

2013 Mississippi Code
Title 97 - CRIMES
Chapter 44 - MISSISSIPPI STREETGANG
ACT
§ 97-44-17 - Forfeiture of firearms,
ammunition, and dangerous weapons
used by criminal street gangs;
disposition of property seized;
procedure

Universal Citation: MS Code § 97-44-17 (2013)

(1) Any firearm, ammunition to be used in a firearm, or dangerous weapon in the possession of a member of a criminal street gang may be seized by any law enforcement agency or peace officer when the law enforcement agency or peace officer has probable cause to believe that the firearm, ammunition to be used in a firearm, or dangerous weapon is or has been used by a gang in the commission of illegal activity.

(2) The district attorney or an attorney for the seizing agency shall initiate, in a civil action, forfeiture proceedings by petition in the circuit courts as to any property seized pursuant to the provisions of this section within thirty (30) days of seizure. The district attorney shall provide notice of the filing of the petition to those members of the gang who become known to law enforcement officials as a result of the seizure and any related arrests, and to any person determined by law enforcement officials to be the owner of any of the property involved. After initial notice of the filing of the petition, the court shall assure that all persons so notified continue to receive notice of all subsequent proceedings related to the property.

(3) Any person who claims an interest in any seized property shall, in order to assert a claim that the property should not be forfeited, file a notice with the court, without necessity of paying costs, of the intent to establish either of the following:

(a) That the persons asserting the claim did not know of, could not have known of, or had no reason to believe in its use by a gang in the commission of illegal activity; or

(b) That the law enforcement officer lacked the requisite reasonable belief that the property was or had been used by a gang in the commission of illegal activity.

(4) An acquittal or dismissal in a criminal proceeding shall not preclude civil proceedings under this section; however, for good cause shown, on motion by the district attorney, the court may stay civil forfeiture proceedings during the criminal trial for related criminal indictment or information alleging a violation of this section. Such a stay shall not be available pending an appeal.

(5) Except as otherwise provided by this section, all proceedings hereunder shall be governed by the provisions of the Mississippi Rules of Civil Procedure.

(6) The issue shall be determined by the court alone, and the hearing on the claim shall be held within sixty (60) days after service of the petition unless continued for good cause. The district attorney shall have the burden of showing by clear and convincing proof that forfeiture of the property is appropriate.

(7) Any person who asserts a successful claim in accordance with subsection (3) of this section shall be awarded the seized property by the court, together with costs of filing such action. All property as to which no claim is filed, or as to which no successful claim is made, may be destroyed, sold at a public sale, retained for use by the seizing agency or transferred without charge to any law enforcement agency of the state for use by it. Property that is sold shall be sold by the circuit court at a public auction for cash to the highest and best bidder after advertising the sale for at least once each week for three (3) consecutive weeks, the last notice to appear not more than ten (10) days nor less than five (5) days prior to such sale in a newspaper having a general circulation in the county. Such notice shall contain a description of the property to be sold and a statement of the time and place of sale. It shall not be necessary to the validity of such sale either to have the property present at the place of sale or to have the name of the owner thereof stated in such notice. The proceeds of the sale, less any expenses of concluding the sale, shall be deposited in the seizing agency's general fund to be used only for approved law enforcement activity affecting the agency's efforts to combat gang activities.

(8) Any action under the provisions of this section may be consolidated with any other action or proceedings pursuant to this section relating to the same property on motion of the district attorney.

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