

1 State of Arkansas
2 93rd General Assembly
3 Regular Session, 2021
4

A Bill

SENATE BILL 560

5 By: Senator A. Clark
6

For An Act To Be Entitled

8 AN ACT TO BE KNOWN AS THE "ARKANSAS CIVIL ASSET
9 FORFEITURE REFORM ACT OF 2021"; AND FOR OTHER
10 PURPOSES.
11

Subtitle

12
13
14 TO BE KNOWN AS THE "ARKANSAS CIVIL ASSET
15 FORFEITURE REFORM ACT OF 2021".
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 SECTION 1. DO NOT CODIFY. Title.

21 This act shall be known as and may be cited as the "Arkansas Civil
22 Asset Forfeiture Reform Act of 2021".
23

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

26 (g) Initiation of Forfeiture Proceedings – Notice to Claimants –
27 Judicial Proceedings.

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

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

36 (C) The prosecuting attorney shall mail a copy of the complaint



1 to the Arkansas Drug Director within five (5) calendar days after filing the
 2 complaint.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

19 (5)(A) If the owner or interest holder fails to file an answer
20 as required by subdivision (g)(4) of this section, the prosecuting attorney
21 may move for default judgment pursuant to the Arkansas Rules of Civil
22 Procedure.

23 (B)(i) If a timely answer has been filed, the prosecuting
24 attorney ~~has the burden of proving by a preponderance of the evidence that~~
25 ~~the seized property should be forfeited~~ has the following burden of proof:

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

30 (b) With regard to a third party not arrested
31 for an offense giving rise to the forfeiture action, the prosecuting attorney
32 shall prove by clear and convincing evidence that the seized property should
33 be forfeited.

34 (ii) After the prosecuting attorney has presented
35 proof under subdivision (g)(5)(B)(i) of this section, any owner or interest
36 holder of the property seized is allowed to present evidence why the seized

1 property should not be forfeited.

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

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

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

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