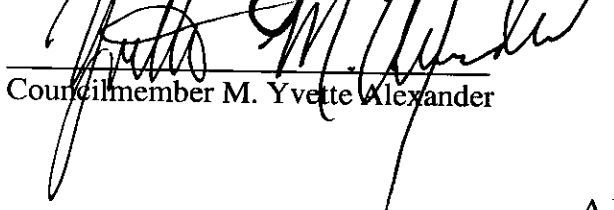




1   
2 Chairman Phil Mendelson

3   
4 Councilmember Marion Barry

5   
6 Councilmember M. Yvette Alexander

  
Councilmember Mary M. Cheh

  
Councilmember Jack Evans

  
Councilmember Kenyan McDuffie

10  
11 A BILL

12 \_\_\_\_\_  
13  
14 IN THE COUNCIL OF THE DISTRICT OF COLUMBIA  
15  
16 \_\_\_\_\_  
17

18  
19  
20  
21 Councilmember Cheh, Chairman Mendelson, Councilmember Barry, Councilmember Evans,  
22 Councilmember Alexander, and Councilmember McDuffie introduced the following bill, which  
23 was referred to the Committee on \_\_\_\_\_.

24  
25 To amend the District of Columbia Uniform Controlled Substances Act of 1981 to ensure that  
26 property owners are promptly notified after their property is seized and held for a civil  
27 forfeiture proceeding; to ensure that all property seized for purposes of a civil forfeiture  
28 proceeding is inventoried and cataloged by the Metropolitan Police Department; to  
29 eliminate the bond requirement as a prerequisite to a civil forfeiture proceeding; to ensure  
30 that property owners have a preliminary hearing to contest the seizure of their property;  
31 to remove the burden of proof on property owners to show that their property is not  
32 subject to forfeiture; to amend the Firearms Control Regulations Act of 1975, the Illegal  
33 Dumping Enforcement Act of 1994, an Act to establish a code of law for the District of  
34 Columbia, and an Act For the suppression of prostitution in the District of Columbia to  
35 clarify the reforms to the burden of proof and the compliance procedures.

36  
37 BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this  
38 act may be cited as the "Civil Asset Forfeiture Amendment Act of 2013".

39 Sec. 2. The District of Columbia Uniform Controlled Substances Act of 1981, effective  
40 August 5, 1981 (D.C. Law 4-29; D.C. Official Code § 48-905.02), is amended as follows:

41 (a) Section 502(a) (D.C. Official Code § 48-905.02(a)) is amended as follows:

1 (1) Strike the phrase “it appears that” in paragraph (4)(A).

2 (2) Paragraph (4)(B) is repealed.

3 (3) Paragraph (7)(A) is repealed.

4 (4) Paragraph (7)(B) is repealed.

5 (5) Paragraph (8)(A) is repealed.

6 (6) A new paragraph (8)(D) is added to read as follows:

7 “(D) During the course of any civil forfeiture proceeding that involves real  
8 property, the Mayor shall file a notice of the proceeding with the Recorder of Deeds. The notice  
9 shall include the legal description of the property and indicate that civil forfeiture is being  
10 sought. The Recorder of Deeds shall record the notice against the title of any real property for  
11 which civil forfeiture is being sought. Upon resolution of the proceeding, the Recorder of Deeds  
12 shall be notified of the disposition of the action.”.

13 (7) A new paragraph (9) is added to read as follows:

14 “(9) No property shall be subject to forfeiture pursuant to subsections (a)(2) –  
15 (a)(8) by reason of any act or omission committed or omitted without the owner’s knowledge or  
16 consent. No property shall be forfeited pursuant to subsections (a)(2) – (a)(8) if, upon receiving  
17 knowledge of the presence of contraband in the property or the commission of a forfeitable  
18 offense involving the property, the owner took reasonable action under the circumstances to  
19 prevent the presence of the contraband or the commission of the offense. This provision shall  
20 not be construed to require an owner to take action that places the owner or a third party in  
21 physical danger in order to avoid forfeiture of the property.”.

22 (8) Subsection (a-1) is repealed.

23 (b) Section 502(d) (D.C. Official Code § 48-905.02(d)) is amended as follows:

1 (1) A new paragraph (2)(D) is added to read as follows:

2 “(D) Ensure that any property in the possession of the Mayor be  
3 inventoried in such a manner that fully describes all items seized, including all items present in a  
4 seized piece of property. The description of all items seized shall be retained by the Mayor or by  
5 a designated agent.”.

6 (2) A new paragraph (2)(E) is added to read as follows:

7 “(E) Ensure that all reasonable steps are taken to preserve the condition of  
8 any property seized. If a seizure of property does not result in forfeiture, the Mayor shall be  
9 responsible for any loss or damage to such property that could have been prevented through the  
10 exercise of reasonable care.”.

11 (3) Paragraph (3)(A) is amended to read as follows:

12 “(A) Upon the seizure of any property by law enforcement, the Mayor or  
13 his or her designee shall promptly take all reasonable steps to identify the owner of the property.  
14 The Mayor shall promptly provide written notice of the seizure that specifies the property sought  
15 to be forfeited, information on the applicable procedures for claiming the property, and a clear  
16 explanation of legal rights to each party who is known or in the exercise of reasonable diligence  
17 should be known by the Mayor to have a right of claim to the seized property. Notice to each  
18 party shall be in person or by registered or certified mail, return receipt requested. Notice shall  
19 include the name and contact information of the official to whom the property owner must direct  
20 correspondence. If such notice is not sent or otherwise given to the owner within two business  
21 days of the seizure, the property shall be returned to the property owner without prejudice to the  
22 right of the District later to bring a forfeiture action unless the Mayor or Mayor’s designee

1 demonstrates good cause, unique to the circumstances of the case, for the delay in notification of  
2 the property owner.”.

3 (4) Paragraph (3)(B) is amended to read as follows:

4 “(B) Any person claiming the property may, at any time after the seizure  
5 not to exceed 60 days from the date of receipt of notice of seizure, contest the seizure and  
6 forfeiture by filing with the Mayor or the Mayor’s designee a claim stating his or her interest in  
7 the property. If the property owner is incarcerated, the Mayor or the Mayor’s designee shall  
8 ensure that the property owner has the means available to file such claim.”.

9 (5) Strike the phrase “and bond (or application for a waiver of bond are not filed  
10 within 360 days” and insert the phrase “is not filed within 60 days” in paragraph (3)(C).

11 (6) Paragraph (3)(F) is amended to read as follows:

12 “(F) Whenever any person who has an interest in forfeited property files  
13 with the Mayor, either before or after the sale or disposition of property, a petition for remission  
14 or mitigation of the forfeiture, the Mayor shall remit or mitigate the forfeiture upon the terms and  
15 conditions as the Mayor deems reasonable if the Mayor finds that mitigating circumstances  
16 justify the remission or mitigation of the forfeiture.”.

17 (7) Paragraph (3)(G) is amended to read as follows:

18 “(G) Notwithstanding that property seized pursuant to this section shall  
19 not be subject to replevin, if the Mayor or Mayor’s designee does not comply with the notice  
20 requirements or other procedures described in this section, a property owner whose property has  
21 been seized and retained by the Mayor may initiate an action for return of the property. In such  
22 an action, a property owner is entitled to immediate return of the owner’s property unless the  
23 Mayor or the Mayor’s designee demonstrates good cause to explain why the procedures of this

1 section were not followed. The Court may grant any other relief that the Court deems  
2 appropriate consistent with this section in the interests of justice.”.

3 (8) Paragraph (3)(H) is repealed.

4 (9) Paragraph (4) is repealed.

5 (c) Section 502(e) (D.C. Official Code § 48-905.02(e)) is amended to read as follows:

6 “(e)(1) When property sought to be forfeited has been returned to the owner pending  
7 resolution of the forfeiture proceedings pursuant to subsection (f), the Mayor shall file a  
8 complaint for forfeiture (libel of information) or return the property not later than 90 days after  
9 the property owner has filed a claim to the property, except that a judge of the Superior Court  
10 may extend such time for good cause shown or upon agreement of the parties.

11 “(2) When property sought to be forfeited has been retained by the District  
12 pending resolution of forfeiture proceedings, the Mayor shall file, pursuant to the Rules of the  
13 Superior Court, a libel seeking forfeiture or return the property to the owner not later than 30  
14 days after the property owner has filed a claim to the property, except that a judge of the  
15 Superior Court may extend such time for good cause shown or upon agreement of the parties. If  
16 such property is retained by the District pending the outcome of proceedings, the proceedings  
17 shall at all times proceed as promptly as practicable.”.

18 (d) A new subsection (f) is added to read as follows:

19 “(f) The Mayor may, at any time, choose to return seized property for use by the  
20 property owner pending the final outcome of forfeiture proceedings. If the Mayor seeks to retain  
21 possession of seized property prior to and pending the ultimate resolution of forfeiture  
22 proceedings, the following procedures shall be followed:

23 “(1) When the property sought to be forfeited is a motor vehicle:

1                   “(A) The Mayor or Mayor’s designee must file in the Superior Court  
2 without delay a libel of information seeking forfeiture, including a request for a preliminary  
3 hearing. In the case of any seizure in which a preliminary hearing is not held within 48 hours of  
4 a property owner’s claim, excluding days on which the Superior Court is closed, the motor  
5 vehicle must be returned to the property owner for use by the owner until such hearing is held.

6                   “(i) If a motor vehicle is returned to a property owner pursuant to  
7 subsection (f)(1)(A), the property owner shall not intentionally destroy, substantially damage,  
8 dispose of, or transfer title to the motor vehicle until such time as the District has the opportunity  
9 to seek the placement of court-ordered conditions on the vehicle’s release pursuant to subsection  
10 (f)(4).

11                   “(ii) If a property owner violates or attempts to violate subsection  
12 (f)(1)(A)(i), such violation shall constitute waiver of the property owner’s claim to the motor  
13 vehicle.”.

14                   “(B) At the preliminary hearing, there is a presumption that the motor  
15 vehicle shall be returned to the property owner pending forfeiture adjudication. The District may  
16 rebut the presumption and retain possession of the vehicle pending final disposition of the  
17 forfeiture case only if the District establishes by a preponderance of the evidence that:

18                   “(i) The vehicle is subject to forfeiture;

19                   “(ii) The seizure of the vehicle was not made in violation of the  
20 Constitution or other applicable law;

21                   “(iii) No condition or combination of conditions can protect the  
22 District’s interests in the vehicle absent continued retention; and

1                                   “(iv) The risk of harm to the District’s interests outweigh the  
2 hardship faced by the property owner such that the District’s retention of the vehicle pending  
3 resolution of the forfeiture action is necessary.”.

4                                   “(C) The Mayor or Mayor’s designee shall return the motor vehicle,  
5 subject to any orders entered pursuant to subsection (f)(4), to the property owner as soon as  
6 practicable after the hearing.”.

7                                   “(D) No findings made in connection with such hearing or in connection  
8 with any hearing held pursuant to section 48-905.02(f) shall have preclusive effect in any related  
9 criminal matter.”.

10                                  “(2) If the seized property is cash or currency, the following procedures shall be  
11 followed:

12                                  “(A) If the property owner, after receiving valid notice of the seizure and  
13 corresponding explanation of rights, attests that the seized funds are necessary to assist the  
14 property owner in securing counsel of choice in a pending criminal matter related to the seizure,  
15 then:

16                                  “(i) The Mayor or Mayor’s designee must return the seized  
17 currency for use by the property owner unless a neutral judicial officer finds, after a hearing  
18 initiated promptly, that probable cause exists for the forfeiture based on evidence that was  
19 obtained in compliance with the Constitution and other applicable law.”.

20                                  “(B) If the property owner, after receiving valid notice of the seizure and  
21 corresponding explanation of rights, claims that the seized funds are necessary to meet the basic  
22 necessities of life (including but not limited to the purchase of food and utilities, the provision of  
23 shelter, transportation costs, and the support of the property owner’s family), then:

1                   “(i) The Mayor or Mayor’s designee must return the seized  
2 currency for use by the property owner unless a neutral judicial officer finds, after a hearing  
3 initiated promptly, that probable cause exists for the forfeiture based on evidence that was  
4 obtained in compliance with the Constitution and other applicable law.

5                   “(ii) If the Court determines that probable cause exists as to only a  
6 portion of the seized funds, the Court shall return the remainder for use by the property owner.”.

7                   “(C) If the Mayor or Mayor’s designee retains possession of the funds or  
8 any portion of the funds pending disposition of the forfeiture case, the money shall continue to  
9 be treated in accordance with D.C. Code § 23-532.”.

10                   “(3) A claimant of any other kind of property pursuant to subsection (d)(3)(B) is  
11 entitled to immediate release of any seized property, subject to the timing provisions of  
12 subsection (e)(2), if:

13                   “(A) The claimant has a possessory interest in the property;

14                   “(B) The continued possession by the District of the person’s property  
15 pending final disposition of the forfeiture proceedings will cause substantial hardship to the  
16 claimant; and

17                   “(C) The claimant’s likely hardship from the continued possession by the  
18 District of the seized property outweighs the risk that the property will be destroyed, damaged,  
19 lost, concealed, or transferred if it is returned to the claimant during the pendency of the  
20 proceeding.”.

21                   “(4) As a condition of returning any seized property to the property owner  
22 pending forfeiture proceedings, the court may:



1                   “(A) Enter any order necessary to ensure that the value of the property is  
2 reasonably maintained while the forfeiture action is pending, including:

3                               “(i) Permitting the inspection, photographing, and inventory of the  
4 property.

5                               “(ii) Fixing a security bond if the property owner is not indigent.

6                               “(iii) Requiring the claimant to obtain or maintain insurance on  
7 the property.

8                               “(iv) Prohibiting the claimant from damaging, destroying, or  
9 transferring title of the property.”.

10                   “(5) Property shall not be returned to a claimant during the pendency of forfeiture  
11 proceedings if:

12                               “(A) The property is contraband.

13                               “(B) The District proves that the property owner will likely use the  
14 property to commit additional criminal acts if the property is returned during the pendency of the  
15 proceedings.”.

16                   “(6) In case of seizure of real property or a conveyance, the District shall provide  
17 the property owner notice of the right to remove any personal property not subject to forfeiture  
18 from the conveyance or real property as soon as practicable after the seizure.”.

19                   (f) A new subsection (g) is added to read as follows:

20                               “(g) In all suits or actions brought for forfeiture of any property when the property is  
21 claimed by any person, the burden of proof shall be on the District to establish that the person’s  
22 property is subject to forfeiture.

1           “(1) In a suit or action seeking forfeiture of real property being used as a  
2 residence, the District shall prove that the claimant’s property is subject to forfeiture beyond a  
3 reasonable doubt.

4           “(2) In a suit or action involving all property other than property described in  
5 section (g)(1), the District shall prove that the claimant’s property is subject to forfeiture by clear  
6 and convincing evidence.”.

7           (g) A new subsection (h) is added to read as follows:

8           “(h) Any forfeiture of property must be proportional to the seriousness of the asserted  
9 violation of District law. Upon request of a property owner, the judge presiding over the  
10 forfeiture case may find a forfeiture excessive, notwithstanding a verdict that the property is  
11 subject to forfeiture due to a violation of District law. If a forfeiture is found excessive, the  
12 judge may enter a judgment mitigating forfeiture of the property in whole or in part in the  
13 interests of justice. In making this determination, the judge shall consider:

14           “(1) The gravity of the offense giving rise to the forfeiture compared to the value  
15 and importance of the property;

16           “(2) The degree to which the forfeitable property is substantially connected to the  
17 performance of the culpable criminal act;

18           “(3) Whether the primary purpose of using the property was to commit or to  
19 attempt to commit a forfeitable offense;

20           “(4) The hardship on the property owner caused by the forfeiture; and

21           “(5) Any other aggravating or mitigating factors.”.

22           (h) A new subsection (i) is added to read as follows:

1           “(i)(1) Nothing in this section should be construed to prohibit law enforcement from  
2 seizing and retaining property as evidence in a criminal case. Notwithstanding the determination  
3 by law enforcement officers that any seized property should be held as evidence, law  
4 enforcement must nonetheless comply with the procedures described in § 48-905.02 if the Mayor  
5 or the Mayor’s designee determines in addition to seek forfeiture of the property. The temporary  
6 designation of property as evidence shall not excuse failure to comply with the procedures  
7 outlined in 48-905.02(d) or any other part of this section.

8           “(2) In the case of property sought to be held as evidence, the Mayor or the  
9 Mayor’s designee must notify the owner of the property that the Mayor intends to hold the  
10 property as evidence in a criminal case. Such notification shall be made in materially the same  
11 manner as notification of intent to seek forfeiture, and such notice shall include notice of the  
12 procedures available to challenge the seizure and retention of the person’s property pursuant to  
13 the Constitution, applicable law, and Superior Court rules of procedure governing return of  
14 seized property in a criminal case. If law enforcement, the public official in charge of  
15 prosecuting the criminal proceeding involving the property, or a judicial officer determines that  
16 it is no longer necessary that the property be held as evidence or that the seizure and retention of  
17 the property is otherwise improper, the property shall be returned promptly to the property owner  
18 consistent with other applicable law and court rules.”.

19           (i) A new subsection (j) is added to read as follows:

20           “(j)(1) If a property owner is financially unable to obtain representation by counsel, and  
21 the person is represented by appointed counsel in connection with a related criminal case, the  
22 court may authorize counsel to represent that person with respect to the claim if the Court  
23 determines that the forfeiture matter is an ancillary matter appropriate to the proceedings as

1 described by D.C. Code § 11-2603. In determining whether to authorize counsel to represent a  
2 person in the forfeiture proceeding, the court shall consider the complexity of the case, the  
3 timing of the two proceedings, and the extent to which the criminal and civil cases are related or  
4 may involve related issues.

5 “(2) If a property owner is financially unable to obtain counsel and the property  
6 at issue in the forfeiture case is being used as the property owner’s residence, the court, at the  
7 request of the person, shall assist the person in obtaining pro bono counsel.”.

8 (j) A new subsection (k) is added to read as follows:

9 “(k) When property is forfeited, the Mayor or Mayor’s designee must:

10 “(1) Retain tangible property for official use, sell that which is not required by  
11 law to be destroyed and which is not harmful to the public, or otherwise dispose of the property  
12 in a manner consistent with District law. In case of forfeiture, all proper expenses of the  
13 proceedings for forfeiture and sale, including expenses of maintenance of custody, advertising,  
14 and court costs, shall be deducted from the proceeds.

15 “(2) Deposit the balance of the proceeds from any forfeiture, as well as any cash  
16 or currency forfeited, in the General Fund of the District of Columbia government.

17 (A) Any proceeds received by any agency of the District of Columbia  
18 government from any federal agency pursuant to federal forfeiture of property found in the  
19 District of Columbia shall likewise be deposited in the General Fund.

20 “(3) Retain records of all forfeited property and the ultimate disposition of the  
21 property or of the funds obtained from the sale of such property.”.

22 (k) A new subsection (l) is added to read as follows:

1           “(1)(1) The procedures outlined in this section shall apply to the forfeiture of property  
2 under any provision of the D.C. Code unless otherwise expressly stated.

3           “(2) The Mayor shall, pursuant to subchapter I of Chapter 5 of Title 2, issue  
4 proposed rules, as necessary, to implement the provisions of this section. The proposed rules  
5 shall be submitted to the Council for a 45-day period of review, excluding Saturdays, Sundays,  
6 legal holidays, and days of Council recess. If the Council does not approve or disapprove the  
7 proposed rules, in whole or in part, by resolution within this 45-day review period, the proposed  
8 rules shall be deemed approved. Nothing in this section shall affect any requirements imposed  
9 upon the Mayor by subchapter I of Chapter 5 of Title 2.”.

10           Sec. 3. Section 706a(c) of The Firearms Control Regulations Act of 1975, effective  
11 September 24, 1976 (D.C. Law 1-85; D.C. Official Code § 7-2507.06a), is amended to read as  
12 follows:

13           “(c) An innocent owner’s interest in a conveyance which has been seized shall not be  
14 forfeited under this section.

15           “(1) No conveyance shall be subject to forfeiture if the owner had no knowledge  
16 that an illegal firearm was being transported, possessed, or concealed in that conveyance, or that  
17 the conveyance was involved in or was being used in the commission of any illegal act involving  
18 a firearm.

19           “(2) No conveyance shall be subject to forfeiture if, upon receiving knowledge of  
20 the presence of any illegal firearm in or on the conveyance, the owner took reasonable action  
21 under the circumstances to prevent the presence of the firearm in the conveyance. This provision  
22 shall not be construed to require an owner to take action that places the owner or a third party in  
23 physical danger in order to avoid forfeiture of the conveyance.

1           “(3) No property shall otherwise be subject to forfeiture if the owner was not  
2 aware of the facts that would render the property forfeitable.

3           “(4) A person who willfully blinds himself or herself to a fact shall be considered  
4 to have had knowledge of that fact.”.

5           Sec. 4. Section 6 of The Illegal Dumping Enforcement Act of 1994, effective September  
6 24, 1976 (D.C. Law 10-117; D.C. Official Code § 8-905), is amended as follows:

7           (1) Strike the phrase “that the owner establishes was” in subsection (a)(2).

8           (2) Subsection (b) is repealed.

9           (3) Subsection (c) is repealed.

10          (4) Subsection (d) is repealed.

11          Sec. 5. Section 863(a) of An Act to establish a code of law for the District of Columbia,  
12 approved March 3, 1901 (D.C. Official Code § 22-1705), is amended as follows:

13           Strike the phrase “unless good cause be shown to the contrary,” and insert the  
14 phrase “consistent with the procedures outlined in § 48-905.02,” in subsection (c).

15          Sec. 6. Section 5 of An Act For the suppression of prostitution in the District of  
16 Columbia, effective May 7, 1993 (D.C. Official Code § 22-2723), is amended as follows:

17          (1) Strike the phrase “the owner establishes” in subsection (a)(1)(B).

18          (2) Section (a-1) is repealed.

19          (3) Section (b) is amended to read as follows:

20           “(b) All seizures and forfeitures of property under this section shall be  
21 pursuant to § 48-905.02, including that seized money, coins, and currency shall be deposited as  
22 provided in D.C. Code § 48-905.02(f) and subchapter IIA of Chapter 5 of Title 23 of the District  
23 of Columbia Code.”.

1           Sec. 7. Fiscal impact statement.

2           The Council adopts the fiscal impact statement of the Council Budget Director as the  
3 fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule  
4 Act, approved December 24, 1973 (87 Stat. 813, D.C. Official Code § 1-206.02(c)(3)).

5           Sec. 5. Effective date.

6           This act shall take effect following approval by the Mayor (or in the event of veto by the  
7 Mayor, action by the Council to override the veto), and shall remain in effect for no longer than  
8 90 days, as provided for emergency acts of the Council of the District of Columbia in section  
9 412(a) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 788;  
10 D.C. Official Code § 1-204.12(a)).