

# Forfeiture in Arizona Before Reform

Why Concerns About Abuse Were Justified

# Forfeiture in Arizona Before Reform: Why Concerns About Abuse Were Justified

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In 2021, the Arizona Legislature enacted sweeping forfeiture reforms that went into effect at the end of September of that year.<sup>1</sup> Among other things, the reforms created a strong conviction prerequisite requiring the conviction of a property owner with limited exceptions, improved protections for innocent owners, established prompt post-seizure hearings, and eliminated non-judicial “uncontested forfeitures.”<sup>2</sup> The reforms, and previous reform attempts, were motivated by a desire to protect Arizonans’ “property rights, their civil rights, and the[ir] due process rights.” As the sponsor of a 2020 reform bill put it, “This is about protecting Arizonans against an abuse that’s gone on.”<sup>3</sup> An investigation by the Arizona Center for Investigative Reporting in 2017 and high-profile incidents highlighted the scope and reach of forfeiture in the state, as well as its problems. Property like cash and cars was often taken from ordinary people who had never been convicted of any crime, with little transparency or accountability.<sup>4</sup>

My analysis of more than four years’ worth of Arizona forfeiture data leading up to the 2021 reforms shows that legislators’ concerns were warranted. Annual forfeiture revenue increased from just over \$18 million in 2018 to nearly \$23 million in 2021, suggesting forfeiture activity was on the rise. At the same time, currency made up an ever-larger percentage of forfeited properties, accounting for nearly 3 out of 4 properties by 2021. Notably, these were often small-dollar forfeitures, with half of currency forfeitures amounting to just \$1,130 or less. This is notable because once a property is seized, the onus is on property

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<sup>1</sup> H.B. 2810. 55th Leg., 1st Reg. Sess. (Ariz. 2021).

<sup>2</sup> Wimer, A. (2021, May 5). *Arizona governor signs important forfeiture reform bill* [Press release]. Institute for Justice. <https://ij.org/press-release/arizona-governor-signs-important-forfeiture-reform-bill/>

<sup>3</sup> Duda, J. (2020, May 29). Asset forfeiture reform bill falls victim to COVID-shortened session. *AZ Mirror*. <https://azmirror.com/2020/05/29/asset-forfeiture-reform-bill-falls-victim-to-covid-shortened-session/>

<sup>4</sup> *In re \$39,500*, 521 P.3d 631 (Ariz. Ct. App. 2022); Kiefer, M. (2015, October 5). Pinal County seeks to dismiss forfeiture lawsuit. *azcentral*. <https://www.azcentral.com/story/news/arizona/politics/2015/10/09/pinal-county-forfeiture-lawsuit/73661522/>; Mahoney, E., & Philip, A. (2017, January 10). Arizona asset seizures net \$200M in past five years. *Arizona Center for Investigative Reporting*. <https://azcir.org/news/2017/01/10/arizona-asset-rico-seizures-net-200m-in-past-five-years/>; *Platt v. Moore*, 15 F.4th 895 (9th Cir. 2021).

owners to go to court to get it back. If they fail to do so, it becomes the government's by default. But small sums like these may not be worth hiring an attorney to fight for. Backing up this common-sense conclusion, Arizona data show larger-dollar forfeitures were more likely to be contested and to involve an attorney.

These findings illustrate how forfeiture in Arizona before the 2021 reforms put innocent people at risk, as simply walking away from their property was the logical thing to do. And, in fact, the data also show that from 2018 to 2021, the percentage of cases associated with a conviction declined significantly, from 51% to 40%, further raising concern that Arizona's old system put innocents at risk and underscoring why the Legislature added a conviction requirement and improved protections for innocent owners.

While it is too soon to say whether the 2021 reforms are working as intended, these new findings suggest lawmakers were right to be concerned that forfeiture was targeting ordinary people, not drug kingpins, and that those caught up in the dragnet might not have the resources to fight back, even if innocent.

Below, I describe my methods and detail my findings, as well as offer recommendations for improving Arizona's forfeiture reporting to ease the burden for agencies while improving data quality.

## Data and Methods

In 2017, the Arizona Legislature enacted a landmark forfeiture reporting reform.<sup>5</sup> Based on IJ's model reporting legislation, the reform gave Arizona the best forfeiture reporting laws in the country, though, as I discuss in the recommendations below, there is still room for improvement.<sup>6</sup> In accordance with the reporting reform, the Arizona Criminal Justice Commission has, since 2018, provided two types of quarterly reports providing key forfeiture details: (1) property reports, which provide details on individual properties like the date they were seized<sup>7</sup> and the property type, and (2) aggregate revenue reports, which provide forfeiture accounting details like the amount of forfeited currency deposited into an agency's forfeiture account. For my analyses, I examine properties forfeited before the 2021 reforms went into effect, a period spanning Fiscal Year 2018 through the first quarter of FY 2022 (hereafter the pre-reform period).<sup>8</sup>

The property reports carry some important limitations, two of them stemming from how the reports are generated. Under Arizona law, property reports are required only when an agency receives proceeds from forfeited properties. And, indeed, agencies appear to generate reports only when money is flowing into or out of their forfeiture accounts. A first implication of this is that reporting quarters do not align with forfeiture actions. In the data, properties are frequently associated with a forfeiture decision date preceding the quarter in which they were reported. This means that an analysis based on when property is reported would present a misleading picture of forfeiture activity. I therefore use forfeiture decision dates, instead of the quarter in which property is reported, to categorize properties as being in the pre-reform period.

My analyses of properties therefore include properties that were subject to a forfeiture decision between FY 2018 and Q1 of FY 2022 even if they were seized even earlier. Meanwhile, my analyses exclude properties that were seized between FY 2018 and Q1 of FY 2022 (or earlier) if they were not also subject to a

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<sup>5</sup> H.B. 2477, 53d Leg., 1st Reg. Sess. (Ariz. 2017).

<sup>6</sup> Erickson, A. C., McDonald, J., & Menjou, M. (2017). *Forfeiture transparency & accountability: State by state and federal report cards*. Institute for Justice. <https://ij.org/report/forfeiture-transparency-accountability/>

<sup>7</sup> The date is formally the seizure for forfeiture date, the date on which property becomes subject to forfeiture. Often, but not always, this is the date forfeiture proceedings were initiated. This may not be the date on which property was physically seized.

<sup>8</sup> Arizona's fiscal year runs from July 1 through June 30.

forfeiture decision during this same period (i.e., they were subject to a forfeiture decision after Q1 of FY 2022 or the forfeiture decision date is missing). In total, my sample included 15,468 properties that were forfeited in the pre-reform period.

A second implication of how the property reports are generated is that a particular property may be reported multiple times. For example, if an agency requested proceeds stemming from a single property more than once, that same property may appear multiple times in reports. To avoid double counting the same properties in my analyses, I developed an algorithm to detect such duplicative reporting and retained only the most recent data for use.

An unrelated limitation of the property reports is that the data are self-reported by agencies using open-ended responses. The state has no mechanism for ensuring consistency across either agencies or time. One implication of this is that I was unable to fully separate partial forfeitures from total forfeitures. A “partial forfeiture” is when some property in a particular case is forfeited, while other property from that same case is returned (e.g., \$500 is seized, and then \$250 is returned to the owner and \$250 is forfeited to the state). I therefore use the term “forfeiture” to describe both partial and total forfeitures.

In light of these limitations, I conducted an extensive compiling and cleaning process with quality control checks to ensure the most accurate and reliable analyses. Nevertheless, there remains a possible yet incalculable margin of error.

## Results

In a typical pre-reform year, Arizona forfeited 3,588 properties across 1,296 cases. Figure 1 shows the number of *cases* by fiscal quarter and year, while Figure 2 shows the number of *properties* by fiscal quarter and year.

**Figure 1. Number of cases resulting in total or partial forfeiture, Q1 FY 2018–Q1 FY 2022**

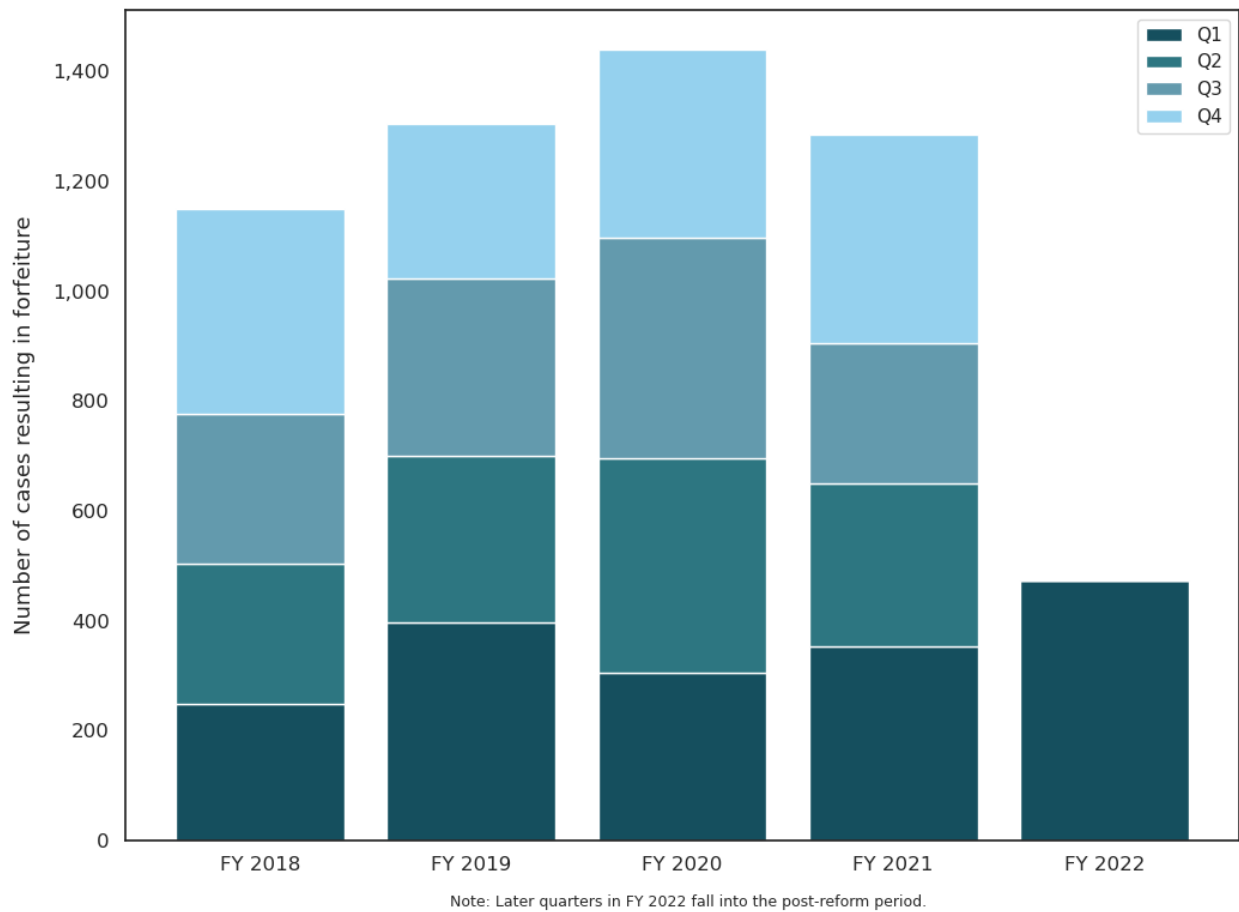
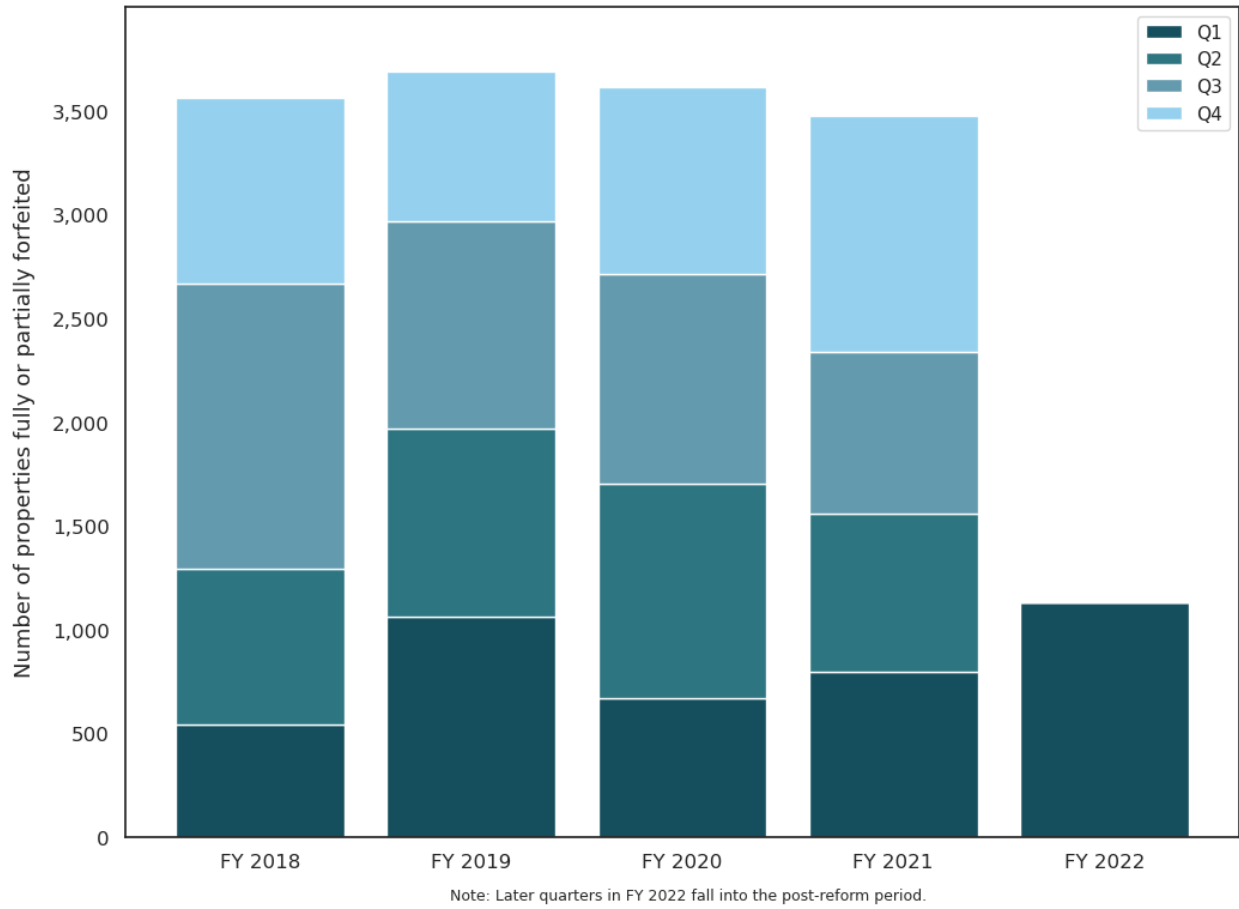
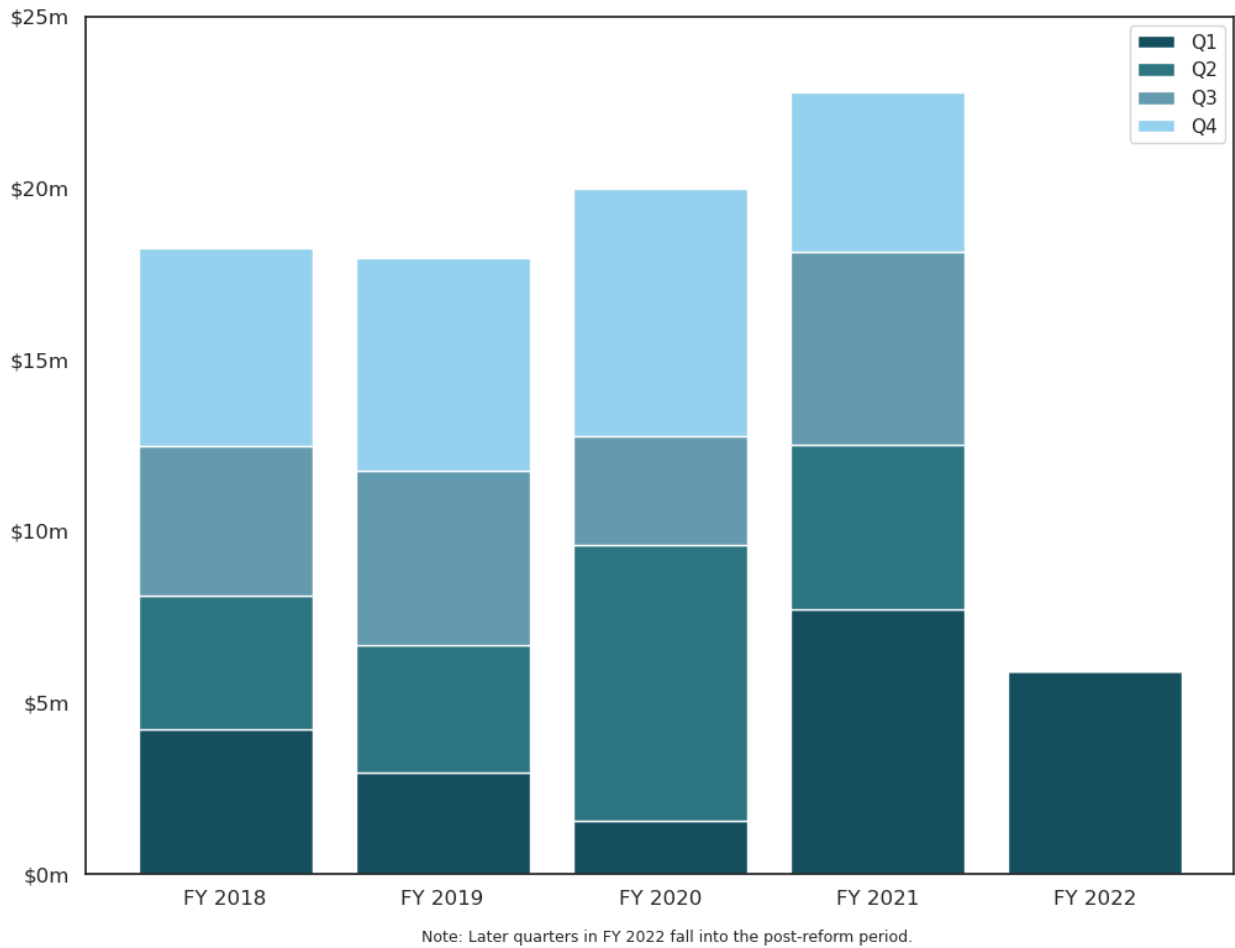


Figure 2. Number of properties resulting in total or partial forfeiture, Q1 FY 2018–Q1 FY 2022



Arizona brought in \$19.1 million in forfeiture revenue in a typical pre-reform year. Forfeiture revenue was highly variable from quarter to quarter, but at an annual level there is a clear increase across the pre-reform period. Annual forfeiture revenue increased from just over \$18 million in 2018 to nearly \$23 million in 2021. Figure 3 displays total forfeiture revenue by fiscal quarter and year based on aggregate reports.

**Figure 3. Total forfeiture revenue, Q1 FY 2018–Q1 FY 2022**



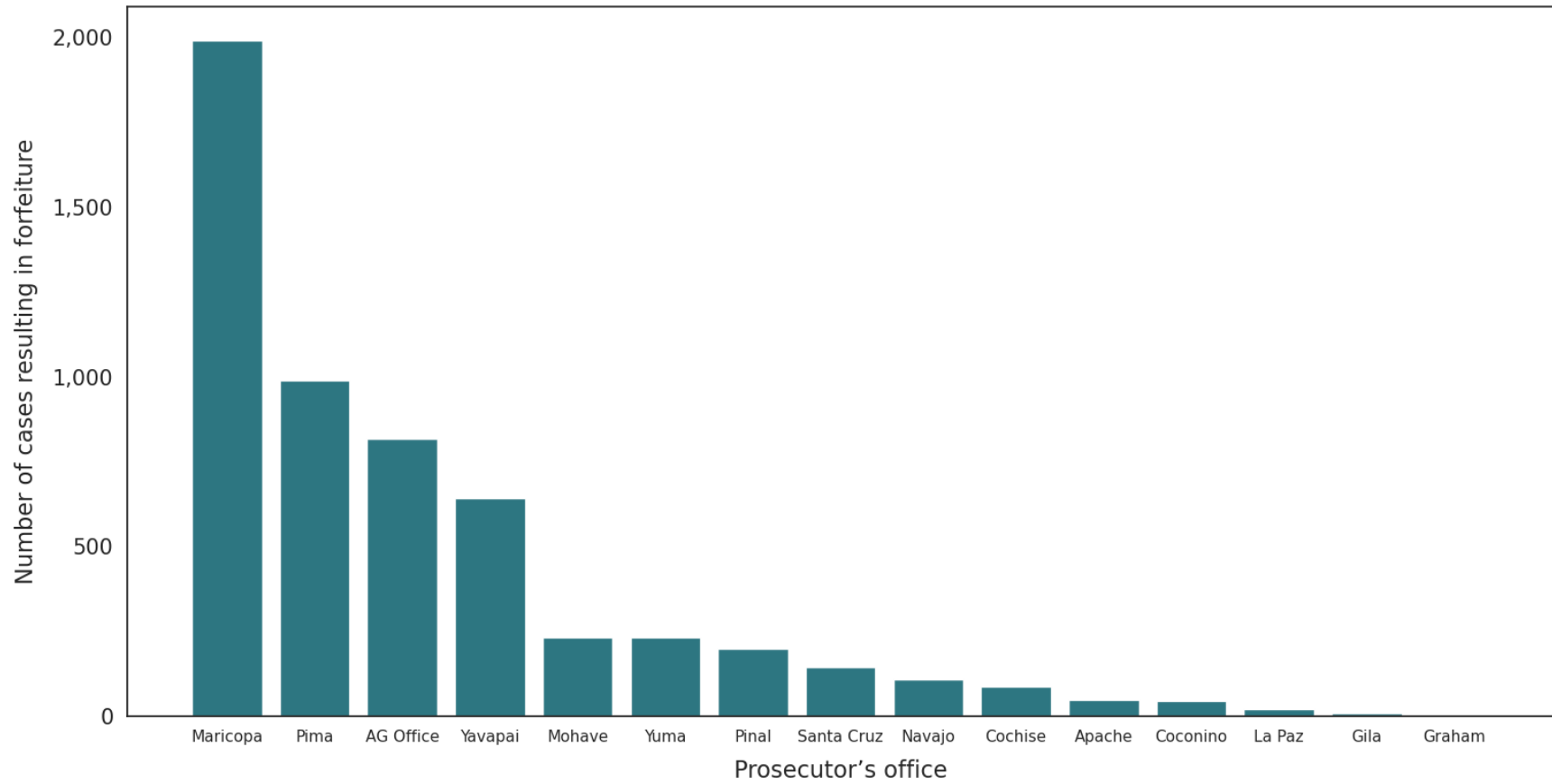


Most forfeiture activity was concentrated in just a few prosecutor's offices. Maricopa County accounted for the plurality (36%) of forfeiture cases, followed by Pima County (18%), the Attorney General's Office (15%), and Yavapai County (12%). These proportions broadly correspond with the counties' proportions of the state population. Figure 4 shows the total number of forfeiture cases in the pre-reform period by prosecutor's office.<sup>9</sup>

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<sup>9</sup> Greenlee County appeared to have one case in the pre-reform period, but it did not report a forfeiture (or disposition) date. Accordingly, I was unable to definitively determine when the forfeiture occurred. The seizure date indicated the case was initiated in 2011.

Figure 4. Number of cases resulting in total or partial forfeiture by office, Q1 FY 2018–Q1 FY 2022

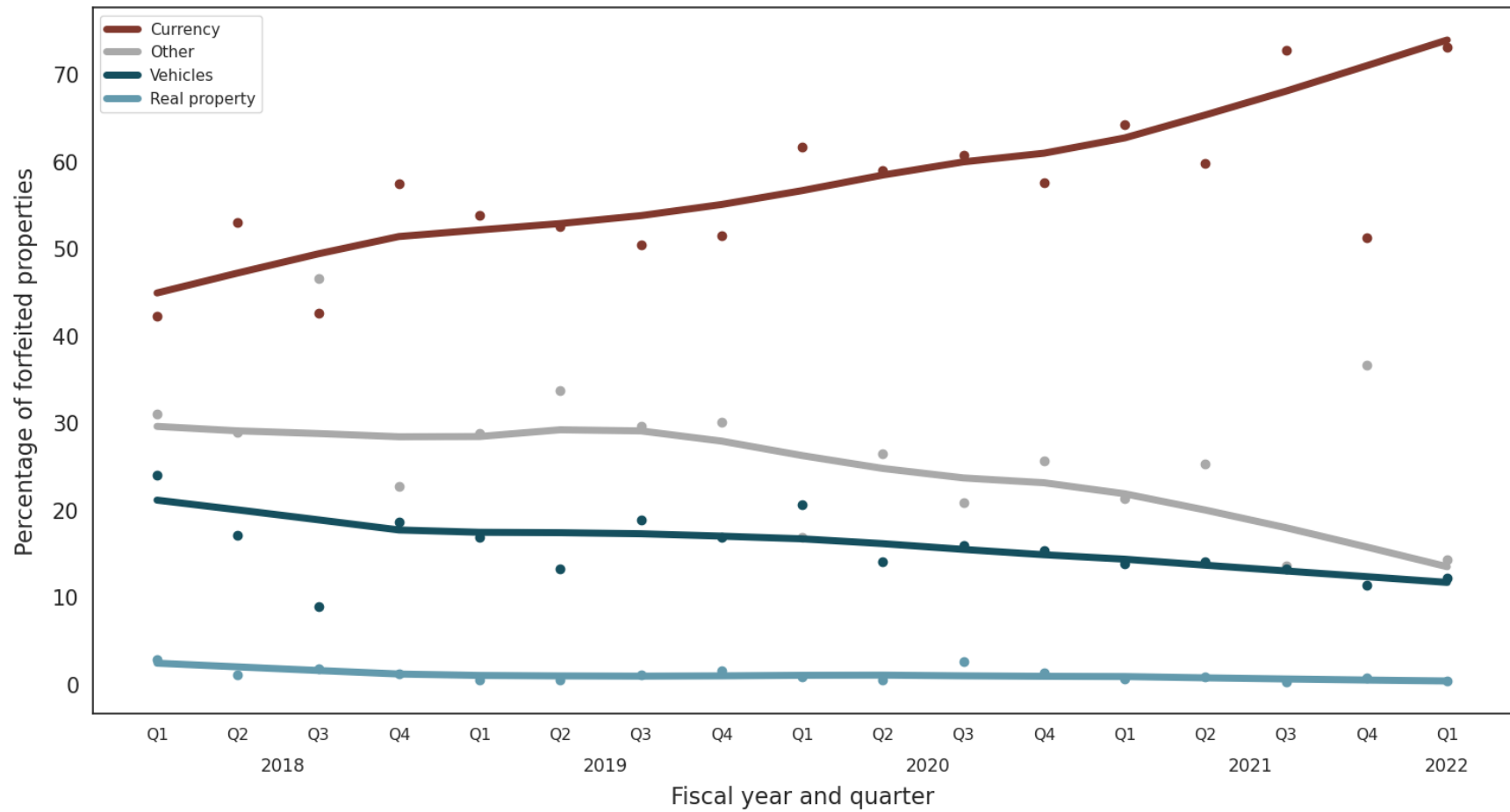


Currency was the most common type of forfeited property in the pre-reform period, accounting for 57% of all forfeited properties—a total of 8,750 properties. And it increased as a proportion of forfeited properties over the period. The percentage of currency among forfeited properties rose by 5 percentage points each quarter on average, a statistically significant trend ( $p < .001$ ). At the beginning of the pre-reform period, currency accounted for about half of all forfeited properties. By the end, it accounted for nearly 3 out of 4. Figure 5 displays the percentage of forfeited properties by property type in the pre-reform period.<sup>10</sup>

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<sup>10</sup> “Other” includes all other property types, such as firearms and electronics.

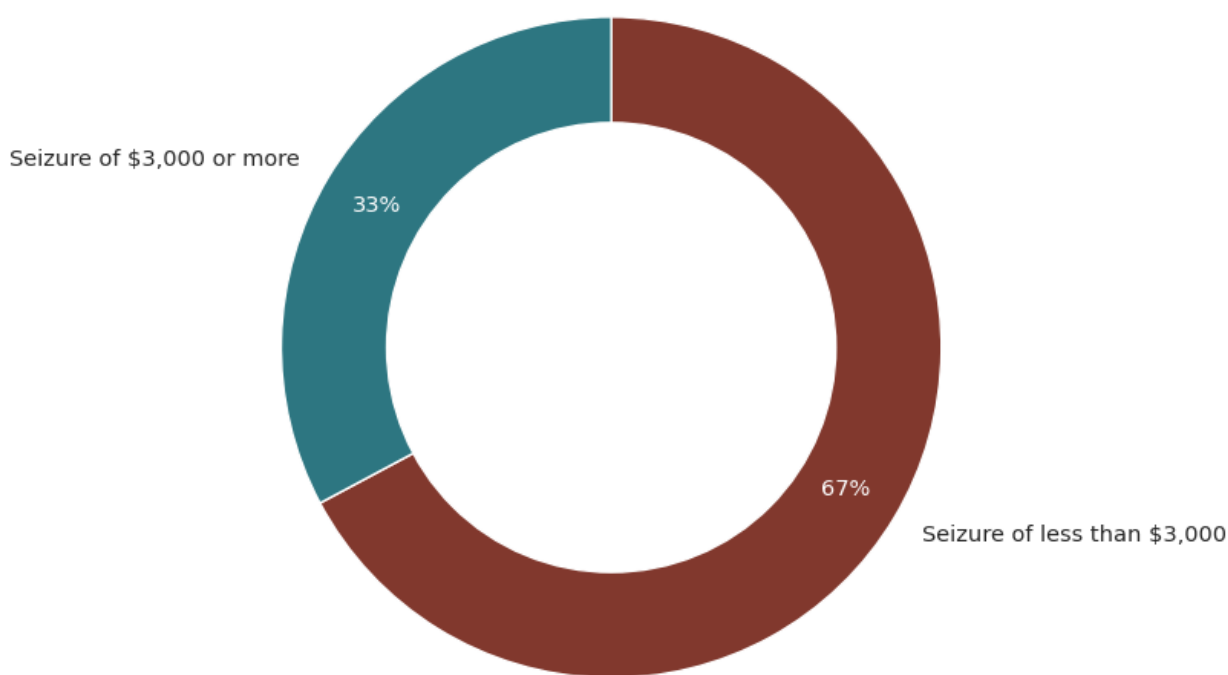
Figure 5. Percentage of forfeited properties by property type, Q1 FY 2018–Q1 FY 2022



Note: Later quarters in FY 2022 fall into the post-reform period.

The typical seizure amount of currency forfeitures was quite low. Half of the 8,750 currency forfeitures in the pre-reform period had a seizure amount of \$1,130 or less. As shown in Figure 6, 67% of currency forfeitures were less than \$3,000, the estimated cost of hiring an attorney to fight a simple state forfeiture case.<sup>11</sup>

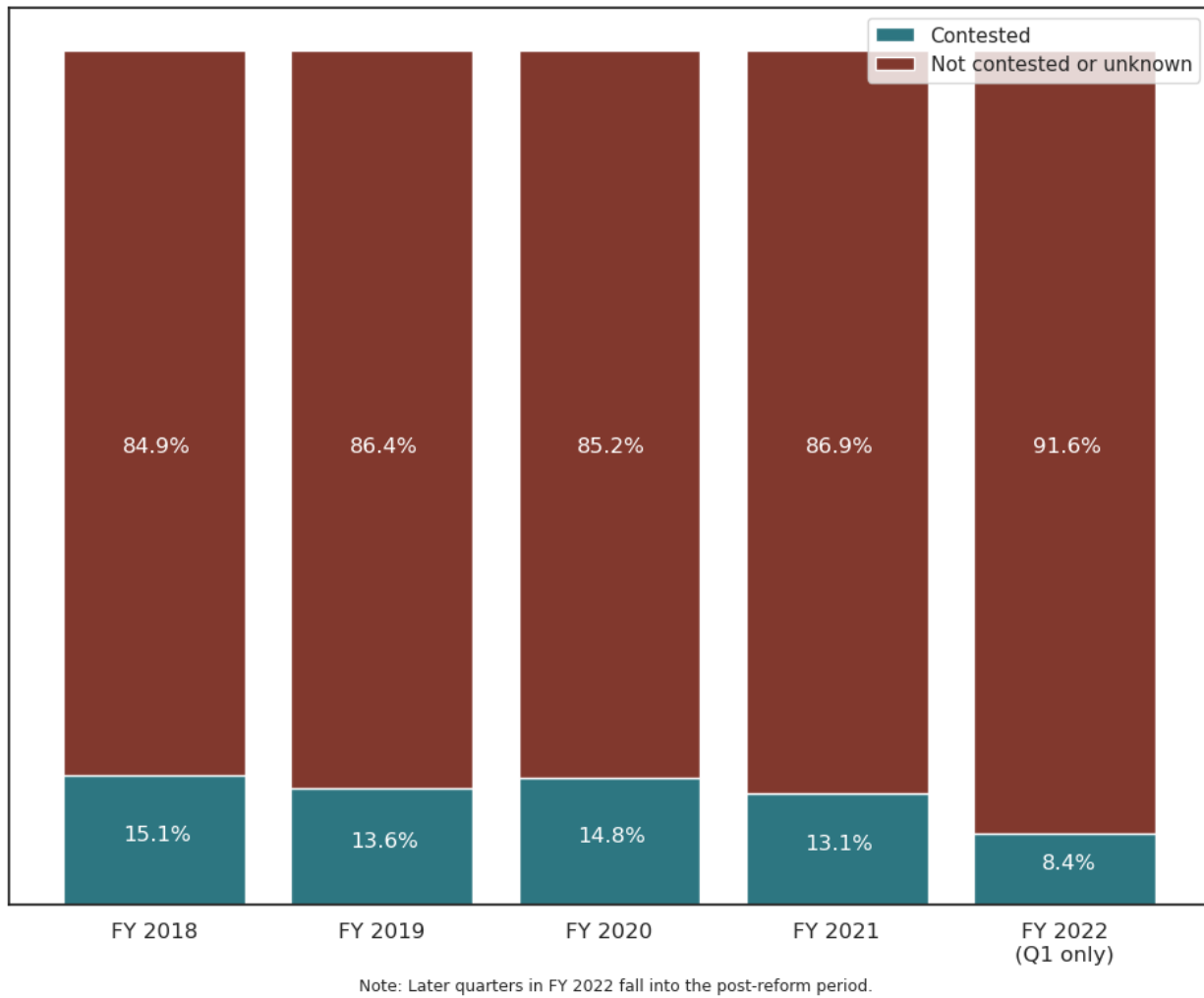
**Figure 6. Share of currency seizures above and below \$3,000, the estimated cost of hiring an attorney, Q1 FY 2018–Q1 FY 2022**



<sup>11</sup> See Knepper, L., McDonald, J., Sanchez, K., & Pohl, E. S. (2020). *Policing for profit: The abuse of civil asset forfeiture* (3rd ed.). Institute for Justice. <https://ij.org/report/policing-for-profit-3/>. The estimated cost of hiring an attorney reported by Knepper et al. (2020) is based on information from state forfeiture attorneys. In general, the average cost of hiring an attorney in Arizona is usually between \$134 and \$536 per hour. Clio. (n.d.). *How much should I charge as a lawyer in Arizona?* <https://www.clio.com/resources/legal-trends/compare-lawyer-rates/az/>. The actual cost of hiring an attorney to contest a forfeiture case in Arizona might be more or less than \$3,000 for any given case, and several other factors might affect whether a person thinks it worthwhile to hire an attorney to contest. For example, although the median seizure amount of contested currency forfeitures was less than \$3,000, there could have been other properties involved in the case that made the overall value at stake greater than \$3,000. In addition, Arizona has a fee-shifting provision that allows successful claimants to receive their attorney fees, which may induce some owners to engage legal representation. Ariz. Rev. Stat. § 13-4314(E).

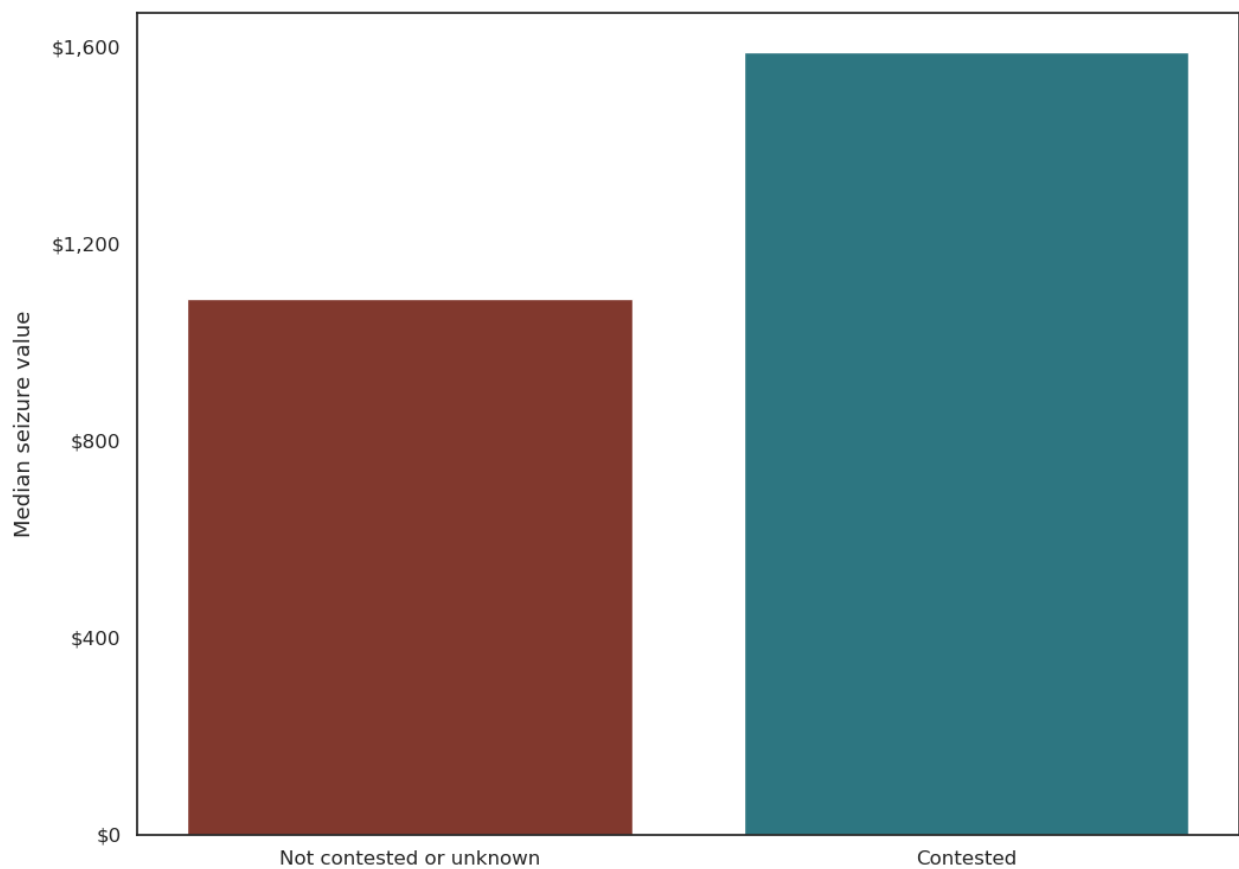
In a typical pre-reform year, 14% of forfeiture cases were contested. Put another way, most cases that resulted in the forfeiture of some or all seized property went *uncontested*. Figure 7 shows the percentage of forfeiture cases that were contested by fiscal quarter and year.

**Figure 7. Percentage of forfeiture cases where forfeiture was contested, Q1 FY 2018–Q1 FY 2022**



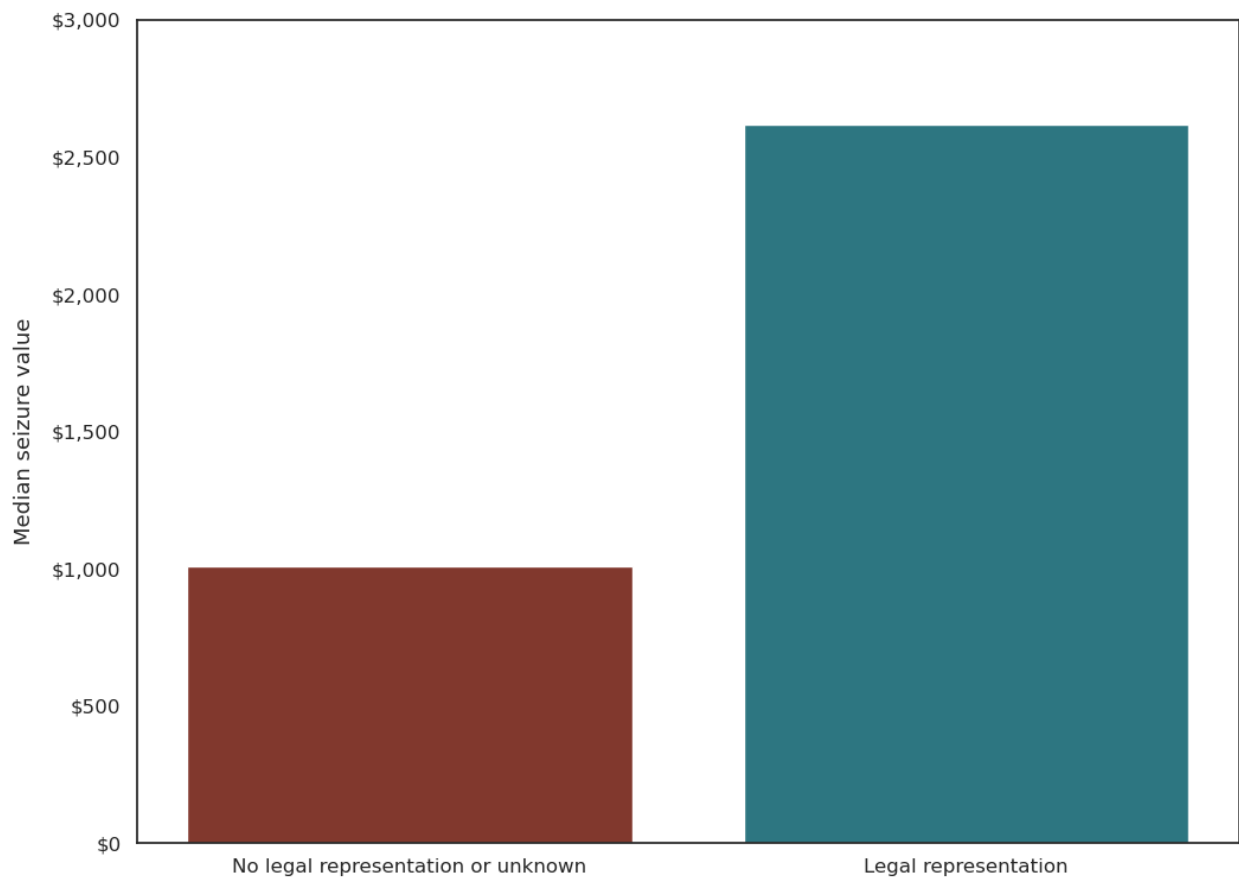
Perhaps unsurprisingly, people were more likely to contest a currency forfeiture when the amount at stake was higher. The median seizure amount of contested currency forfeitures was \$1,590, about \$500 more than the median seizure amount of uncontested currency forfeitures (\$1,087). This difference was statistically significant ( $p < .001$ ). Figure 8 shows the median seizure amount of contested and uncontested currency forfeitures in the pre-reform period.

**Figure 8. Median seizure amounts of contested and uncontested currency forfeitures, Q1 FY 2018–Q1 FY 2022**



Similarly, people contesting currency forfeitures were more likely to enlist legal representation when the amount at stake was higher. The median seizure amount of contested currency forfeitures was \$2,620 when claimants had an attorney. This was more than twice the median seizure amount of contested currency forfeitures when claimants went it alone (\$1,006). This difference was statistically significant ( $p < .001$ ). Figure 9 shows the median seizure amount of contested currency forfeitures with and without legal representation in the pre-reform period.

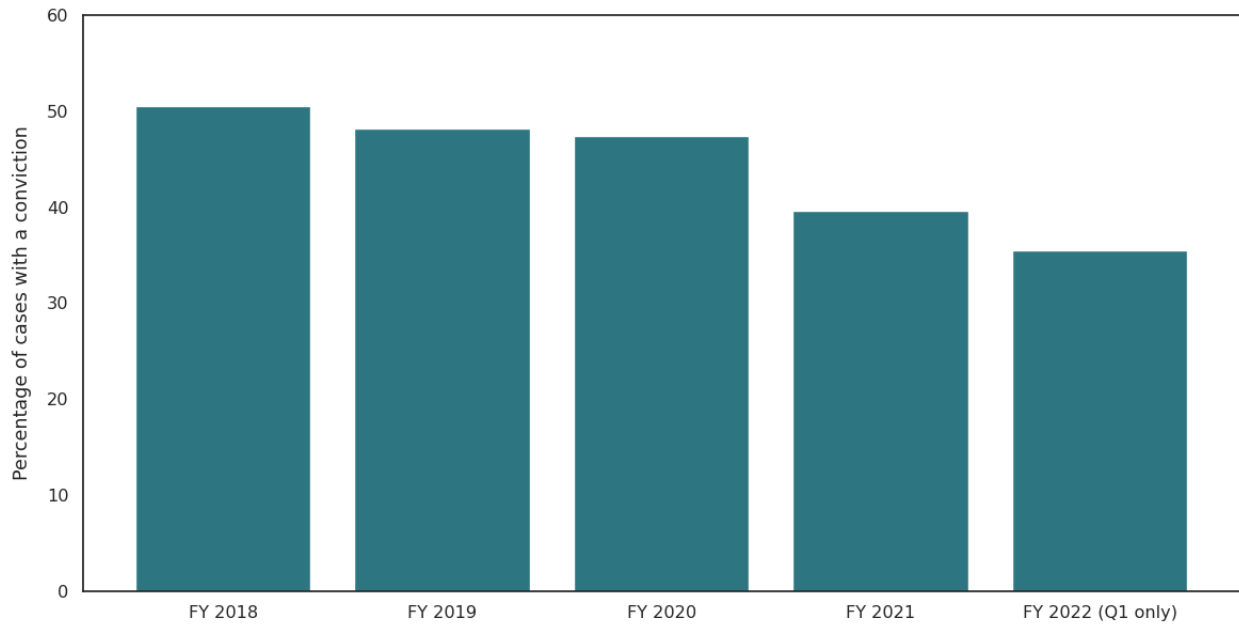
**Figure 9. Median seizure amounts of contested currency forfeitures with and without legal representation, Q1 FY 2018–Q1 FY 2022**





Prior to the 2021 reforms, a conviction was not required to forfeit property. In a typical pre-reform year, fewer than half of forfeiture cases (48%) were associated with a conviction. Moreover, the percentage of cases associated with a conviction decreased by almost 4 percentage points each quarter on average, a statistically significant trend ( $p < .001$ ). Figure 10 shows the percentage of forfeited properties that were associated with a conviction by fiscal quarter and year.

**Figure 10. Proportion of forfeiture cases associated with a conviction, Q1 FY 2018–Q1 FY 2022**



Note: Later quarters in FY 2022 fall into the post-reform period.

Among the prosecutor’s offices that accounted for most forfeiture cases—Maricopa County, Pima County, the Attorney General’s Office, and Yavapai County—Yavapai stands out for having the most forfeiture cases associated with a conviction: nearly 90%. In contrast, Maricopa, which accounts for the plurality of cases, had the lowest percentage of forfeiture cases associated with a conviction, at about 40%. Table 1 shows the percentage of forfeiture cases associated with a conviction for each of these offices.

**Table 1. Percentage of forfeiture cases associated with a conviction for offices with the most forfeiture cases**

Prosecutor’s Office	Percentage of Cases Associated with a Conviction
Maricopa	39%
Attorney General	42%
Pima	50%
Yavapai	87%

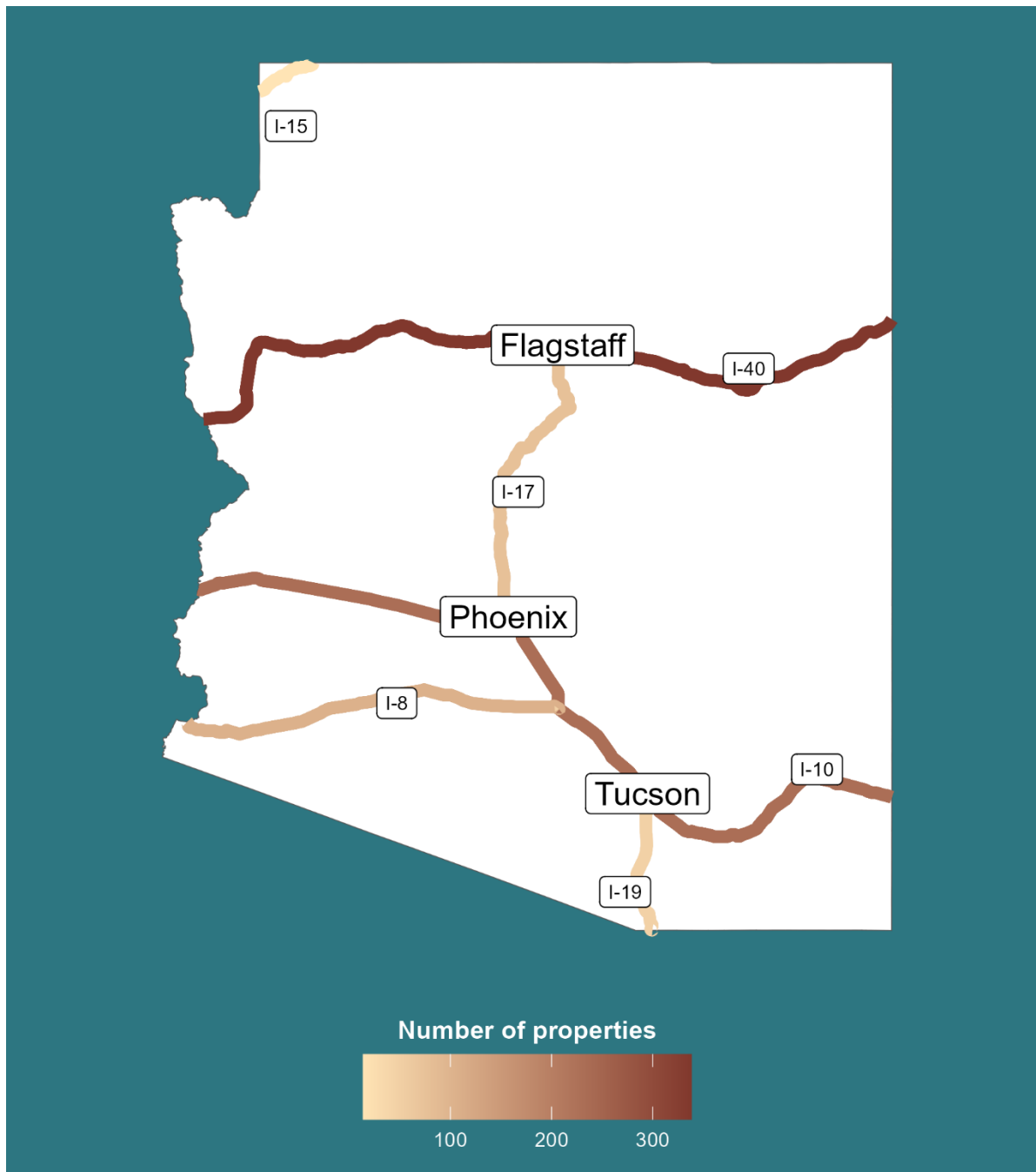
One of Arizona's 2021 reforms prohibited the use of waivers to request, require, or induce a person to disclaim their property rights. Often, these waivers were used during stops on interstate highways (or other roadways), with motorists being told they would be free to continue on their way if only they agreed to give up their property.<sup>12</sup>

Unfortunately, the property reports do not contain information about waivers. However, they do show that at least 818 forfeited properties were seized on interstates in the pre-reform period. They also show that the bulk of these properties were seized along interstates running east-west, especially I-40. This is true even when accounting for traffic density and road miles. Indeed, about one property was seized for every mile of I-40. Figure 11 is a map of forfeited properties that were seized on interstate highways in the pre-reform period. Darker colors reflect a greater number of properties seized.

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<sup>12</sup> See, e.g., *State v. Mauceli*, No. 1 CA-CV 18-0063, 2018 WL 6684216 (Ariz. App. 2018).

Figure 11. Map of forfeited properties by interstate, Q1 FY 2018–Q1 FY 2022



Unfortunately, it is too soon to tell what effect, if any, Arizona's 2021 reforms are having, as only one full year of post-reform data is available. This is a short period of time in and of itself. Not only that, but in the pre-reform period, it was common for there to be a two- to three-quarter delay between a seizure and a forfeiture decision. Moreover, some of the reforms, such as more stringent criteria for initiating a forfeiture case, could plausibly increase that delay.

These limitations mean many of the properties reported as having been forfeited after the reforms were, in fact, initiated before the reform period (and therefore subject to pre-reform law). They also mean the properties reported as having been both initiated and forfeited after the reforms are probably unrepresentative of the scale and scope of post-reform forfeiture activity, as some forfeitures that have already happened or that are in progress may not have been reported yet. Accordingly, I do not present analyses of the post-reform forfeiture data currently available.

## Discussion and Recommendations

While it is too soon to tell what effect, if any, Arizona's 2021 reforms are having, my analyses provide an important reminder of why they were needed in the first place. Most forfeiture cases were not associated with a conviction (see Figure 10), which means that most people who permanently lost their property to the state were legally, if not also factually, innocent. Moreover, most cases went uncontested (see Figure 7), which means most people did not fight the forfeiture of their property. It is possible that in many cases, it simply did not make sense to fight back, as the cost of doing so exceeded the value of the property. Indeed, among currency forfeitures, which increasingly accounted for most forfeitures, the typical amount was just a little over \$1,000. This is far less than the estimated \$3,000 it costs to hire an attorney to fight a simple state forfeiture case (see Figure 6). This would explain why higher-dollar currency forfeitures were more likely to be contested and why higher-dollar contested currency forfeitures were more likely to involve an attorney (see Figure 8 and Figure 9). And that's only one cost—there is also the fact that forfeiture cases often take years, and the chances of success are uncertain. It is no wonder legislators were concerned about forfeiture and wanted to ensure Arizonans' rights were protected.

Our analyses reinforce the concerns that led to the 2021 reforms, but they also point to improvements that could increase transparency around forfeiture activity in the state. Arizona has the best forfeiture reporting laws in the country. However, the state's forfeiture data are not as useful as they could be due to inconsistencies in how information about seizures and forfeitures is reported across agencies and time. For example, Pinal County rarely, if ever, provided information like property-level seizure or forfeiture values.

One practical, and very achievable, way Arizona could improve transparency is by adopting a standardized reporting process to ensure the same information is reported in the same way across agencies and time. This could be as simple as creating a standard form in the shape of a spreadsheet or web survey form for agencies to use for their reporting to ACJC. In any event, the most important elements of a standard form are clearly defined terms and pre-defined response options, rather than open-ended text fields. For example, a spreadsheet could contain dropdown menus with pre-defined options for agencies to choose

from, much like a multiple-choice test. This would improve data reliability and make comparisons across agencies and time more meaningful. It would also take the guesswork out of reporting, making the process easier for agencies.

Even better, Arizona could create a dynamic database system for reporting. In addition to having the same benefits as a standard form, a database would make it easier to track seized properties throughout the forfeiture process—particularly if Arizona assigned each property a unique ID. Arizona need not look far for good examples of how to set up such a database. Several Arizona police agencies, including the Phoenix Police Department, are members of the Police Data Initiative<sup>13</sup> and as such willingly make quality datasets publicly available. In a similar vein, several Arizona cities manage open data portals as part of a “smart city” initiative.<sup>14</sup>

Whether a standard form, a dynamic database system, or something else, a standardized reporting process would make it much more likely that an average member of the public, to say nothing of their representatives in the Arizona Legislature, could access and make sense of forfeiture activity.

Increased transparency is critical to assessing both the need for reform and the impacts of reform. The Arizona Legislature has enacted important reforms, and with greater transparency will come a greater ability to evaluate whether they are working as the Legislature intended.

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<sup>13</sup> See <https://www.policedatainitiative.org/participating-agencies/>

<sup>14</sup> See, e.g., <https://data.mesaaz.gov/>