

Procedures for the Sale of County Property, County Surplus, and the Seizure and Forfeiture of Assets Confiscated in Relation to Drug-Trafficking Offenses

Table of Contents

I. Sale of County Property Generally

- A. Procedures of Sale of County-Owned Real or Personal Property
- B. Post-Sale Procedures
- C. Exceptions to the Procedures of Sale Set Forth in This Statute

II. Sale or Disposal of County-Owned Surplus Property

- A. Procedures for Sale of Surplus Property
- B. Disposal of Worthless County Property

III. Procedure for Sale of County-Owned Firearms

IV. Procedure for Seizure and Forfeiture of Property Related to Controlled-Substances Arrests and the Subsequent Disposition of Such Property

- A. Items Subject to Forfeiture
- B. Seizure and Forfeiture of Contraband
- C. Procedure of Seizure and Forfeiture of Property in Connection with Drug-Related Arrests
 - 1. Seizure without process
 - 2. Inventory of Property Seized for Forfeiture
 - 3. Forfeiture by Court Order
 - a. Order Allowing Seizing Law Enforcement Agency to Retain Forfeited Property
 - b. Order for the Sale of Property When Appropriate
 - c. Other Orders
- D. Custody of Property Pending Disposition
- E. Transfer of Forfeited Property to Federal Agency
- F. Federal Forfeitures

I. Sale of County Property Generally (A.C.A. § 14-16-105) ¹

- Any sale of real or personal property belonging to county not made under the terms of this statute or listed in the exceptions of this statute shall be null and void.
- The county court reserves the power to sell any real or personal property belonging to the county and to appropriate the proceeds of the sale for county use by following the procedures set forth in this section.

A. Procedures of Sale of County-Owned Real or Personal Property

- When the county judge finds the sale of any county-owned real or personal property to be in the best interest of the county, he shall cause the county court to enter an order of sale including:
 - Property description
 - Reason for sale
 - Order for county assessor to appraise the property at fair market value and to certify the appraisal within a time specified by the court.
- The county clerk shall deliver a certified copy of the order to the county assessor, certifying the date of delivery on the margin of the record where the order is recorded.
- The assessor shall appraise the property specified in the order, and, within the time specified in the order, file a written certificate of appraisal with the county clerk.
 - If the property is appraised for *less than \$2,000*, the property may be sold by the county judge at public or private sale, by sealed bids or by internet sale,² for no less than three-fourths (3/4) of the appraised value.³
 - When the sale is completed, the court shall enter an order approving the sale.⁴
 - If the property is appraised for *more than \$2,000*, the property may be sold by the county judge to the highest bidder, either by sealed bids or internet sale.⁵ A board of approval for the sale shall be made up of the sheriff, treasurer, and circuit clerk of the county in which the property is to be sold with the judge sitting as the chair of the board without a vote.⁶

¹ Appendix A

² Internet sale: notice of sale shall be placed on the website for no less than eight (8) consecutive days before the date of sale, containing a description of property to be sold and the time of the sale.

³ Additional notice may be posted on the county website or a trade or business website for no less than eight (8) consecutive days before the sale.

⁴ The order shall include a property description, name of purchaser, terms of sale, verification that proceeds were deposited with county treasurer, and the account to which proceeds were credited by treasurer.

⁵ If sale is over the internet, notice shall be placed on the internet, and the internet vendor or publisher shall send an invoice accompanied by a statement that the sale was conducted over the internet.

⁶ Notice of the sale should be published for two consecutive weeks in some newspaper published and having a general circulation in the county, including the property description, the time and place for submitting sealed bids or

- The property shall not be sold for less than three-fourths (3/4) of its appraised value as determined by the certificate of the assessor.
- The judge reserves the right to reject any bids received.
- When the judge has accepted a bid and a majority of the board has approved the sale, the judge may sell the property to the highest bidder. The county court shall then enter an order approving the sale.⁷

B. Post-Sale Procedures

- The county fixed asset list shall be amended to reflect all sales made under this statute.
- Any taxpayer of the county may bring an action to cancel the sale and recover possession of sold county property within two years of the date of the sale.⁸

C. Exceptions to the Procedures of Sale Set Forth in This Statute

- This statute does *not* apply to any property obtained by any recycling program authorized and operated by the county. (A record of items obtained through recycling programs that are sold by the county should be maintained by the county judge, including their description, whether sold at public or private sale, name of purchaser, and terms of the sale. These proceeds should be deposited with county treasurer.)
- This statute does *not* apply to any sale of a county conservation easement under A.C.A. § 15-20-401, which shall only be made by a majority vote of the quorum court.
- This statute does *not* apply to items sold as COUNTY SURPLUS under A.C.A. § 14-16-106 (relevant procedures set forth in that section).
- This statute does *not* apply when personal property of the county is traded in on new or used equipment, and the county is credited the property's approximate fair market value toward the purchase of new equipment.
- This statute does *not* apply when the county is leasing county-owned property, including but not limited to leases under §§ 14-16-108, or the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201.
- This statute does *not* apply when a sale or disposal of property is conducted under another section of the Arkansas Code.

whether the sale will be conducted on the internet, the appraised property value, and the signature of judge and date signed.

⁷ The order shall include the property description, name of purchaser, terms of sale, verification that proceeds were deposited with county treasurer, and the account to which proceeds were credited by treasurer.

⁸ The action is to be taken in the circuit court of the county in which the sale is made or in any county where the sold property can be found. If the property is recovered by the county under such an action, the purchaser shall *not* be entitled to a refund of payment made for the sale.

II. Sale or Disposal of County-Owned Surplus Property (A.C.A. § 14-16-106)⁹

- The county judge may sell at public auction or by internet sale to the highest bidder any personal or real property owned by the county that the judge determines to be a surplus.
- The county fixed asset listing shall be amended to reflect all sales or disposal of county property made under this statute.

A. Procedures for Sale of Surplus Property

- Notice of such sale shall be published at least once a week for two consecutive weeks in a newspaper having general circulation in the county, including a property description and the time and place of public auction or internet sale.¹⁰
- When the sale is complete, the county court shall enter an order approving the sale.¹¹

B. Disposal of Worthless County Property

- If it is determined by the county judge and assessor that some personal property of the county is junk or of no value to the county, the property may be disposed of in any manner deemed appropriate by the county judge.
 - The judge should report any such disposal of worthless property to the quorum court monthly.

III. Procedure for Sale of County-Owned Firearms

- There is no current state or federal law that deals with the sale of county-owned weapons that were purchased by a state or local law enforcement agency for law-enforcement purposes. Therefore, the procedures set forth in A.C.A. § 14-16-105-106 and § 16-90-119¹² should be followed to ensure that no federal and state laws regarding the sale of firearms are violated. The sale of firearms by a state or local law enforcement agency should be treated like the sale of firearms by an individual or a business, and when sold at a public sale, should only be sold to someone who resides within the state after running the appropriate background checks. Otherwise, no waiting period is required.

⁹ Appendix B

¹⁰ If sale is over the internet, notice shall be placed on the internet, and the internet vendor or publisher shall send an invoice accompanied by a statement that the sale was conducted over the internet.

¹¹ The order shall include the property description, name of purchaser, terms of sale, verification that the proceeds of the sale were deposited with county treasurer, and the account to which funds were credited by treasurer.

¹² Appendices A, B, and C.

IV. Procedure for Seizure and Forfeiture of Property Related to Controlled-Substances Arrests and the Subsequent Disposition of Such Property (A.C.A. § 5-64-505)¹³

A. Items Subject to Forfeiture¹⁴

- Any controlled or counterfeit substance that has been manufactured, distributed, or acquired in violation of this statute.
- Any raw materials or equipment used, or intended to be used, in manufacturing or delivering such controlled or counterfeit substances.
- Any property used as a container for such substances or materials.
- Any conveyance, including aircraft, vehicle, or vessel, used or intended to be use in the transport or facilitation of the sale or receipt of such substances or materials, but only if the owner or person in charge of the conveyance appears to be a consenting party. No conveyance will be subject to forfeiture if the owner did not have knowledge of or reason to have knowledge of, or did not consent to, such transportation or facilitation.
 - A forfeited conveyance shall be subject to any bona fide security interest of the conveyance if the party neither consented to nor had knowledge of the act leading to forfeiture.
- Any book, record, or research material used or intended to be used in violation of this statute.
- Anything of value, *including firearms*, furnished or intended to be furnished in exchanged for a controlled or counterfeit substance in violation of this statute, any *proceeds or profits* traceable to such an exchange, and any *money or securities* used or intended to be used in violation of this statute (unless the property owner had no knowledge of or did not consent to the act leading to the forfeiture).
 - Any firearms or money found in close proximity to any forfeitable controlled or counterfeit substances, paraphernalia, or records regarding controlled substances shall be presumed forfeitable under this statute.
 - The burden of proof shall be on the property owner to rebut this presumption by a preponderance of the evidence.
- Real property may be forfeited if it substantially assisted in or facilitated the commission of any act prohibited by this statute, unless the owner had no knowledge of or did not consent to the act leading to the forfeiture.¹⁵

¹³ Appendix D

¹⁴ Items in this section are subject to forfeiture by a civil proceeding initiated by the prosecuting attorney upon order by the circuit court. However, no property shall be subject to forfeiture based solely upon the misdemeanor possession of a Schedule III, IV, V, or VI controlled substance.

¹⁵ Real property shall not be forfeited for a violation of § 5-64-419, if a class C felony or less, or § 5-64-441. Forfeiture shall be subject to interest of secured party if secured by a mortgage or other lien and the party had no knowledge of and did not consent to the act leading to the forfeiture. Upon conviction of the drug-related crime, the court shall enter an order of forfeiture of the property to be filed on the day of issuance. Such an order shall not

B. Seizure and Forfeiture of Contraband

- The following items are classified as contraband and may be seized and forfeited to the state:
 - A Schedule I controlled substance possessed, transferred, sold, or offered for sale in violation of this statute or any such substance seized by the state of which the owner is unknown.
 - A plant from which a Schedule I, II or VI controlled substance may be derived when the plant is cultivated in violation of this chapter, the cultivator is unknown, or the plant is a wild growth.
 - Any drug paraphernalia or counterfeit substance except in the possession of a practitioner in the course of professional practice or research.

C. Procedure of Seizure and Forfeiture of Property in Connection with Drug-Related Arrests

1. Seizure without process

- Seizure *without process* may be made if:
 - The seizure is incident to an arrest, search under a warrant, or inspection under an administrative inspection warrant
 - The property has been the subject of a prior judgment in favor of the state
 - The seizing agency has probable cause to believe the property is a danger to health or safety
 - The seizing agency has probable cause to believe that the property was used or intended to be used in violation of this chapter.

2. Inventory of Property Seized for Forfeiture

- When property is seized for forfeiture by a law enforcement agency, the seizing officer shall prepare a confiscation report¹⁶, to be signed by the seizing officer and the

affect the title of a bona fide purchaser who purchased the property prior to issuance of the order, and the order has no effect on the title of such a purchaser.

¹⁶ The report shall be filed with the seizing agency within forty-eight (48) hours after the seizure and maintained in a separate file.

- One copy shall be retained by the seizing officer.
- The report shall contain the following information:
 - Detailed property description including any serial or model numbers and odometer or hour reading of vehicles or equipment
 - Date of seizure
 - Name and address from whom property was seized
 - Reason for seizure
 - Where property will be held
 - Seizing law enforcement officer's name
 - Signed statement by the seizing officer stating that the confiscation report is true and complete.
- Within three (3) business days of receiving the report, the seizing agency shall forward a copy of the report to the prosecuting attorney for the district where the property was seized and to the Arkansas Drug Director.

party from whom the property was seized, if present. The party from whom the property was seized shall also receive a copy of the report. If no property owner is present, or if the owner refuses to sign the report, an additional officer shall sign the report, stating that the owner refused to sign.

- The Division of Legislative Audit shall notify the Arkansas Alcohol and Drug Abuse Coordinating Council and a the circuit court of any law enforcement agency or prosecuting attorney that the entity is ineligible to receive any forfeited funds, property, or grants from the council if, by the Division’s investigation or by notice from the Arkansas Drug Director, the Division determines that:
 - The agency has failed to complete and file the confiscation report as required
 - The agency, prosecuting attorney, or public entity has not properly accounted for seized property, or
 - The prosecuting attorney has failed to comply with notification requirements mandated in the latter part of the statute.
- Upon receipt of such notice, the circuit court shall not issue any order distributing seized property to the entity in violation, nor any grant be awarded to the entity by the council until the appropriate officials of the entity have appeared before the Legislative Joint Audit Committee and the committee has adopted a motion authorizing subsequent transfers of forfeited property to the entity¹⁷.

3. Forfeiture by Court Order

- Any property subject to forfeiture under this statute may be seized by any law enforcement agency pursuant to an order of the circuit court having jurisdiction over the property, upon filing of a petition by the prosecuting attorney. The prosecuting attorney shall initiate proceedings by filing a complaint¹⁸ in the circuit court of the county where the property was seized and serving the

-
- The Drug Director shall establish a standardized confiscation report form to be used by all state law enforcement agencies with specific guidelines concerning the nature and dollar value of all property, including firearms, to be included in the report and forwarded to the office of the local prosecuting attorney and the Drug Director.

¹⁷ While the entity is ineligible, the circuit court shall order money that would have been transferred to that agency to be transmitted to the Treasurer of the State for credit to the Crime Lab Equipment Fund. If the property is not cash, it shall be converted to cash pursuant to the procedures forth in the latter part of this statute and then deposited accordingly. These funds will not be subject to recovery or retrieval by the ineligible entity.

¹⁸ The complaint shall include a copy of the confiscation report, and be filed within sixty (60) days of receipt of the report from the seizing agency. The complaint may be filed later if accompanied by a statement of good cause for the late filing, but no later than 120 days after the date of seizure, or in the case of real property, the defendant’s conviction. If a complaint is filed late and the court determines that there was no good cause, the seized property shall be returned to the property owner or interest holder. If the owner cannot be determined, then the property shall be disposed of by the procedures set forth in the latter part of the statute.

complaint on all known owners and interest holders of the seized property in accordance with the Arkansas Rules of Civil Procedure.

- The property owner or interest holder may file an answer verifying their property interest, setting forth any defense to forfeiture. If no answer is filed, the prosecuting attorney may file for default judgment. If the court finds no cause for forfeiture, then the property shall be returned to the property owner or interest holder immediately. If the court, through default judgment or based on a preponderance of the evidence finds that there was reasonable grounds for forfeiture, the court shall enter an order in accordance with the options set forth below. The order may:

a. Order Allowing Seizing Law Enforcement Agency to Retain Forfeited Property

- Permit the law enforcement agency or prosecuting attorney to retain the seized property for law enforcement or prosecutorial purposes **for no more than two years**, unless the court finds that the property is in use for law enforcement or prosecutorial purposes and authorizes continual use for those purposes on an annual basis.¹⁹
 - **At the end of the retention period, the seized property shall be sold** if not required to be destroyed the state or deemed harmful to the public. The property shall be sold by public sale by the retaining agency pursuant to the provisions of § 5-5-101(e) and (f).²⁰
 - **Proceeds of the sale shall be distributed eighty percent (80%) to the drug control fund²¹ of the retaining law enforcement agency or prosecuting attorney's office, and twenty percent (20%) shall be deposited into the State Treasury to be credited to the Crime Lab Equipment Fund.**
 - Nothing prohibits the retaining agency from selling the seized property at any time during the time allowed for retention. However, the **proceeds must be distributed as set forth above.**
 - Any firearm not retained shall be disposed of *in accordance with state and federal law.*

¹⁹ The Association of Arkansas Counties and the Arkansas Sheriffs' Association seek to have this two year limitation and subsequent annual court authorization changed in the Arkansas Code.

²⁰ Appendix E.

²¹ Money from the drug control fund may not supplant other local, state or federal funds. Money deposited into the drug control fund is appropriated on a continuing basis, and shall only be used for law enforcement and prosecutorial purposes. The law enforcement agencies shall submit to the Arkansas Drug Director on or before January 1 and July 1 of each year a report detailing any money received and expenditures made from the drug control fund during the preceding six-month period.

- If court determines that the property has been used for personal or inappropriate purposes, the court shall order the property to be sold pursuant to § 5-5-101(e) and (f), and the proceeds deposited into the State Treasury to be credited to the Crime Lab Equipment Fund.
- Within three (3) days of the issuance of the court order, the circuit clerk shall forward to the Drug Director copies of the confiscation report, the court order, and any other documentation regarding the disposition of the forfeited property.

b. Order for the Sale of Property When Appropriate

- The court may sell seized property that is not required by law to be destroyed and that is not harmful to the public pursuant to the provisions of § 5-5-101(e) and (f). The proceeds of any money forfeited or obtained by judgment or settlement under this chapter shall be deposited into the State Special Assets Forfeiture Fund²² of the prosecuting attorney.
- The prosecuting attorney shall have discretion over the equitable distribution of the proceeds deposited into the State Special Assets Forfeiture Fund.²³

c. Other Orders

- The court may transfer a motor vehicle to a school district for use in a driver's education course.

²² If, during a calendar year, the aggregate amount of deposits in the asset forfeiture fund exceeds \$20,000 per county, the prosecuting attorney shall, within fourteen (14) days, notify the circuit judges in the judicial district and the Arkansas Drug Director. Subsequent to the notification, twenty percent (20%) of proceeds of any additional sale and any additional money forfeited shall be deposited into the State Treasury to be credited to the Crime Lab Equipment Fund, and the remainder shall be deposited into the asset forfeiture fund of the prosecuting attorney. Failure of the prosecuting attorney to comply with the notification requirement above renders that office and any entity eligible to receive forfeited funds from the that office ineligible to receive forfeited money or property, and twenty percent (20%) of funds in excess of \$20,000 that have been retained but not reported shall be subject to recovery for deposit into the Crime Lab Equipment Fund. **The prosecuting attorney shall administer expenditures from the asset forfeiture fund** which is subject to audit by the Division of Legislative Audit. Distributions shall only be made for law enforcement or prosecutorial purposes, and shall be made in the following order: 1) For satisfaction of any bona fide security interest or lien; 2) For payment of any proper expense of the forfeiture and sale proceedings, including maintenance and court costs; 3) **Any balance under \$250,000 shall be distributed proportionally so as to reflect generally the contribution of the appropriate local or state law enforcement for prosecutorial agency's participation in any activity that led to the seizure or forfeiture of the property or deposit of money;** 4) **Any balance over \$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,** along with an itemized accounting of the expenses, within 10 days after the distribution of the funds. **Money from the Special State Assets Forfeiture Fund may not supplant other local, state or federal funds.** The Drug Director shall establish rules and procedures for proper investment, use, and disposition of state money deposited into the Special State Assets Forfeiture Fund in accordance with the intent and purposes of this statute. State money 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.

²³ See Appendices F - G.

- Any aircraft shall be forfeited to the Arkansas Drug Director and may only be used for drug eradication and interdiction efforts. If the aircraft is ordered sold by the Arkansas Alcohol and Drug Abuse Coordinating Council, it shall be sold pursuant to § 5-5-101(e) and (f) and the proceeds of the sale shall be deposited into the Special State Assets Forfeiture Fund.
- Any controlled substance, plant, drug paraphernalia, or counterfeit substance shall be destroyed pursuant to a court order.
- A drug task force may use forfeited property or money if the court's order specifies that the forfeited property is forfeited to the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.²⁴

D. Custody of Property Pending Disposition

- Property seized for forfeiture shall be deemed to be in the custody of the seizing agency subject only to an order of the circuit court having jurisdiction over seized property.
- (Subject to any need to retain property for evidence), **the seizing law enforcement agency may:**
 1. Remove the property to a place designated by the court
 2. Place the property under constructive seizure, giving notice of pending forfeiture to all property owners and interest holders, or by filing notice in appropriate public record
 3. Remove the property to storage or, if money, deposit into an interest bearing account
 4. Provide for another agency or custodian to take custody of property in order to service, maintain and operate the property as is necessary to maintain its value in any appropriate location within the jurisdiction of the court.²⁵

E. Transfer of Forfeited Property to Federal Agency

- No state or local law enforcement agency shall transfer any seized property to any federal agency for forfeiture under federal law unless the circuit court having

²⁴ Whichever of the above agencies is ordered possession of the forfeited property, the agency shall maintain an inventory of and be accountable for the forfeited property or money, and also be responsible to the Division of Legislative Audit requirements set forth below.

²⁵ A receipt shall accompany any such transfer, including a detailed property description, to whom the property is being transferred and the source of its authorization, and the signatures of both the transferor and transferee. Both shall maintain a copy of the receipt. A person who takes custody of such property is not liable to any person where an act is done in a reasonable manner in compliance with a court order.

jurisdiction on the property orders, upon petition of the prosecuting attorney, for the agency to do so.

- Such a transfer to a federal agency shall *not* be approved unless it reasonably appears that the activity giving rise to the investigation or seizure involves more than one state or the nature of the investigation or seizure would be better pursued under federal law.

F. Federal Forfeitures

- Any money received by a prosecuting attorney or law enforcement agency from a federal forfeiture shall be deposited and maintained in a separate account, with no other money being maintained in that account other than any interest income generated by the account.²⁶
- For further guidance regarding the distribution of seized property and/or money from federal forfeitures, please reference the federal *Guide to Equitable Sharing for State and Local Law Enforcement Agencies*.²⁷

²⁶ Distributions may only be made from this account for law enforcement and prosecutorial purposes *consistent with governing federal law*. The account is subject to the audit the Division of Legislative Audit. **If the balance of the account should exceed \$250,000, the excess amount shall be forwarded to the Department 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. Of the funds maintained in the Special State Assets Forfeiture Fund at the beginning of each fiscal year, **no more than twenty-five percent (25%)** shall be retained by the Department of Arkansas State Police to be used for law enforcement purposes *consistent with the governing federal law*. **Sixty-five percent (65%) may be distributed among other state and local law enforcement agencies** to be used for law enforcement purposes *consistent with the governing federal law*. The Department of Arkansas State Police shall promulgate rules and procedures for the distribution of these funds with the advice of the Arkansas Alcohol and Drug Abuse Coordinating Council.

²⁷ Appendix H - U.S. Department of Justice, Criminal Division, Asset Forfeiture and Money Laundering Section (April 2009). Please contact Lindsey Bailey at the Association of Arkansas Counties to obtain a copy.

APPENDIX A

§ 14-16-105. Sale of county property generally

(a) The county court of each county shall have power and jurisdiction to sell and cause to be conveyed any real estate or personal property belonging to the county and to appropriate the proceeds of the sale for the use of the county by proceeding in the manner set forth in this section.

(b)(1) When the county judge of a county shall consider it advisable and to the best interest of the county to sell and convey any real or personal property belonging to the county, he or she shall cause an order to be entered in the county court setting forth:

(A) A description of the property to be sold;

(B) The reason for the sale; and

(C) An order directing the county assessor to cause the property to be appraised at its fair market value and to certify his or her appraisal of the property to the county court within a time to be specified in the order.

(2) A certified copy of the order shall be delivered to the county assessor by the county clerk, and the county clerk shall certify the date of the delivery of the copy on the margin of the record where the order is recorded.

(3) An order and the procedures as used in this section shall not be required for any sale by the county of any materials separated, collected, recovered, or created by a recycling program authorized and operated by the county. However, the county judge shall maintain a record of the recyclable materials sold, whether they were sold at public or private sale, a description of the recyclables sold, the name of the purchaser, and the terms of the sale. All the proceeds of the sale shall be deposited with the county treasurer.

(4) An order and the procedures described in this section shall not be required for any conveyance by the county of a conservation easement as described in the Conservation Easement Act, § 15-20-401 et seq. However, this conveyance shall not be made unless authorized by a majority vote of the quorum court.

(5) If property is sold under § 14-16-106, the requirements of this section are not applicable.

(c)(1) Upon receipt of the certified copy of the order, the county assessor shall view the property described in the order and shall cause the property to be appraised at its fair market value.

(2) Within the time specified in the order, the assessor shall file with the county clerk his or her written certificate of appraisal of the property.

(d)(1) If the appraised value of the property described in the order is less than the sum of two thousand dollars (\$2,000), the property may thereafter be sold and conveyed by the county judge, either at public or private sale, by sealed bids or Internet sale for not less

than three-fourths ($\frac{3}{4}$) of the appraised value as shown by the certificate of appraisal filed by the assessor.

(2)(A) If the property will be sold by Internet sale, the notice of sale shall be placed on the website of the Internet vendor for no less than eight (8) consecutive days before the date of sale and shall contain a description of the property to be sold and the time of the sale.

(B) An additional notice may be posted on a county-owned or county-affiliated website, trade website, or business website for no less than eight (8) consecutive days before the date of sale.

(3)(A) When the sale has been completed, the county court shall enter its order approving the sale.

(B) The order shall set forth:

(i) The description of the property sold;

(ii) The name of the purchaser;

(iii) The terms of the sale;

(iv) That the proceeds of the sale have been deposited with the county treasurer; and

(v) The funds to which the proceeds were credited by the county treasurer.

(e)(1)(A)(i) If the appraised value of the property to be sold exceeds the sum of two thousand dollars (\$2,000), the county judge may sell the property to the highest and best bidder, upon sealed bids received by the judge or by Internet sale.

(ii) The sheriff, the treasurer, and the circuit clerk of the county in which the property is to be sold shall constitute a board of approval for the sales, and the judge shall be the ex officio chair of the board without a vote.

(B) The property, when it exceeds the appraised value of two thousand dollars (\$2,000), shall not be sold for less than three-fourths ($\frac{3}{4}$) of its appraised value as determined by the certificate of the assessor.

(2)(A) Notice of the sale shall be published for two (2) consecutive weekly insertions in some newspaper published and having a general circulation in the county.

(B) The notice shall specify:

(i) The description of the property to be sold;

(ii) The time and place for submitting written bids, including that the sale may be conducted on the Internet; and

(iii) The appraised value of the property to be sold.

(C) The notice shall be dated and signed by the judge.

(D) If the sale is conducted on the Internet, the notice shall be placed on the Internet under this section, and the invoice from the Internet vendor or publisher shall be accompanied by a statement from the Internet vendor or publisher that the sale was published and conducted on the Internet.

(3) The judge shall have the right to reject any bids received by him or her under the notice.

(4)(A) When the judge has accepted a bid for the property and if a majority of the board approves the sale, the judge may sell and convey the property to the highest bidder.

(B) When the sale has been approved and completed, the county court shall enter an order approving the sale, which shall set forth the details of the sale as provided in subdivision (d)(2)(B) of this section.

(f)(1)(A) Any sale or conveyance of real or personal property belonging to any county not made under the terms of this section shall be null and void.

(B) The county fixed asset listing shall be amended to reflect all sales or conveyances made by the county under this section.

(C)(i) Any taxpayer of the county may bring an action to cancel the sale and to recover possession of the property sold within two (2) years from the date a sale is consummated.

(ii) This action for the use and benefit of the county is to be taken in the circuit court of the county in which the sale is made or in any county where personal property so sold may be found.

(iii) In the event the property is recovered for the county in the action, the purchaser shall not be entitled to a refund of the consideration paid by him or her for the sale.

(2) The procedures for sale and conveyance of county property set forth in this section shall not apply in these instances:

(A) When personal property of the county is traded in on new or used equipment and credit approximating the fair market price of the personal property is given to the county toward the purchase price of new equipment;

(B) When the sale of the personal property of the county involves the sale by the county of any materials separated, collected, recovered, or created by a recycling program authorized and operated by the county;

(C) When the county is conveying an easement, including, but not limited to, easements granted upon county lands for water improvements, sewer improvements, gas lines, electric lines, phone lines, utilities, railways, public roads, highways, and conservation easements as described in § 15-20-401 et seq. for any of the purposes enumerated in § 15-20-401 et seq. , as the same may be amended from time to time; or

(D) When the county is leasing county property, including, but not limited to, leasing county lands or property under §§ 14-16-108 -- 14-16-110, or the Municipalities and Counties Industrial Development Revenue Bond Law, § 14-164-201 et seq.

(E) When a sale or disposal of property is conducted under another section of the Arkansas Code.

(g)(1) County hospitals constructed or maintained in whole or part by taxes approved by the voters shall not be sold unless the sale is approved by the majority of electors voting on the issue at a general or special election. This subsection is applicable to county hospitals constructed before and after July 20, 1987.

(2) An election shall not be required for the sale of a county hospital that has been vacant or not used as a county hospital for more than one hundred twenty (120) days.

APPENDIX B

§ 14-16-106. Sale or disposal of surplus property

- (a) If it is determined by the county judge to be surplus, any personal or real property owned by a county may be sold at public auction or by Internet sale to the highest bidder.
- (b)(1) Notice of the public auction or Internet sale shall be published at least one (1) time a week for two (2) consecutive weeks in a newspaper having general circulation in the county.
- (2) The notice shall specify the description of the property to be sold and the time and place of the public auction or Internet sale.
- (3)(A) If the property will be sold by Internet sale, the notice of sale shall be placed on the website of the Internet vendor for no less than eight (8) consecutive days before the date of sale and shall contain a description of the property to be sold and the time of the sale.
- (B) An additional notice may be posted on a county-owned or county-affiliated website, trade website, or business website for no less than eight (8) consecutive days before the date of sale.
- (c)(1) If it is determined by the county judge and the county assessor that any personal property owned by a county is junk, scrap, discarded, or otherwise of no value to the county, then the property may be disposed of in any manner deemed appropriate by the county judge.
- (2) However, the county judge shall report monthly to the quorum court any property that has been disposed of under subdivision (c)(1) of this section.
- (d) The county fixed asset listing shall be amended to reflect all sales or disposal of county property made by the county under this section.
- (e) If the sale is conducted on the Internet, the invoice from the Internet vendor or publisher shall be accompanied by a statement from the Internet vendor or publisher that the sale was published and conducted on the Internet.
- (f)(1) When the sale is complete, the county court shall enter an order approving the sale.
- (2) The order shall set forth:
- (A) The description of the property sold;
 - (B) The name of the purchaser;
 - (C) The terms of the sale;
 - (D) That the proceeds of the sale have been deposited with the county treasurer;
- and
- (E) The funds to which the proceeds were credited by the county treasurer.

APPENDIX C

§ 16-90-119. Confiscation of deadly weapons

(a) When any person is convicted of any homicide, burglary, robbery, assault with intent to kill, assault with a deadly weapon, battery, or any other felony involving a deadly weapon, the court in which the person is convicted may confiscate the deadly weapons involved in the offense and may by court order either:

(1) Transfer the weapons and the title to the weapons to an appropriate state or local law enforcement agency for use or sale by the law enforcement agency; or

(2) Order the weapons destroyed if the weapons are not suitable for use or sale by law enforcement agencies.

(b)(1) The sale of weapons by a law enforcement agency under this section shall be at a public auction or by competitive bid.

(2) The sale shall be subject to a background check of the purchaser through the Federal Bureau of Investigation's National Instant Criminal Background Check System.

(3) The sale shall not include illegal weapons.

(4) The proceeds of the auction shall be retained by the law enforcement agency.

APPENDIX D

§ 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 (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 subdivisions (a)(1) or (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 subdivisions (a)(1) or (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) The Division of 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 the Division of 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)(B) 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 and regulations 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, sheriff, chief of police, Department of Arkansas State Police, or Arkansas Highway Police Division of the Arkansas State Highway and Transportation Department.
- (b) After the order, the prosecuting attorney, sheriff, chief of police, Department of Arkansas State Police, or Arkansas Highway Police Division 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 in 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 the Division of 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 and 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 the Division of 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 and regulations 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 the Division of Legislative Audit.

(B)(i) Any balance over two hundred fifty thousand dollars (\$250,000) shall be forwarded to the Department 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 Department 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 Department 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 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 of 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), (6), or (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 Asset 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 Asset 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.

APPENDIX E

§ 5-5-101. Disposition of contraband and seized property

- (a) Any seized property shall be returned to the rightful owner or possessor of the seized property except contraband owned by a defendant.
- (b)(1) As used in this section, “contraband” means any:
- (A) Article possessed under a circumstance prohibited by law;
 - (B) Weapon or other instrument used in the commission or attempted commission of a felony;
 - (C) Visual, print, or electronic medium that depicts sexually explicit conduct involving a child prohibited under § 5-27-304;
 - (D) Visual, print, or electronic medium that contains a sexual performance of a child prohibited under § 5-27-403;
 - (E) Item the possession of which is prohibited by § 5-27-602;
 - (F) Item the production of which is prohibited by § 5-27-603;
 - (G) Item the production of which is prohibited by § 5-27-605; or
 - (H) Other article designated “contraband” by law.
- (2) “Contraband” does not include a visual, a print, or an electronic medium created, obtained, or possessed by licensed medical personnel or a regulated medical facility for the purpose of treatment or documentation of injuries to a child.
- (c)(1) Contraband shall be destroyed.
- (2) Except as limited under subdivision (c)(3) of this section, in the discretion of the court having jurisdiction, any contraband capable of lawful use may be:
- (A) Retained for use by the law enforcement agency responsible for the arrest; or
 - (B) Sold and the proceeds disposed of in the manner provided by subsections (e)-(g) of this section.
- (3) Contraband described in subdivisions (b)(1)(C)-(H) of this section and having no lawful use shall not be retained.
- (d)(1)(A) Except as provided in subdivision (d)(2) of this section, unclaimed seized property shall be sold at public auction to be held by the chief law enforcement officer of the county, city, or town law enforcement agency that seized the unclaimed seized property or the chief law enforcement officer's designee.
- (B) The proceeds of the sale, less the cost of the sale and any storage charge incurred in preserving the unclaimed seized property, shall be paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.
- (2)(A) Unclaimed seized property that is a recreational item may be donated at no cost to a local or state agency, a nonprofit organization, or an educational program designed to provide education, assistance, or recreation to children.
- (B)(i) As used in subdivision (d)(2)(A) of this section, “recreational item” means an item

(ii) "Recreational item" includes without limitation a bicycle but does not include a motor vehicle or motorcycle.

(e) The time and place of sale of seized property shall be advertised:

(1) For at least fourteen (14) days next before the day of sale by posting written notice at the courthouse door; and

(2) By publication in the form of at least two (2) insertions, at least three (3) days apart, before the day of sale in a weekly or daily newspaper published or customarily distributed in the county.

(f)(1) Any seized property to be sold at public sale shall be offered for sale on the day for which it was advertised between 9:00 a.m. and 3:00 p.m., publicly, by auction, and for ready money.

(2) The highest bidder shall be the purchaser.

(g)(1) The proceeds from any sale of seized property shall be delivered to the county, city, or town treasurer, as the case may be, to be held by him or her in a separate account for a period of three (3) months.

(2) If any person during the time described in subdivision (g)(1) of this section establishes to the satisfaction of the county, city, or town treasurer that he or she was at the time of sale the owner of any seized property sold as provided in subsection (f) of this section, the person shall be paid the amount realized from sale of the seized property less the expenses of the sale.

(3) Any money in the separate account not claimed or paid within the designated three-month period shall be paid into the general fund of the county, city, or town whose law enforcement agency performed the seizure.