

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

State of Arkansas
93rd General Assembly
Regular Session, 2021

As Engrossed: H4/21/21
A Bill

SENATE BILL 560

By: Senator A. Clark

By: Representatives McCollum, Underwood, V. Flowers, Richardson, Gonzales

For An Act To Be Entitled

AN ACT TO BE KNOWN AS THE "ARKANSAS CIVIL ASSET
FORFEITURE REFORM ACT OF 2021"; AND FOR OTHER
PURPOSES.

Subtitle

TO BE KNOWN AS THE "ARKANSAS CIVIL ASSET
FORFEITURE REFORM ACT OF 2021".

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

SECTION 1. DO NOT CODIFY. Title.

This act shall be known as and may be cited as the "Arkansas Civil
Asset Forfeiture Reform Act of 2021".

SECTION 2. Arkansas Code § 5-64-505(g), concerning the initiation of
civil asset forfeiture proceedings, is amended to read as follows:

(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.~~

(4)(A) Subject to the Arkansas Rules of Civil Procedure, with regard to a person arrested for an offense giving rise to a forfeiture action, the owner or interest holder of the seized property shall file with the circuit clerk an answer to the complaint that shall include:

(i) 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;

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

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

(iv) The address at which the owner or interest holder accepts mail.

(B) With regard to a third party not arrested for an offense giving rise to a forfeiture action, within forty-five (45) days of service of process the owner or interest holder of the seized property shall file with the circuit clerk an answer to the complaint.

(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~~ has the following burden of proof:

(a) With regard to a person arrested for an offense giving rise to the forfeiture action, the prosecuting attorney shall prove by a preponderance of the evidence that the seized property should be forfeited; or

(b) With regard to a third party not arrested for an offense giving rise to the forfeiture action, the prosecuting attorney shall prove by clear and convincing 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.

SECTION 2. Arkansas Code § 5-64-505(i)(2)(A)(v), concerning the use of drug control funds obtained through the forfeiture process, is amended to read as follows:

(v) Moneys in the drug control fund shall only be used for law enforcement and prosecutorial purposes, including without limitation to provide a grant of up to one thousand dollars (\$1,000) to the family of a law enforcement officer who dies in the prosecuting attorney's jurisdiction.

/s/A. Clark