirement under this subsection if the prosecuting attorney shows by clear and convincing evidence that, before a conviction, the person from whom the property was seized:~~

- ~~(A) Died;~~

- ~~(B) Was deported by the United States Government;~~
- ~~(C) Was granted immunity or reduced punishment in exchange for testifying or assisting a law enforcement agency or prosecution;~~
- ~~(D) Fled the jurisdiction or failed to appear on the underlying criminal charge;~~
- ~~(E) Failed to answer the complaint for civil asset forfeiture under this section as specified in the Arkansas Rules of Civil Procedure;~~
- ~~(F) Abandoned or disclaimed interest or ownership in the property seized; or~~
- ~~(G) Agreed in writing with the prosecuting attorney and other parties as to the disposition of the property.~~

SECTION 9. Arkansas Code § 5-64-510 is amended to read as follows:

5-64-510. Methamphetamine-contaminated motor vehicles.

(a) As used in this section, “methamphetamine-contaminated motor vehicle” means a motor vehicle that has been lawfully forfeited ~~under § 5-64-505~~ in which methamphetamine was manufactured as determined by a law enforcement agency or a prosecuting attorney who has possession of the motor vehicle.

(b) A law enforcement agency or a prosecuting attorney who has possession of a methamphetamine-contaminated motor vehicle shall destroy or sell for scrap metal the methamphetamine-contaminated motor vehicle.

SECTION 10. Arkansas Code § 5-64-806 is repealed.

~~5-64-806. Seizure and forfeiture.~~

~~Any property, including money, used in violation of a provision of this subchapter may be seized and forfeited to the state.~~

SECTION 11. Arkansas Code § 5-73-130 is repealed.

~~5-73-130. Seizure and forfeiture of firearm—Seizure and forfeiture of motor vehicle—Disposition of property seized.~~

~~(a) If a person under eighteen (18) years of age is unlawfully in possession of a firearm, the firearm shall be seized and, after an adjudication of delinquency or a conviction, is subject to forfeiture.~~

~~(b) If a felon or a person under eighteen (18) years of age is~~

~~unlawfully in possession of a firearm in a motor vehicle, the motor vehicle is subject to seizure and, after an adjudication of delinquency or a conviction, subject to forfeiture.~~

~~(c) As used in this section, "unlawfully in possession of a firearm" does not include any act of possession of a firearm that is prohibited only by:~~

~~(1) Section 5-73-127, unlawful to possess loaded center fire weapons in certain areas; or~~

~~(2) A regulation or rule of the Arkansas State Game and Fish Commission.~~

~~(d) The procedures for forfeiture and disposition of the seized property are as follows:~~

~~(1) The prosecuting attorney of the judicial district within whose jurisdiction the property is seized that is sought to be forfeited shall promptly proceed against the property by filing in the circuit court a petition for an order to show cause why the circuit court should not order forfeiture of the property; and~~

~~(2) The petition shall be verified and shall set forth:~~

~~(A) A statement that the action is brought pursuant to this section;~~

~~(B) The law enforcement agency bringing the action;~~

~~(C) A description of the property sought to be forfeited;~~

~~(D) A statement that on or about a date certain there was an adjudication of delinquency or a conviction and a finding that the property seized is subject to forfeiture;~~

~~(E) A statement detailing the facts in support of subdivision (d)(1) of this section; and~~

~~(F) A list of all persons known to the law enforcement agency, after diligent search and inquiry, who may claim an ownership interest in the property by title or registration or by virtue of a lien allegedly perfected in the manner prescribed by law.~~

~~(e)(1) Upon receipt of a petition complying with the requirements of subdivision (d)(1) of this section, the circuit court judge having jurisdiction shall issue an order to show cause setting forth a statement that this subchapter is the controlling law.~~

~~(2) In addition, the order shall set a date at least forty-one~~

~~(4) days from the date of first publication of the order pursuant to subsection (f) of this section for all persons claiming an interest in the property to file such pleadings as they desire as to why the circuit court should not order the forfeiture of the property for use, sale, or other disposition by the law enforcement agency seeking forfeiture of the property.~~

~~(3) The circuit court shall further order that any person who does not appear on that date is deemed to have defaulted and waived any claim to the subject property.~~

~~(f)(1) The prosecuting attorney shall give notice of the forfeiture proceedings by:~~

~~(A) Causing a copy of the order to show cause to be published two (2) times each week for two (2) consecutive weeks in a newspaper having general circulation in the county where the property is located with the last publication being not less than five (5) days before the show cause hearing; and~~

~~(B) Sending a copy of the petition and order to show cause by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:~~

~~(i) The property is of a type for which title or registration is required by law;~~

~~(ii) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or~~

~~(iii) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.~~

~~(2) The law enforcement agency is only obligated to make diligent search and inquiry as to the owner of the property, and if, after diligent search and inquiry, the law enforcement agency is unable to ascertain the owner, the requirement of actual notice by mail with respect to a person having a perfected security interest in the property is not applicable.~~

~~(g) At the hearing on the matter, the petitioner has the burden to establish that the property is subject to forfeiture by a preponderance of the evidence.~~

~~(h) In determining whether or not a motor vehicle should be ordered forfeited, the circuit court may take into consideration the following~~

~~factors:~~

~~(1) Any prior criminal conviction or delinquency adjudication of the felon or juvenile;~~

~~(2) Whether or not the firearm was used in connection with any other criminal act;~~

~~(3) Whether or not the motor vehicle was used in connection with any other criminal act;~~

~~(4) Whether or not the juvenile or felon was the lawful owner of the motor vehicle in question;~~

~~(5) If the juvenile or felon is not the lawful owner of the motor vehicle in question, whether or not the lawful owner knew of the unlawful act being committed that gives rise to the forfeiture penalty; and~~

~~(6) Any other factor the circuit court deems relevant.~~

~~(i) The final order of forfeiture by the circuit court shall perfect in the law enforcement agency right, title, and interest in and to the property and shall relate back to the date of the seizure.~~

~~(j) Physical seizure of property is not necessary in order to allege in a petition under this section that the property is forfeitable.~~

~~(k) Upon filing the petition, the prosecuting attorney for the judicial district may also seek a protective order to prevent the transfer, encumbrance, or other disposal of any property named in the petition.~~

~~(l) The law enforcement agency to which a motor vehicle is forfeited shall either:~~

~~(1) Sell the motor vehicle in accordance with subsection (m) of this section; or~~

~~(2) If the motor vehicle is not subject to a lien that has been preserved by the circuit court, retain the motor vehicle for official use.~~

~~(m)(1) If a law enforcement agency desires to sell a forfeited motor vehicle, the law enforcement agency shall first cause notice of the sale to be made by publication at least two (2) times a week for two (2) consecutive weeks in a newspaper having general circulation in the county and by sending a copy of the notice of the sale by certified mail, return receipt requested, to each person having ownership of or a security interest in the property or in the manner provided in Rule 4 of the Arkansas Rules of Civil Procedure if:~~

~~(A) The property is of a type for which title or registration is required by law;~~

~~(B) The owner of the property is known in fact to the law enforcement agency at the time of seizure; or~~

~~(C) The property is subject to a security interest perfected in accordance with the Uniform Commercial Code, § 4-1-101 et seq.~~

~~(2) The notice of the sale shall include the time, place, and conditions of the sale and a description of the property to be sold.~~

~~(3) The property shall then be disposed of at public auction to the highest bidder for cash without appraisal.~~

~~(n) The proceeds of any sale and any moneys forfeited shall be applied to the payment of:~~

~~(1) The balance due on any lien preserved by the circuit court in the forfeiture proceedings;~~

~~(2) The cost incurred by the seizing law enforcement agency in connection with the storage, maintenance, security, and forfeiture of the property;~~

~~(3) The costs incurred by the prosecuting attorney or attorney for the law enforcement agency, approved by the prosecuting attorney, to which the property is forfeited; and~~

~~(4) Costs incurred by the circuit court.~~

~~(o) The remaining proceeds or moneys shall be deposited into a special county fund to be titled the "Juvenile Crime Prevention Fund", and the moneys in the fund shall be used solely for making grants to community-based nonprofit organizations that work with juvenile crime prevention and rehabilitation.~~

~~(p)(1) The law enforcement agency to which a firearm is forfeited may trade the firearm to a federally licensed firearms dealer for credit toward future purchases by the law enforcement agency.~~

~~(2) If the firearm is unable to be traded to a federally licensed firearms dealer, the law enforcement agency may dispose of the firearm as the law enforcement agency deems appropriate.~~

SECTION 12. Arkansas Code § 5-74-107(c), concerning the offense of unlawful discharge of a firearm from a vehicle, is repealed.

~~(c)(1)(A) Any vehicle or property used by the owner, or anyone acting with the knowledge and consent of the owner, to facilitate a violation of this section is subject to forfeiture.~~

~~(B) Subdivision (c)(1)(A) of this section is a new and independent ground for forfeiture.~~

~~(2)(A) Property that is forfeitable based on this section is forfeited pursuant to and in accordance with the procedures for forfeiture in § 5-64-505.~~

~~(B) The reference in subdivision (c)(2)(A) of this section to § 5-64-505 is procedural only, and it is not a defense to forfeiture under this section that the discharge of a firearm did not involve a controlled substance.~~

SECTION 13. Arkansas Code § 16-21-147(d), concerning the disposition of federal forfeiture funds by a prosecuting attorney, is amended to read as follows:

(d) All federal forfeitures to a prosecuting attorney's office shall be deposited in a separate account ~~pursuant to § 5-64-505(i)(4)~~ as required by law.

SECTION 14. Arkansas Code § 16-21-148 is amended to read as follows:
16-21-148. Deputy prosecutor for civil asset forfeiture actions.

~~(a)~~ In addition to the deputy prosecuting attorney positions created by § 16-21-113(a)(1) and other Arkansas Code provisions and laws, a prosecuting attorney shall have the power to enter into a contract for personal services with a licensed attorney whose duty it will be to act as a deputy prosecutor to prosecute civil asset forfeiture actions ~~at such hourly amount~~ as is deemed proper by the prosecuting attorney.

~~(b) This attorney may be paid from funds generated from § 5-64-505(i)(2).~~

SECTION 15. Arkansas Code § 16-21-1105 is amended to read as follows:
16-21-1105. Supplemental funding.

(a) The state may provide for supplemental funding directly to the office of the Prosecuting Attorney of the Sixth Judicial District, including, but not limited to, funds collected under the provisions of §§ ~~5-64-505~~, 16-21-120, and 21-6-411.

(b) These funds shall be in addition to appropriated funds of the local quorum court, but subject to state audit.

SECTION 16. Arkansas Code § 16-21-1108 is amended to read as follows:
16-21-1108. Federal funds.

The office of the Prosecuting Attorney of the Sixth Judicial District is authorized to receive funds from the ~~federal government~~ United States Government in the name of the office of the Prosecuting Attorney of the Sixth Judicial District and to receive both federal and state asset forfeiture funds and to utilize and expend those funds for such purposes as are allowed for by law ~~or specified in § 5-64-505.~~

SECTION 17. Arkansas Code § 16-118-108(a), concerning the definition of "drug paraphernalia" as it pertains to civil actions against the sellers of drug paraphernalia, is amended to read as follows:

(a) As used in this subchapter, "drug paraphernalia" means those items as defined by in §§ 5-64-101, § 5-64-403(a)(4), and § 5-64-443, ~~and 5-64-505.~~

SECTION 18. Arkansas Code § 19-5-972 is amended to read as follows:
19-5-972. Special State Assets Forfeiture Fund.

(a) There is established on the books of the Treasurer of State, the Auditor of State, and the Chief Fiscal Officer of the State a fund to be known as the "Special State Assets Forfeiture Fund".

(b) The fund shall consist of revenues as provided ~~in § 5-64-505(i)(1)(B)(iv) and any other revenues as may be provided~~ by law, there to be administered through rules established by the Arkansas Drug Director and distributed by the Arkansas Alcohol and Drug Abuse Coordinating Council in accordance with the intent and purposes of the Uniform Controlled Substances Act, § 5-64-101 et seq.

SECTION 19. Arkansas Code § 19-6-301(30), concerning special revenues, is amended to read as follows:

(30) Various asset forfeiture proceeds, ~~§ 5-64-505(f)(5)(B), § 5-64-505(h)(1)(A), and § 5-64-505(i)~~ as provided by law;

SECTION 20. Arkansas Code § 26-57-1306(b), concerning the seizure of contraband cigarettes, is amended to read as follows:

(b) Contraband and Seizure. Any cigarettes that have been sold,

offered for sale, or possessed for sale in this state or imported for personal consumption in this state in violation of § 26-57-1303(c) shall be deemed contraband, and the cigarettes shall be subject to seizure and forfeiture as provided ~~in § 5-64-505~~ by law, and all of the cigarettes lawfully seized and forfeited shall be destroyed and not resold.