

# CIVIL FORFEITURE FAST FACTS

*“The purpose of civil forfeiture is removing the economic incentive to engage in racketeering, reducing the financial ability of racketeers to continue to engage in crime, preventing unfair business competition by persons with access to crime proceeds, compensating victims of racketeering, and reimbursing the State for the costs of prosecution.” State v. Gravano, Arizona Court of Appeals (2002).*

## **Civil Forfeiture refers to Arizona laws that:**

- Deter “crimes for profit” by repurposing property that was seized because of a crime;
- Incapacitate criminals by removing the **tools** used and the **profits** made from crime;
- Provide restitution to victims and compensate for the harm inflicted on the community.

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## **2014 HIDTA (High Intensity Drug Trafficking Area) STATISTICS of profits and tools removed from just the drug trade in Arizona:**

<b>Marijuana Seized</b>	<b>1,073,672 pounds</b>
<b>Cocaine, Methamphetamine, and Heroin Seized</b>	<b>3,727 pounds</b>
<b>Cash and Assets Seized</b>	<b>\$50,921,673</b>
<b>Wholesale Value of Drugs Seized</b>	<b>\$1.5 billion</b>

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**“CONTRABAND IS, BY ITS VERY NATURE, ILLEGAL AND ELIGIBLE FOR SEIZURE WITHOUT CRIMINAL PROCEEDINGS.” TEXAS PUBLIC POLICY FOUNDATION (SEPTEMBER 2015)**

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## **IN ADDITION TO THE RULES THAT APPLY TO ANY LAWSUIT OVER PROPERTY, ARIZONA PROCEDURE PROTECTS PROPERTY OWNERS.**

*Arizona’s law contains procedural safeguards to control unconstitutional conduct:*

- *Forfeiture proceedings are conducted before an impartial state court judge;*
- *All persons with a known interest in seized property receive notice and may appear to challenge a proposed forfeiture;*
- *Anyone disputing the forfeiture may testify, introduce evidence and present and cross-examine witnesses.*

*Torres v. Goddard, U.S. Court of Appeals (2015).*

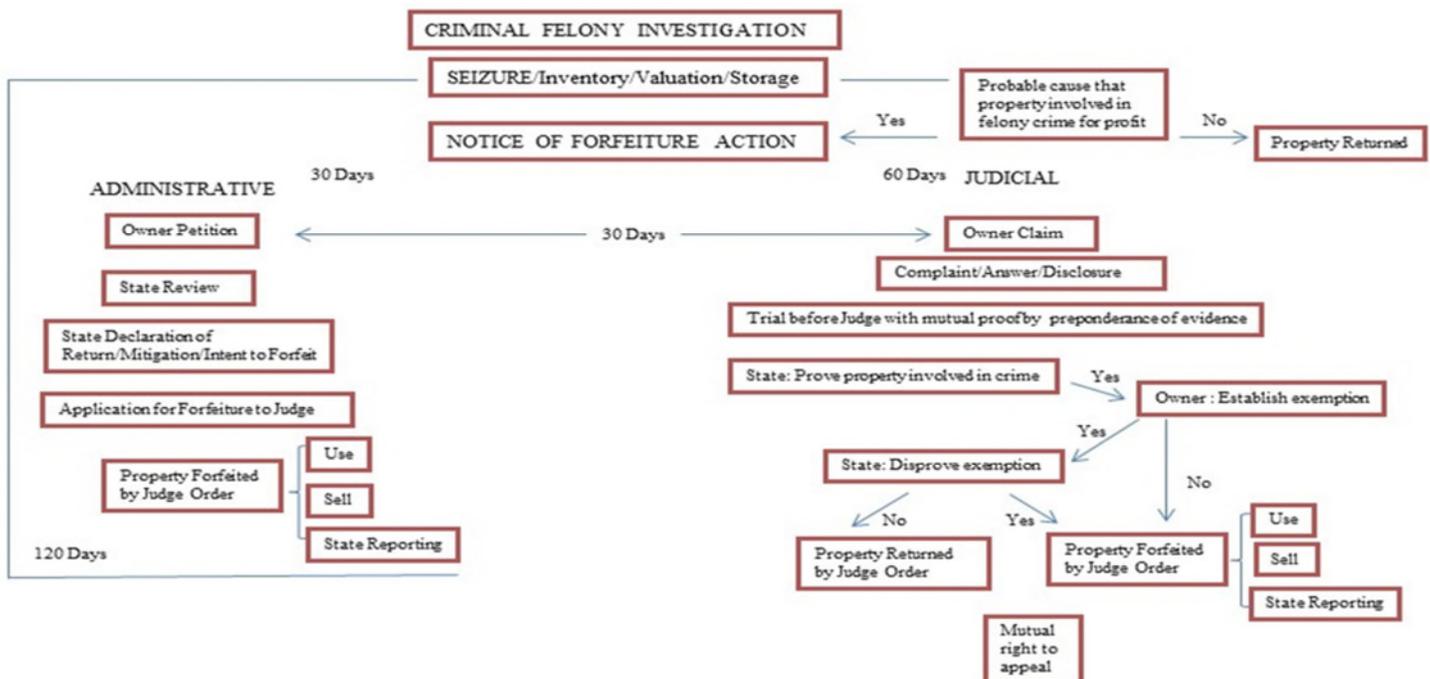


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## How it works:

“Arizona's forfeiture laws require the State to file an action in court and to prove the underlying racketeering and the connection between the racketeering and the property subject to forfeiture. The burden of proof is on the State, and civil procedural rules are applied. - State v. Gravano, Arizona Court of Appeals (2002).

- 1) Seizure of any private property requires demonstrating to a **court** probable cause **that the property is part of a crime**.
- 2) All known property owners receive **notice** of seizure for forfeiture and the **court** proceedings that follow.
- 3) **State must first prove:** a) illegal activity b) committed for financial gain c) which used that property (tool) or resulted in the gain of that property (profit).
- 4) **Owner may contest** by presenting evidence of exemption.
- 5) If the State does not rebut, the court orders return to the owner.
- 6) If the State disproves the exemption (or no exemption is presented) the **court orders the property forfeited** to the state.
- 7) The state and owners share burdens of proof by preponderance of evidence, mutual disclosure and discovery requirements, and both have a right to appeal.



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“[T]he Government has a pecuniary interest in forfeiture that goes beyond merely separating a criminal from his ill-gotten gains...The sums of money that can be raised for law-enforcement activities this way are substantial, and the Government’s interest in using the profits of crime to fund these activities should not be discounted. It is our view that there is a strong governmental interest in obtaining full recovery of all forfeitable assets.”

*Caplin & Drysdale, Chartered v. United States, U.S. Supreme Court (1989).*

## **What Happens to Forfeited Property?**

*Use of forfeiture funds is transparent and publically reported. The Arizona Criminal Justice Commission (ACJC) gets every court order together with quarterly reports from law enforcement and prosecuting agencies that receive or expend forfeiture funds. ACJC compiles a comprehensive annual report of all income and expenditures of funds which is available to the public through links on government websites.*

*(<http://www.azcjc.gov/ACJC.Web/finance/ricomain.aspx>)*

### **CIVIL FORFEITURE FUNDS ARE USED FOR:**

- Compensation of victims (\*4)
- Training (\*6) and equipping police and prosecutors (\*9)
- Body armor and special vehicles (\*9)
- Wiretaps and crime-fighting computer software (\*8)
- Witness protection programs (\*3)
- Re-entry programs (\*2)
- HIDTA
- Narcotics Task Forces (\*5,\*6,\*7,\*8,\*9)

### **FUNDING COMMUNITY SUPPORT SERVICES:**

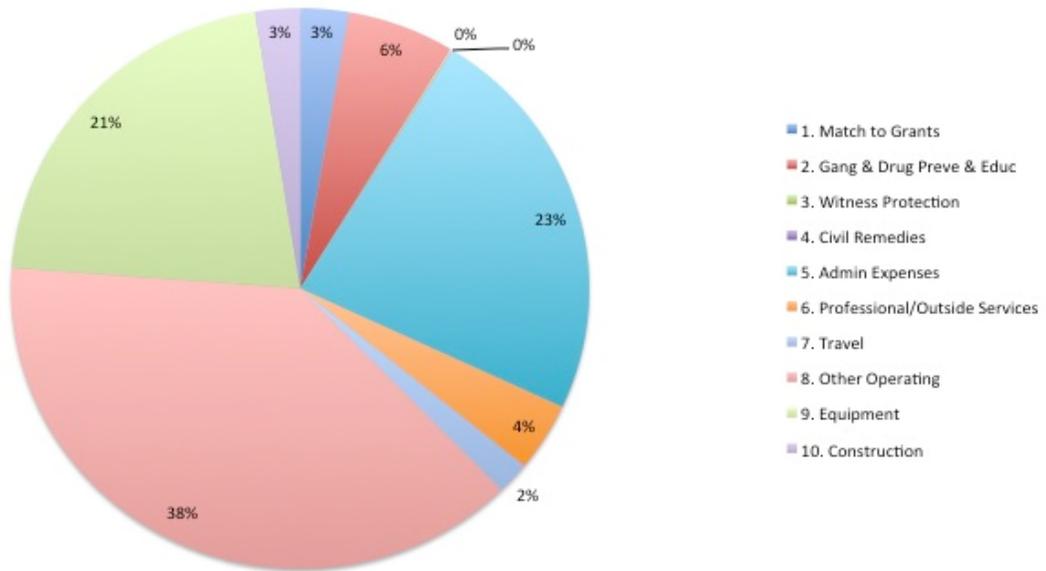
- Substance abuse prevention/treatment (\*2)
- Community programs (\*2)
- Crime-tip hotlines (\*2)
- Drug and gang prevention and education (\*2)
- Job training (\*2)  
Mentoring (Big Brothers/Big Sisters; Boys and Girls Clubs) (\*3)

\*(Numbers) refer to the expenditure categories in the graphs below.

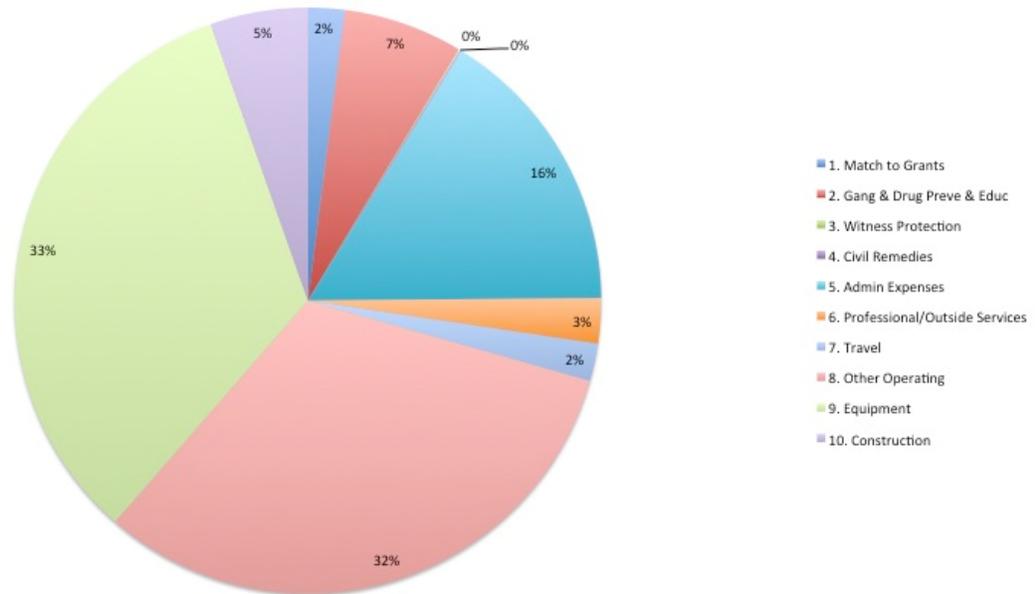


# CIVIL FORFEITURE FAST FACTS

2015 State Expenditures



2014 State Expenditures



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## CONSEQUENCES OF FOREGOING CIVIL FORFEITURE

Pursuant to federal and state constitutional case law, Arizona forfeitures are civil proceedings that are not criminal in nature or purpose and do not require a criminal conviction. Although property related to a crime may be seized, there are many reasons why a criminal case might not proceed or may be delayed that have nothing to do with the fact that the property can be proven to be a tool or fruit of a crime. If civil forfeiture had to await a criminal case outcome, the potential consequences would include:

- 1) Removal of the property, such as laundered money, from the jurisdiction, country, reach of the law;
- 2) Protection of proceeds and property involved in crime for profit by placing the property in the names of straw owners;
- 3) Inability to forfeit abandoned criminal property as no notice can be given and no person can be identified for prosecution; and
- 4) Depriving victims of restitution.



The forfeiting official is no different from any other plaintiff seeking economic recovery... [t]he plaintiff presents the claim, supported by proof, to an independent decision-maker; that judge reviews the evidence from the plaintiff and from the defendant/claimant and renders a fair and impartial decision. Public policy is not implicated; the only decision the public official makes is to place the case before the court; hence the **preponderance** standard applies, rather than a higher standard usually reserved for public acts.

*State ex rel. Cumberland v. One 1990 Ford Thunderbird*, 371 N.J. Super. 228, Superior Court New Jersey, Appellate Division (2004).



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## SOURCES

- I. A.R.S. 13- 2314 *et seq.* Racketeering; civil remedies by the State; reporting
- II. A.R.S. 13-4301 *et seq.* Forfeitures; procedures; reporting
- III. *State ex rel. Goddard v. Gravano*, 204 Ariz. 106, 60 P.3d 246 (App. 2002).
- IV. *Torres v. Goddard*, 793 F.3d 1046 (9<sup>th</sup> Cir. 2015).
- V. *Caplin & Drysdale, Chartered v. United States*, 491 U.S. 617 (1989).
- VI. Arizona Criminal Justice Commission. [www.azcjc.gov](http://www.azcjc.gov)
- VII. *State ex rel. Cumberland v. One 1990 Ford Thunderbird*, 371 N.J. Super. 228, Superior Court New Jersey, Appellate Division (2004).

