

# Guilty Until Proven Innocent

Civil Asset Forfeiture in Arkansas



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Maleka Momand

Arkansas Center for Research in Economics  
University of Central Arkansas  
College of Business  
210 Donaghey Avenue  
Conway, Arkansas 72035

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### Summary

Arkansas law enforcement agencies seize millions of dollars worth of property and cash every year through a process called civil asset forfeiture. Forfeiture is a practice used most commonly to combat drug trafficking and was promoted for its usefulness in the War on Drugs. Forfeiture laws allow police to seize and keep citizens' cash, personal property, and even their homes and businesses without charging them with a crime, let alone convicting them. Police are legally allowed to seize any asset if they suspect it is connected with criminal activity. This matter is not one to take lightly, especially considering the sheer volume of cash and property Arkansas law enforcement officials seize annually. State law encourages law enforcement officials to use forfeiture by allowing agencies to keep 100 percent of seized property for use at the agency's discretion. The strong incentive to seize combined with a low standard of proof in forfeiture litigation, which occurs after the seizure, puts ordinary and potentially innocent Arkansans at risk of having their hard-earned property taken away and possibly

never returned. Under arcane forfeiture laws, they are guilty until proven innocent.

Many states have come under fire for inappropriate use of forfeiture and inadequate reporting practices and Arkansas is no exception. Uncovering the reality of forfeiture in Arkansas is no easy task. Records are held tightly by local law enforcement agencies, prosecuting attorneys offices, and the Arkansas Drug Director. The records are inconsistent, frequently unreliable, and often unspecific as to the nature of the forfeiture. The records do not indicate if the property owner was charged with a crime or if the property was returned. The circumstances surrounding civil asset forfeiture in Arkansas are so dire that the state earned a D minus in the Institute for Justice's 2015 Policing for Profit report, ranking Arkansas near the bottom of all states.

Hindered by poor reporting and record-keeping at the state and local levels, this report provides a partial account of civil asset forfeiture in Arkansas using the best available data. The findings are eye opening:

- Most property seizures affect ordinary Arkansas citizens.
- Seizures are concentrated along one of

the state's critical travel routes, Interstate 40. A steady stream of traffic provides ample opportunity for officers to stop and seize property.

- Counties with a higher percentage of Hispanics tend to have higher amounts of currency seized, which hints at the possibility of racial bias in seizures.

The lack of transparency in state and local records makes the extent of forfeiture in Arkansas nearly impossible to capture. Arkansas officials should focus on improving reporting requirements in order to fairly assess the use of forfeiture for its intended purposes.

## Forfeiture Data is Limited and Unreliable

When a seizure occurs in Arkansas, the seizing law enforcement official is required to complete a confiscation report that contains the property's description, property owner's personal information, and a broad reason for seizure. The report is filed with the respective law enforcement agency and is sent to the district prosecuting attorney, who in turn sends it to the Arkansas Drug Director. The Drug Director is responsible for maintaining a complete database of all seizures called the Asset Seizure Tracking System (ASTS). The ASTS contains all of the information listed on the confiscation report for every seizure that occurs in a given year. ACRE obtained the ASTS records for years 2010 through 2015 with a Freedom of Information Act Request.

In addition to the ASTS, the Arkansas Division of Legislative Audit produces an annual report checking agency compliance with forfeiture reporting requirements. The

annual audit of seizure records indicates that the majority of audited agencies keep inadequate records. An aggregate account of all seizures is included in this report. ACRE uses data from these reports in its statistical analyses.

These primary sources of forfeiture records are grossly insufficient. They do not report the disposition of the property, if the property as actually forfeited, nor do they offer whether or not the property owner was charged with any crime. In short, they do not offer a clear representation of forfeiture in Arkansas.

## How Much Does Law Enforcement Seize?

ACRE was able to identify significant trends in forfeiture data despite the state's poor recordkeeping. Records from the Asset Seizure Tracking System, the Arkansas Drug Director's database of all forfeitures, indicate that from 2010 through 2015, Arkansas law enforcement seized nearly \$45 million in currency alone, as Table 1 shows.

**Table 1. Civil Asset Forfeiture in Arkansas: Currency Seizures, 2010–2015**

<b>Year</b>	<b>Amount Seized</b>
<b>2010</b>	<b>\$6,299,255</b>
<b>2011</b>	<b>\$8,386,082</b>
<b>2012</b>	<b>\$3,653,458</b>
<b>2013</b>	<b>\$8,688,150</b>
<b>2014</b>	<b>\$10,764,388</b>
<b>2015</b>	<b>\$6,922,333</b>
<b>Total</b>	<b>\$44,713,666</b>

Source: Data obtained via Freedom of Information Act request from the Asset Seizure Tracking System, Office of the Arkansas Drug Director.

This figure does not include the value of other property seized by law enforcement agents. Arkansas law enforcement frequently seizes vehicles, cell phones, computers, and weapons under the suspicion that the property was used in a drug exchange or intended to facilitate one. Officials even seize jewelry, televisions, trailers, and land.

For example, in 2015, law enforcement officers seized a television, two laptops, a speaker, a computer monitor, and an Xbox 360 from a property owner in Pea Ridge, according to the ASTS. Similarly, officers seized three watches, one cell phone, a computer, an iPhone, a television, and a DVD player from a property owner in West Memphis. The Uniform Controlled Substances Act makes these seizures legal, under the assumption that the property was used to facilitate a drug crime. The ASTS does not provide a reason or justification for each seizure, making it impossible to discern whether or not the property owner was guilty of a crime. Table 2 shows the total noncash items Arkansas police seized from citizens under civil asset forfeiture laws from 2010 through 2015.

**Table 2. Civil Asset Forfeiture in Arkansas: Other Property Seizures, 2010–2015**

<b>Year</b>	<b>Automobiles</b>	<b>Weapons</b>	<b>Other</b>
<b>2010</b>	<b>803</b>	<b>357</b>	<b>148</b>
<b>2011</b>	<b>674</b>	<b>444</b>	<b>124</b>
<b>2012</b>	<b>516</b>	<b>364</b>	<b>125</b>
<b>2013</b>	<b>584</b>	<b>732</b>	<b>137</b>
<b>2014</b>	<b>536</b>	<b>359</b>	<b>122</b>
<b>2015</b>	<b>486</b>	<b>501</b>	<b>123</b>

Source: Data obtained via Freedom of Information Act request from the Asset Tracking System, Office of the Arkansas Drug Director.

Simply put, any property of significant monetary value is eligible for seizure. After police seize the property, the property owner may choose to contest the forfeiture. Contesting forfeiture is a lengthy and expensive legal process. The due process protections of right to counsel and “innocent until proven guilty” do not apply in civil asset forfeiture cases. In cases where a parent, spouse, or neighbor wants to challenge the transfer of title to property to the state in a forfeiture action, it is the property owner’s responsibility to prove the property’s innocence. The property owner must also prove that the claimant did not consent or have any knowledge of the property’s alleged illegal use. Unfortunately, the ASTS does not indicate whether or not a property’s seizure is contested or if the property owner was ever charged or convicted of a crime. The seizing law enforcement agency only needs to prove that it is “more likely than not” that the property was involved in a crime, a standard of proof known as “preponderance of evidence.” If a court orders a forfeiture, the seizing law enforcement agency becomes the property’s new legal owner. With ownership of the property, law enforcement agencies can either use the seized goods or sell them for profit—a profit they get to keep and spend for “law enforcement and prosecutorial purposes.” This broad category includes gym memberships for law enforcement officers, meals, and hotel bookings. The Arkansas Division of Legislative Audit conducts an annual audit of agency expenses, but rarely penalizes agencies for inappropriate spending.

## In Arkansas, More Seizures Occur Along the Interstate

Travelers along Interstate 40 (I-40) are obvious targets for law enforcement officers with intent to seize. This well-traveled route spans eight states in its east-west traffic flow, making it a possible source of seizures from out-of-state drivers suspected of transporting drugs with intent to distribute. The average daily traffic in counties that I-40 passes through is consistently higher than the average daily traffic of more rural counties that I-40 does not pass through, according to 2014 data from the Arkansas State Highway & Transportation Department. ACRE statistical analysis relying on average currency seized per capita in counties found a significant correlation between the presence of I-40 and higher currency seizures in counties.

I-40 is frequented by out-of-state travelers and Arkansans alike. However, the majority of seizures happen to Arkansas residents. Table 3 shows that from 2010 through 2015, seizures from out-of-state property owners were never higher than about 14 percent. It is not out-of-state drug couriers but Arkansas residents who are impacted most by civil asset forfeiture. Because of poor reporting by local law enforcement, it is unclear whether these residents were ever charged with or convicted of a crime. Moreover, there is no reporting if the interdiction occurs on the eastbound or westbound side of I-40. This missing data is important because it is commonly recognized that vehicles traveling east carry illegal drugs — and should be stopped — and vehicles carrying drug proceeds after the drugs are sold—travel west. Thus, it is undecided whether civil asset forfeiture is achieving its intended goal: reducing drug-related crimes in Arkansas.

**Table 3. Forfeiture Affects Arkansas Residents More Than Out-of-State Travelers, 2010–2015**

Year	Seizures from Out-of-State Property Owners (%)
2010	11.51
2011	14.04
2012	12.84
2013	11.39
2014	12.44
2015	12.48

Source: Data obtained via Freedom of Information Act request from the Asset Tracking System, Office of the Arkansas Drug Director.

## Disparate Impact of Civil Asset Forfeiture on Hispanics in Arkansas

Neither the publicly available civil forfeiture records nor those obtained via Freedom of Information Act requests contains complete data on the race of property owners. To glean insight on the impact of civil asset forfeiture on minorities, ACRE performed a statistical analysis and found that for each percent increase in a county's Hispanic population, there was a corresponding \$0.10 increase in currency seized on average per capita between 2010 and 2015.<sup>1</sup> This seemingly small increase in currency seizures

1 The percentage of specific minorities present in each Arkansas county was used as the independent variable in a statistical regression technique to test the relationship between average per capita currency seized and race. The regression also controlled for median household income and income per capita. Ethnicity data came from the 2012 United States Census Bureau's population projections, and the income data came from the bureau's 2014 projections. A stepwise regression found a strong, positive relationship between the percentage of Hispanics and the average currency seized per capita in Arkansas counties. This relationship is significant even when controlled for income differences across counties. For more information, see Momand, Maleka, "Civil Asset Forfeiture in Arkansas." Undergraduate thesis, Schedler Honors College at the University of Central Arkansas, 2016.

results in large annual increases on average at the county level. For example according to the Census Bureau, in 2014 Washington County, Arkansas had a Hispanic population of 16.2 percent, which is 9.2 percentage points above the Arkansas state average. Given the county's population of 220,792, this suggests that over \$200,000 more was seized from people in this county than would have been if Washington County had an average Hispanic population. This figure does not include the value of cars, technology, and other property seized by law enforcement officers. The correlation suggests the possibility of racial bias in Arkansas seizures. However, with incomplete data, the full extent of potential racial bias is not easily measured.

## Conclusion

Arkansas needs to reform its civil asset forfeiture laws to remove the incentive for law enforcement agencies to seize property from ordinary citizens without any criminal charge or conviction. Police appear to be targeting Arkansas residents traveling on I-40 and may be targeting Hispanics specifically. The lack of transparency in law enforcement reporting makes a complete picture of civil asset forfeiture in Arkansas nearly impossible to assemble. All forfeiture records are held within a tight circle of local agencies, prosecuting attorneys offices, and the Arkansas Drug Director. Records obtained through Freedom of Information Act requests are inconsistent and do not provide complete information surrounding forfeiture proceedings. Civil forfeiture is a tempting source of income for law enforcement agencies at the expense of Arkansas property owners. Moving forward, Arkansas legislators should

prioritize reforming civil asset forfeiture laws to better protect the property rights of Arkansas citizens. Initial steps should include the legislature passing and the governor signing legislation with comprehensive reporting requirements that make seizure and forfeiture data available on a public website for legislators, administrators, and the curious Arkansan. This database would be more comprehensive than the ASTS and include information on the disposition of all property seizures and the use of forfeiture proceeds by law enforcement agencies. Once this data begins to accumulate, further reform can be shaped to address how forfeiture is used in Arkansas.

## About the Author

Maleka Momand is an ACRE Affiliated Research Analyst. She holds a Bachelor of Arts in Political Science with a minor in Honors Interdisciplinary Studies from the University of Central Arkansas. She completed the research for this report as a Research Fellow with the Arkansas Center for Research in Economics under the supervision of Dr. Jeremy Horpedahl. Momand has had multiple op-eds published on this issue and her research has been cited by various news sources. She is currently a content manager at Argive, a regulatory research nonprofit in Silicon Valley.

## To learn more, please see:

Carpenter, Dick et al. *Policing for Profit: The Abuse of Civil Asset Forfeiture* (2nd ed.). Arlington, VA: Institute for Justice, 2015.

Momand, Maleka, "Civil Asset Forfeiture in Arkansas." Undergraduate thesis, Schedler Honors College at the University of Central Arkansas, 2016.





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