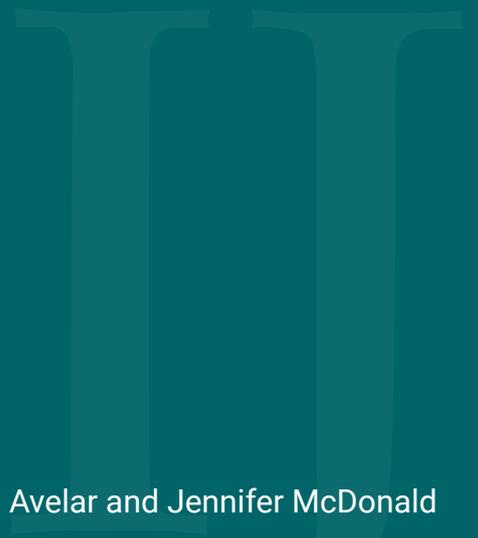


Forfeiture in Arizona

An Institute for Justice Analysis of FY2018 Reporting Data



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By Paul V. Avelar and Jennifer McDonald

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Executive Summary

During the 2017 session, the Arizona Legislature passed, and the governor signed, incremental but important bipartisan reforms of the state's civil forfeiture system. These reforms included new transparency requirements for forfeiture, obliging agencies to report the value, type and date of a property seizure, whether any criminal charges were filed, and the final disposition of the seized property. This reporting reform was designed to ensure lawmakers and the public had a better idea of what was really happening on the ground when it comes to forfeiture.

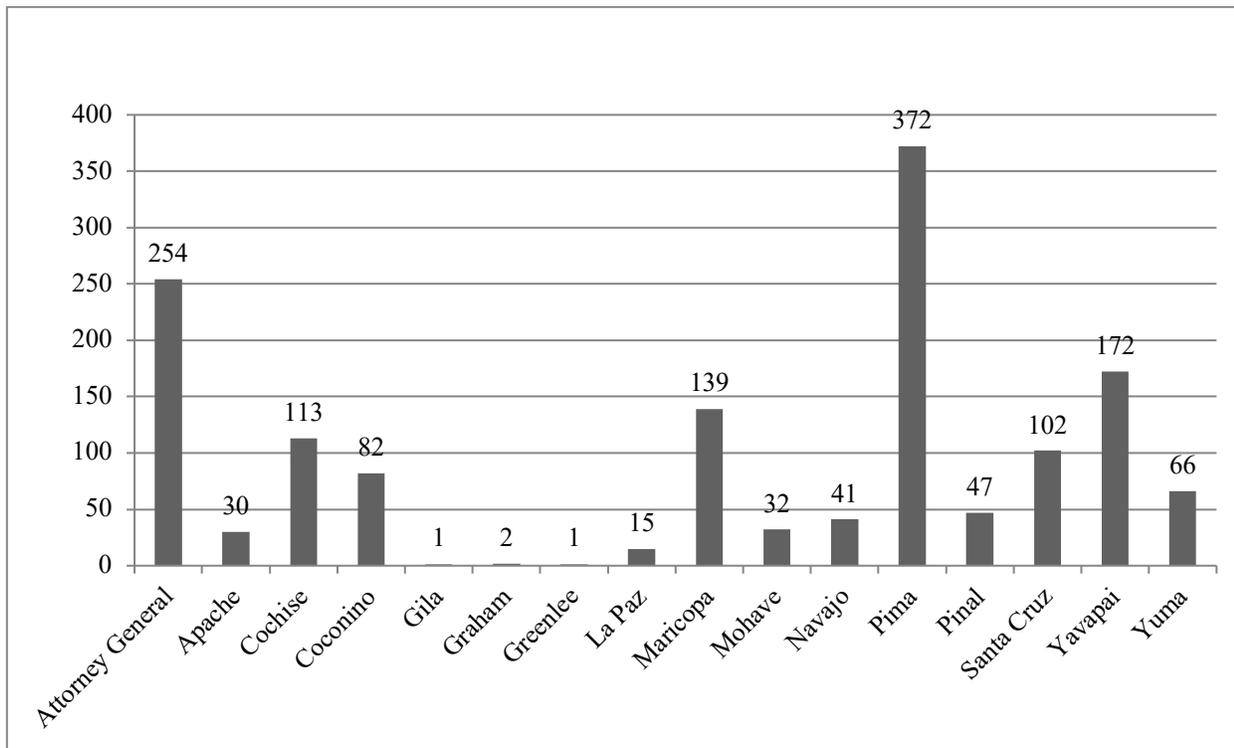
We now have the first full year of these new reports—from Fiscal Year 2018—and can make some observations both about forfeiture and about the reports themselves. These reports provide a snapshot of what happened this year. More reports—over more time—will be necessary to truly know what is happening with forfeiture under Arizona law. But, in the pages that follow, we can at least *begin* to answer some important questions. Key findings include:

- In FY2018, Arizona saw 1,469 forfeiture cases. Pima County led the way with 372 cases (or one-quarter of all cases), followed by the Attorney General's Office (254 cases), while Gila and Greenlee counties had only one case each.
- The government nearly always won forfeiture cases, posting a 76% success rate statewide.
- Property owners fighting forfeiture rarely had legal counsel. Attorneys represented owners in only 20% of cases reported as contested.
- Forfeiture often happens without a criminal conviction. Just 46% of forfeitures were tied to an existing conviction.
- Forfeiture rarely involved compensation to persons injured by a crime. This happened in only four of the 1,469 cases statewide.
- Most cash forfeitures were for small sums: 56% of cash forfeitures were for less than \$1,000. Large-dollar forfeitures are far less common.
- Forfeiture proceeds declined again in FY2018, but without consistent reporting over time, the reasons for this decline are unclear.
- Arizona's forfeiture reporting should be improved through better property tracking, standardized reporting fields and clearer definitions for contested forfeitures.

Results and Analysis

Among the questions unanswered prior to Arizona’s new forfeiture reporting law was that of how many forfeitures happen in Arizona. As shown in Figure 1, there were 1,469 forfeiture cases in Fiscal Year 2018. But the differences across agencies are striking. Gila and Greenlee counties had only one case each; Graham County had two. At the other end of the spectrum, Pima County had 372 cases—one-quarter of all forfeiture cases in the state—more than the Attorney General’s Office (254 cases), more than double the number in Yavapai County (172) and nearly triple the number in Maricopa County (139). Cochise (113), Santa Cruz (102) and Coconino (82) counties were the only other agencies reporting more than 80 forfeiture cases. Together, the seven biggest forfeiting agencies accounted for 1,234 (84%) of the 1,469 forfeiture cases.

Figure 1. 1,469 total forfeiture cases statewide, FY2018.



When agencies bring forfeiture cases, they almost always win. As shown in Table 1, property was forfeited to the government in three out of four forfeiture cases in Arizona. Among the busiest forfeiters in Arizona, Maricopa County won 99% of the time, Pima County 94% of the time, and the Attorney General 92% of the time. Cochise (65%), Yavapai (55%) and Santa Cruz (23%) won at much lower rates, with Coconino’s rate (5%) being markedly lower still.

Table 1. Portion of Cases in Which Property Was Forfeited, by Agency, FY2018

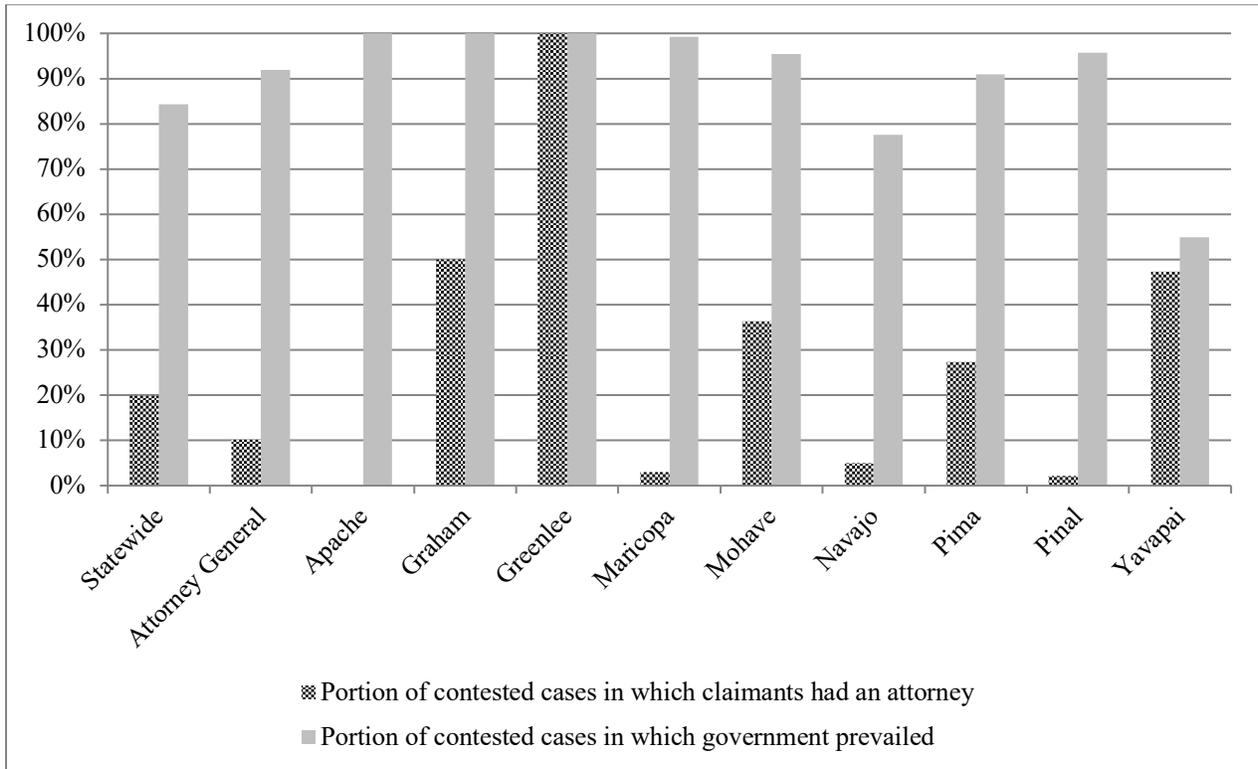
| | Portion of cases in which property was forfeited |
|------------------|--|
| Statewide | 76% |
| Attorney General | 92% |
| Apache | 87% |
| Cochise | 65% |
| Coconino | 5% |
| Gila | 100% |
| Graham | 100% |
| Greenlee | 100% |
| La Paz | 0% |
| Maricopa | 99% |
| Mohave | 94% |
| Navajo | 76% |
| Pima | 94% |
| Pinal | 96% |
| Santa Cruz | 23% |
| Yavapai | 55% |
| Yuma | 100% |

Table 2. Portion of Forfeiture Cases That Were Contested, by Agency, FY2018

| | Portion of forfeitures that were contested |
|------------------|--|
| Statewide | 59% |
| Attorney General | 93% |
| Apache | 100% |
| Cochise | 0% |
| Coconino | 6% |
| Gila | N/A |
| Graham | 100% |
| Greenlee | 100% |
| La Paz | 0% |
| Maricopa | 100% |
| Mohave | 73% |
| Navajo | 98% |
| Pima | 31% |
| Pinal | 100% |
| Santa Cruz | 0% |
| Yavapai | 99% |
| Yuma | 0% |

Table 2 shows that, statewide, property owners contested forfeiture in 59% of cases. Figure 2 shows that, in those contested cases, the government prevailed 84% of the time. And in just 20% of those cases did property owners have a lawyer. Again, however, the differences across agencies are stark, and it may well be that counties’ classification of contested vs. uncontested is different (as will be discussed below). But of the Attorney General’s cases, for example, 93% were contested, and the Attorney General won 92% of the contested cases. This may or may not be related to the fact that property owners had a lawyer in only 10% of the contested Attorney General cases.

Figure 2. Portion of contested cases in which claimants had an attorney and portion of contested cases in which government prevailed, by agency, FY2018.



The high rate of government victories in forfeiture is concerning given most property in Arizona is forfeited without a conviction. Figure 3 and Table 3 show that, statewide, only about 46% of forfeitures were tied to an existing conviction. Thirty-five percent of forfeitures were reported in the absence of a conviction. In the remaining 19% of cases, criminal charges were reported to be unknown or pending at the time of forfeiture, though this still means no conviction had been handed down at the time of forfeiture. Again, the differences across the agencies are striking: Yavapai County reported a nearly 90% conviction rate; Coconino County a 0% rate. Pima County (58%), the Attorney General (44%), Maricopa County (33%), Santa Cruz County (26%) and Cochise County (14%) all reported conviction rates within that range.

Figure 3. Portion of forfeitures in which there was a conviction, no conviction, or unknown or pending charges at the time of forfeiture, statewide, FY2018.

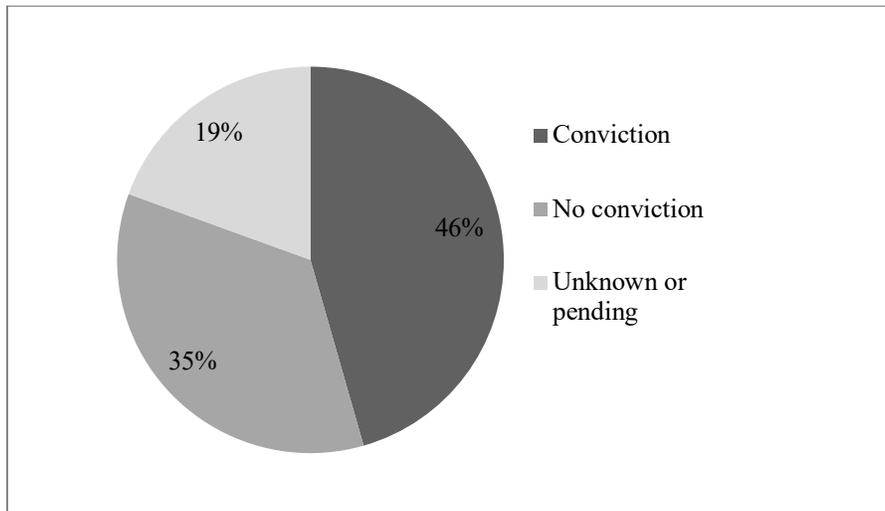
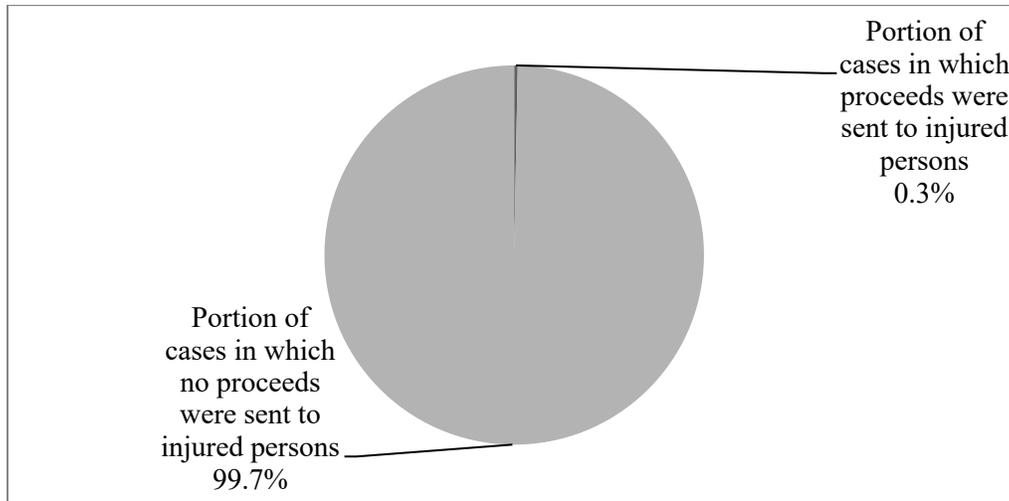


Table 3. Portion of Forfeitures in Which There Was a Conviction, No Conviction, or Unknown or Pending Charges at the Time of Forfeiture, by Agency, FY2018

| | Conviction | No conviction | Unknown or pending |
|------------------|------------|---------------|--------------------|
| Attorney General | 44% | 28% | 28% |
| Apache | 38% | 8% | 54% |
| Cochise | 14% | 71% | 15% |
| Coconino | 0% | 50% | 50% |
| Gila | 0% | 100% | 0% |
| Graham | 100% | 0% | 0% |
| Greenlee | 100% | 0% | 0% |
| Maricopa | 33% | 48% | 19% |
| Mohave | 4% | 93% | 3% |
| Navajo | 13% | 13% | 74% |
| Pima | 58% | 25% | 17% |
| Pinal | 2% | 98% | 0% |
| Santa Cruz | 26% | 74% | 0% |
| Yavapai | 89% | 2% | 9% |
| Yuma | 61% | 29% | 10% |

Forfeiture also rarely involves “injured persons.” State law allows a person who has suffered an “economic loss caused by the conduct giving rise to the forfeiture” to be compensated by the forfeiture.¹ But of the 1,469 reported forfeiture cases, agencies reported only four cases in which anything was sent to injured persons, as shown by Figure 4.

Figure 4. Portion of forfeitures resulting in proceeds to injured persons, statewide, FY2018.



¹ A.R.S. § 13-4311(N)(3).

As shown in Table 4, statewide, 38% of all forfeiture cases were of cash only, and of these cases, most were of small amounts, as shown in Table 5. Statewide, 43% of cash forfeitures were for less than \$500; 56% were for less than \$1,000. Only 16% of cash forfeitures were for more than \$10,000. This is troubling given that proponents of forfeiture cite cases involving very large amounts of cash in support of these programs. FY2018 data indicate such cases are not representative.

Table 4. Percentage of Cash-Only Cases, by Agency, FY2018

| | Portion of cases in which cash was the only item seized |
|------------------|---|
| Statewide | 38% |
| Attorney General | 32% |
| Apache | 63% |
| Cochise | 38% |
| Coconino | 16% |
| Gila | 0% |
| Graham | 100% |
| Greenlee | 0% |
| La Paz | 47% |
| Maricopa | 19% |
| Mohave | 47% |
| Navajo | 71% |
| Pima | 50% |
| Pinal | 26% |
| Santa Cruz | 8% |
| Yavapai | 40% |
| Yuma | 68% |

Table 5. Number of Cash Forfeiture Cases, by Value and Agency, FY2018

| | Number of cash forfeiture cases | | | |
|------------------|---------------------------------|---------------|---------------|----------------|
| | Under \$500 | Under \$1,000 | Under \$5,000 | Under \$10,000 |
| Statewide | 43% | 56% | 79% | 84% |
| Attorney General | 47% | 55% | 79% | 85% |
| Apache | 27% | 50% | 77% | 85% |
| Cochise | 70% | 79% | 95% | 100% |
| Coconino | 100% | 100% | 100% | 100% |
| Gila | N/A | N/A | N/A | N/A |
| Graham | 0% | 50% | 100% | 100% |
| Greenlee | N/A | N/A | N/A | N/A |
| La Paz | 57% | 57% | 57% | 71% |
| Maricopa | 12% | 24% | 52% | 60% |
| Mohave | 0% | 0% | 13% | 20% |
| Navajo | 15% | 30% | 78% | 81% |
| Pima | 29% | 46% | 75% | 82% |
| Pinal | 100% | 100% | 100% | 100% |
| Santa Cruz | 88% | 88% | 88% | 100% |
| Yavapai | 45% | 66% | 83% | 86% |
| Yuma | 74% | 89% | 96% | 98% |

Note: We reviewed cash-only forfeitures because the value of cash forfeitures is easy to determine. The value of other property forfeited often relies on subjective estimates that reduce measurement accuracy.

Relatedly, FY2018 data show most of the “value” seized for forfeiture comes from just a few bigger cases. As shown in Table 6, forfeitures valued under \$10,000 account for just 13% of proceeds statewide. Put differently, the 16% of cases involving more than \$10,000 in cash (Table 5) account for 87% of all value of cash seized (Table 6). This pattern—a small number of large forfeitures accounting for most of the value forfeited—is common among the forfeiture systems that have been studied.

Table 6. Total Value of Cash Forfeiture, by Value and Agency, FY2018

| | Value of cash forfeiture cases | | | |
|------------------|--------------------------------|---------------|---------------|----------------|
| | Under \$500 | Under \$1,000 | Under \$5,000 | Under \$10,000 |
| Statewide | 1% | 2% | 7% | 13% |
| Attorney General | 0% | 1% | 4% | 9% |
| Apache | 1% | 4% | 16% | 25% |
| Cochise | 4% | 10% | 42% | 75% |
| Coconino | 0% | 0% | 0% | 0% |
| Gila | N/A | N/A | N/A | N/A |
| Graham | 0% | 20% | 100% | 100% |
| Greenlee | N/A | N/A | N/A | N/A |
| La Paz | 0% | 0% | 0% | 18% |
| Maricopa | 0% | 1% | 6% | 11% |
| Mohave | 0% | 0% | 0% | 2% |
| Navajo | 1% | 3% | 18% | 22% |
| Pima | 1% | 3% | 13% | 21% |
| Pinal | 0% | 0% | 0% | 0% |
| Santa Cruz | 0% | 0% | 0% | 100% |
| Yavapai | 1% | 3% | 7% | 10% |
| Yuma | 6% | 11% | 15% | 21% |

Overall, as shown in Table 7, Arizona law enforcement agencies reported nearly \$28 million in assets seized in FY2018. Before the 2017 reforms, reports included only total forfeiture proceeds. The FY2018 reports additionally list each item of seized property, which allows for more detailed analysis than was previously possible.

Table 7. Value Seized and Forfeited, by Agency, FY2018

| | Total value seized | Total value forfeited |
|------------------|---------------------|-----------------------|
| Statewide | \$27,918,948 | \$10,899,843 |
| Attorney General | \$16,526,910 | \$4,880,758 |
| Apache | \$214,556 | \$156,327 |
| Cochise | \$348,544 | \$53,075 |
| Coconino | \$1,121,447 | \$0 |
| Gila | \$10,600 | \$900 |
| Graham | \$2,927 | \$2,927 |
| Greenlee | \$1,550 | \$3,100 |
| La Paz | \$249,056 | \$0 |
| Maricopa | \$1,920,183 | \$1,790,527 |
| Mohave | \$630,629 | \$755,507 |
| Navajo | \$272,856 | \$200,982 |
| Pima | \$4,565,662 | \$2,508,089 |
| Pinal | \$456,486 | \$0 |
| Santa Cruz | \$636,583 | \$36,100 |
| Yavapai | \$801,362 | \$393,253 |
| Yuma | \$159,598 | \$118,298 |

Although reporting of seizures and individual forfeitures is a new reform, Arizona has long required reporting of aggregate forfeiture proceeds and expenditures. The FY2018 forfeiture proceeds were substantially down from prior years, representing the continuation of a downward trend. However, the reasons for this are not known. Figure 5 and Table 8 display annual total forfeiture proceeds from FY2000 to FY2018.

Figure 5. Reported forfeiture proceeds by fiscal year, 2000–2018.

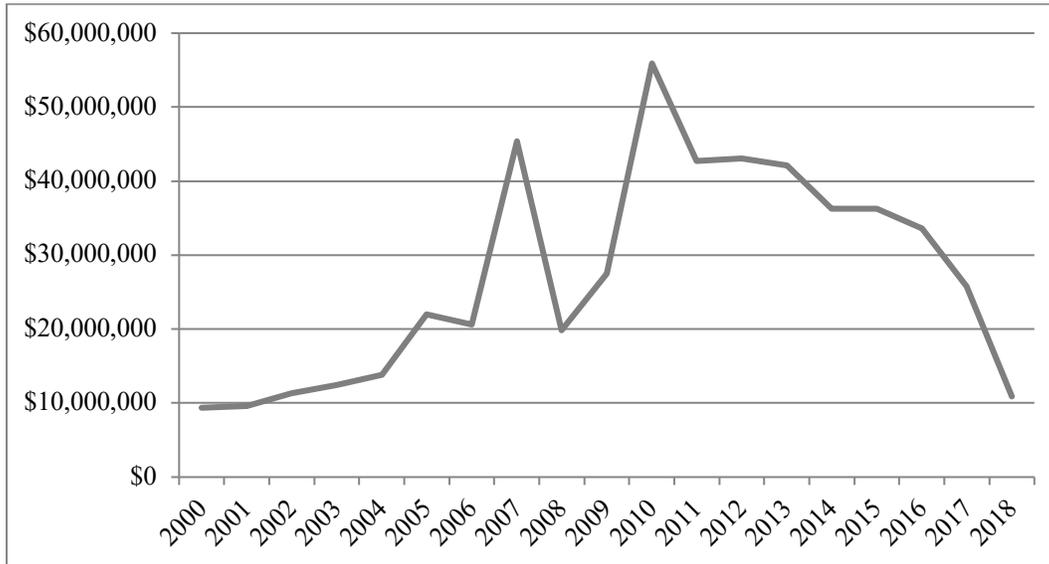


Table 8. Reported Forfeiture Proceeds by Fiscal Year, 2000–2018

| Fiscal year | Reported forfeiture proceeds |
|-------------|------------------------------|
| 2000 | \$9,367,316 |
| 2001 | \$9,649,223 |
| 2002 | \$11,362,722 |
| 2003 | \$12,414,334 |
| 2004 | \$13,807,821 |
| 2005 | \$21,989,986 |
| 2006 | \$20,606,951 |
| 2007 | \$45,345,606 |
| 2008 | \$19,836,898 |
| 2009 | \$27,491,832 |

| Fiscal year | Reported forfeiture proceeds |
|-------------|------------------------------|
| 2010 | \$55,904,233 |
| 2011 | \$42,712,374 |
| 2012 | \$43,036,040 |
| 2013 | \$42,118,485 |
| 2014 | \$36,281,212 |
| 2015 | \$36,226,128 |
| 2016 | \$33,566,564 |
| 2017 | \$25,797,311 |
| 2018 | \$10,899,843 |

Our review of the FY2018 reports has also found some technical issues that should be addressed. First, the Arizona Criminal Justice Commission (ACJC)—which prescribes forfeiture reporting forms and collects and publishes the reported forfeiture data—should consider migrating its forfeiture reporting system into a dynamic database similar to the U.S. Department of Justice’s Consolidated Asset Tracking System (CATS).² Such a system would make it easier for agencies to track seized assets over time and for the public to compare seizing and forfeiting behavior across agencies. As it stands, static individual agency reports must be individually aggregated before the data can be of much use.

Second, reporting fields should be standardized. We recommend the ACJC establish drop-down menus for each field of information in order to improve consistency across reports. For example, a seizure of \$500 in cash can currently be reported in the “Type of property seized” column as “cash,” “currency,” “U.S. Currency,” “\$500 cash” or “money,” among other options. This makes it difficult to aggregate seizures by property type. A solution would be to provide response options in a drop-down menu so agencies could select from a standard list of currency, vehicle, real property, electronics, jewelry, other and so forth. These drop-down menus should be used in the majority of the data fields and would significantly improve consistency in reporting.

Third and relatedly, it is not clear that agencies have a consistent definition of contested vs. uncontested forfeitures. Arizona law provides for two kinds of forfeiture procedures: “judicial forfeiture” and an administrative-law-like procedure known as “uncontested forfeiture.” But so-called uncontested forfeitures can be contested if a property owner files a “petition of remission or mitigation” seeking the return of property. Similarly, judicial forfeitures can be uncontested if no property owner files a claim to contest the forfeiture. Some agencies—Maricopa County for example—are almost certainly reporting any case in which it pursues a judicial forfeiture as a contested forfeiture, even if no property owner files a claim to contest the forfeiture. Other agencies may be doing the same or may be reporting judicial forfeitures in which no claim is filed as uncontested forfeitures. ACJC should standardize reporting definitions and provide drop-down menus here as well. And even better, the Legislature should eliminate the nonjudicial uncontested forfeiture system to ensure that every person can have their day in court.

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² CATS can be downloaded from the Department of Justice’s website: <https://www.justice.gov/afp/freedom-information-act>