

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

As Engrossed: H4/21/21

A Bill

SENATE BILL 560

5 By: Senator A. Clark
6 *By: Representatives McCollum, Underwood, V. Flowers, Richardson, Gonzales*
7

For An Act To Be Entitled

9 AN ACT TO BE KNOWN AS THE "ARKANSAS CIVIL ASSET
10 FORFEITURE REFORM ACT OF 2021"; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 TO BE KNOWN AS THE "ARKANSAS CIVIL ASSET
15 FORFEITURE REFORM ACT OF 2021".
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19 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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21 SECTION 1. DO NOT CODIFY. Title.

22 This act shall be known as and may be cited as the "Arkansas Civil
23 Asset Forfeiture Reform Act of 2021".
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25 SECTION 2. Arkansas Code § 5-64-505(g), concerning the initiation of
26 civil asset forfeiture proceedings, is amended to read as follows:

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

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

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



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

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

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

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

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

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

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

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

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

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

36 ~~(D) The address at which the owner or interest holder will~~

1 ~~accept mail.~~

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

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

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

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

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

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

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

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

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

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

35 (ii) After the prosecuting attorney has presented
36 proof under subdivision (g)(5)(B)(i) of this section, any owner or interest

1 holder of the property seized is allowed to present evidence why the seized
2 property should not be forfeited.

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

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

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

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

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/s/A. Clark

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