



The Office of the Prosecuting Attorney of the Sixth Judicial District will not approve criminal affidavit requests for arrest warrants for violations of ACA § 18-16-101 Failure to Pay Rent-Refusal to Vacate Upon Notice-Penalty, AKA “Failure to Vacate”. Also, this office will not provide ten (10) day Notices to Vacate. ACA § 18-16-101, as amended by the Arkansas Legislature. It is the position of this office that such matters are civil breaches of contract, with full legal redress available in civil court through Unlawful Detainer proceedings.

Arkansas is the only state in the country that attempts to criminalize the eviction process. In 2012, a bi-partisan, non-legislative commission, charged by the Arkansas Legislature, examined ACA § 18-16-101, and recommended its full repeal. It is this office’s opinion the statute is a use of criminal law to enforce a civil contract, which presents due process issues.

The Arkansas Constitution, Article 2, § 16 states that “No person shall be imprisoned for debt...unless in cases of fraud.” ACA § 18-16-101, as amended by Act 159, criminalizes a tenant’s failure to pay a private debt pursuant to a rental or lease contract. There is no requirement under this statute that an element of fraud or other evidence of criminal intent must exist. A failure to vacate, while certainly problematic for landlords, does not amount to fraud.

Act 159 goes into effect on August 1, 2017. The Act adds a new and separate criminal offense for each day a tenant “willfully and unnecessarily” fails to vacate the property after the expiration of the notice to vacate. What used to be a single offense may now result in multiple offenses. There is no notice to a tenant as to how many additional charges the tenant may face. There is no notice as to additional convictions that may result from delays in the criminal process, and there are no exceptions set out in the statute regarding such delays. The ongoing fines could be seen as imposing a deterrent to a tenant maintaining his/her innocence. This could be seen as a violation of a tenant’s 14th Amendment rights.

This office finds ACA § 18-16-101, as amended, to be constitutionally questionable on due process grounds. Because this office finds existing civil remedies sufficient, it will continue the policy currently in effect, and will not issue process for failure to vacate.