

Special Report

Arkansas Legislative Audit

Law Enforcement Agencies' Compliance with Asset Seizure and Forfeiture Requirements

Uniform Controlled Substances Act

For the Calendar Year Ended December 31, 2021



INTRODUCTION

This report reviews law enforcement agencies' compliance with the asset seizure and forfeiture requirements of the Uniform Controlled Substances Act (Ark. Code Ann. § 5-64-505) for the year ended December 31, 2021. Arkansas Code provides for reporting noncompliant law enforcement entities to the responsible Circuit Court and the Arkansas Alcohol and Drug Abuse Coordinating Council as no longer eligible to receive grants or forfeited assets. The results of the review are provided on **page 3**. A statewide summary of seized items entered into the Asset Seizure Tracking System (ASTS), maintained by the Arkansas Drug Director, for the review period is provided in **Schedule 1 on page 5**.

OBJECTIVES

The objectives of this review were to:

- Verify that law enforcement agencies complete and file confiscation reports, in compliance with Arkansas Code.
- Confirm that law enforcement agencies, prosecuting attorneys, and other public entities properly account for seized property, in accordance with Arkansas Code.

SCOPE AND METHODOLOGY

This annual review was conducted for the period January 1, 2021 through December 31, 2021, and encompassed reports from various law enforcement agencies located across the State, as identified in **Exhibit I on page 2**. A map of the State's judicial districts is provided in **Exhibit II on page 2**.

To conduct the review, two seizure incidents in each of the judicial districts selected were chosen from ASTS. Auditors traced the seized assets recorded in ASTS to the supporting confiscation report and verified required procedures had been followed in the disposition of the seized assets. Additionally, one confiscation report was randomly selected from the agency and traced to ASTS to ensure all seized assets had been properly reported. Finally, one seized asset was randomly selected from the agency's evidence room and traced to the entity's confiscated inventory records.

ARKANSAS LEGISLATIVE AUDIT

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Report ID: SPSA00221

Report Date: June 29, 2022



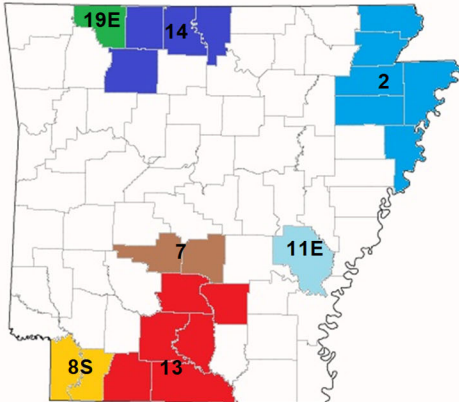
Exhibit I

Uniform Controlled Substances Act
Judicial Districts Selected for Testing
Calendar Year 2021

2021 Testing	
Judicial Districts (JD)	Agencies Selected for Testing
Second	2nd DTF Greene County SO
Seventh	Malvern PD Sheridan PD
Eighth South	Bi-State DTF Miller County SO
Eleventh East	Arkansas County SO Stuttgart PD
Thirteenth	Camden PD Magnolia PD
Fourteenth	Boone County SO Harrison PD
Nineteenth East	Carroll County SO Eureka Springs PD

DTF = Drug Task Force
PD = Police Department
SO = Sheriff's Office

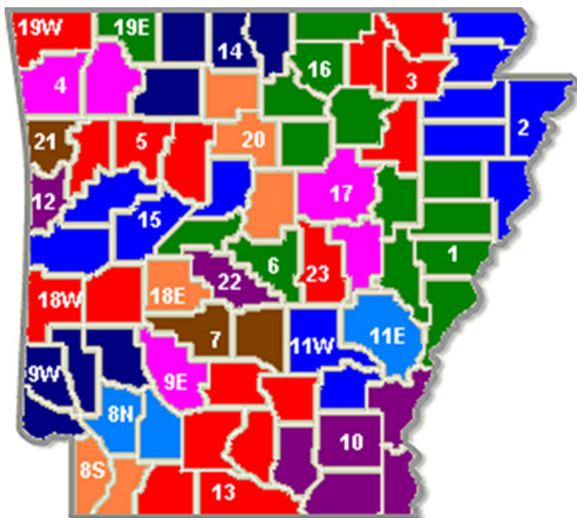
Districts Selected for Testing



Note: Arkansas Legislative Audit (ALA) staff selected 7 of the 28 judicial districts in the State. Two confiscation reports were selected for testing from each district. Results from previous reviews are available on the ALA web site at www.arklegaudit.gov.

Exhibit II

Arkansas Judicial Districts



Source: Arkansas Judicial Directory

BACKGROUND

Ark. Code Ann. § 5-64-505(f) provides that, within 48 hours of an asset seizure, the seizing officer must file with the seizing law enforcement agency an original confiscation report to be maintained in a separate file. Within three business days of receiving the confiscation report, the seizing agency is required to forward a copy of the report to the prosecuting attorney and to the Arkansas Drug Director for entry in ASTS. In turn, the prosecuting attorney has 60 days to file a complaint in Circuit Court listing the seized property. This process is illustrated in **Exhibit III on page 3**.

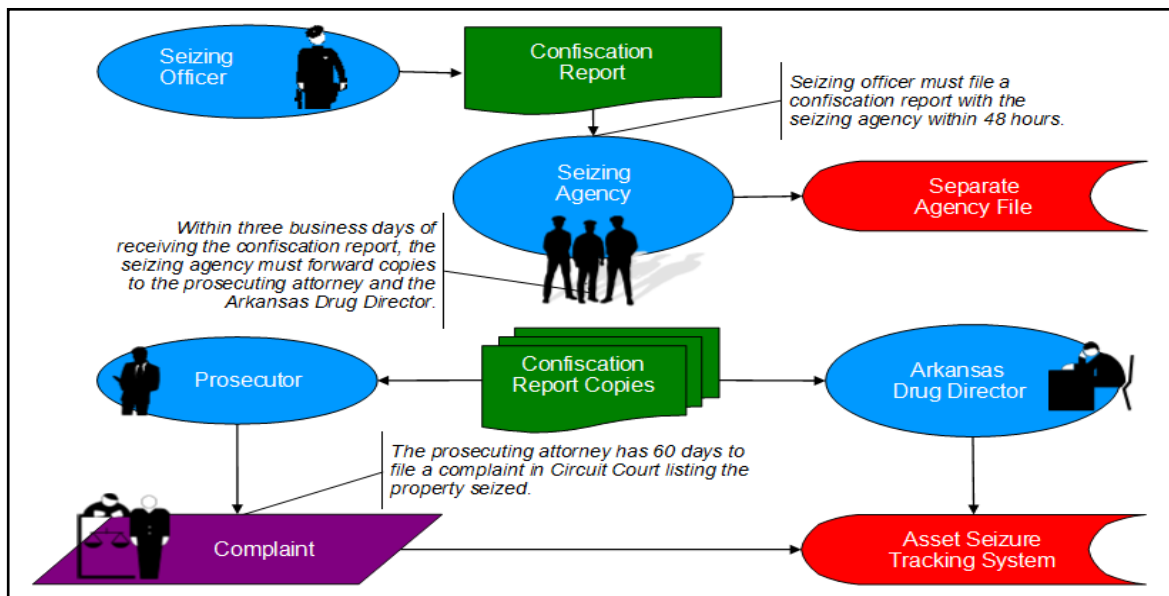
RESULTS OF REVIEW

All assets selected for testing were accounted for; however, exceptions in recordkeeping were noted at 5 of the 14 agencies reviewed:

- The Greene County Sheriff's Office and the Camden Police Department did not maintain adequate seized property inventory records, as required by Ark. Code Ann. § 5-64-505(f)(5).
- The Camden Police Department did not maintain a file of original confiscation reports, as required by Ark. Code Ann. § 5-64-505(f)(2)(C)(ii).
- The Sheridan Police Department did not file a confiscation report with the Arkansas Drug Director within three business days, as required by Ark. Code Ann. § 5-64-505(f)(4).
- According to Ark. Code Ann. § 5-64-505(g)(2), a complaint shall be filed within 60 days after the prosecuting attorney has received the confiscation report. The 14th Judicial District Prosecuting Attorney's Office and the Eureka Springs Police Department, which is in the 19th East Judicial District, were in possession of assets for which a complaint was not filed within 60 days. Both the 14th and the 19th East Judicial District Prosecuting Attorney's Offices have agreed with the finding and have responded with corrective actions. Management responses are provided in their entirety in **Appendix A**.

Exhibit III

Seized Asset Forfeiture Process



Source: Ark. Code Ann. § 5-64-505

FOLLOW-UP MATTERS

For a number of years, ALA staff have been tracking several cases pending disposition. A delay in disposition is typically caused by an agency's inability to return seized property to a defendant because he or she is incarcerated or cannot be located to be notified about the release of the seized property. Other extenuating circumstances may also exist that are beyond the control of the custodial agency.

Listed below are two instances, in which the disposition of a seized asset has not occurred. Due to the length of time that has passed, ALA staff will no longer continue to monitor the asset to its final disposition.

- In May 2016, \$13,500 in cash, one 12ga Winchester, two .233cal Bushmasters, and one .40cal Smith & Wesson were seized from a defendant by the **Hot Spring County Sheriff's Office**. As of April 2022, the cash was still in the possession of the 7th Judicial District Prosecuting Attorney's (PA) Office, and the firearms were still in the possession on the Hot Spring County Sheriff's Office. Discussions with the PA revealed that the defendant was killed during a raid that preceded the seizure. The defendant's mother, who was the heir, passed away during the case proceedings. According to the PA, attempts to locate another heir were unsuccessful. As of April 2022, the PA has notified ALA that a meeting will be scheduled with the deceased defendant's attorney regarding how to proceed with the assets.
- In June 2016, \$2,194 in cash, one .22cal Magnum Research, one 9mm Cobra, one .380cal Jimenez, and one .380cal Bersa Thunder were seized from a defendant by the **Group 6 Drug Task Force** in the 7th Judicial District. As of April 2022, the cash was held by the 7th Judicial District PA's Office, and the firearms were still in the possession on the Group 6 Drug Task Force. Discussions with the PA revealed that an Order of Non Suit was filed on May 28, 2020; however, the assets were still in the possession of the 7th JD PA's Office and the Group 6 Drug Task Force.

Schedule 1

Arkansas Drug Director Asset Seizure Tracking System (ASTS) - Seized Assets For the State's 28 Judicial Districts January 1, 2021 through December 31, 2021					
<i>Judicial District</i>	<i>Currency</i>	<i>Automobiles</i>	<i>Firearms</i>	<i>Other* **</i>	<i>Counties</i>
1st	\$ 112,991	15	2		Cross, Lee, Monroe, Phillips, St. Francis, and Woodruff
2nd	456,470	19	53	5	Clay, Craighead, Crittenden, Greene, Mississippi, and Poinsett
3rd	114,221	22	38	3	Jackson, Lawrence, Randolph, and Sharp
4th	140,150	1			Madison and Washington
5th	286,762	17	13		Franklin, Johnson, and Pope
6th	684,605	18	4	1	Perry and Pulaski
7th	755,696	5	1		Grant and Hot Spring
8th North	76,805	3			Hempstead and Nevada
8th South	59,153	6	4		Lafayette and Miller
9th East	92,158	1	2		Clark
9th West	94,436	12	14		Howard, Little River, Pike, and Sevier
10th	66,808	11	24	14	Ashley, Bradley, Chicot, Desha, and Drew
11th East	3,721	2	3	1	Arkansas
11th West	98,682	5	9	1	Jefferson and Lincoln
12th	217,209	57	29	16	Sebastian
13th	217,385	23	69	2	Calhoun, Cleveland, Columbia, Dallas, Ouachita, and Union
14th	24,590	11	30	2	Baxter, Boone, Marion, and Newton
15th	255,971	27	93	2	Conway, Logan, Scott, and Yell
16th	66,180	6	7		Cleburne, Fulton, Independence, Izard, and Stone
17th	106,378	11	38	5	Prairie and White
18th East	74,089	37		2	Garland
18th West	67,510	14	25	2	Montgomery and Polk
19th East	5,161	2	18		Carroll
19th West	202,453	14	25	2	Benton
20th	101,216	7	3	3	Faulkner, Searcy, and Van Buren
21st	900,518	42	26	6	Crawford
22nd	233,737	1	2	3	Saline
23rd	205,350	11	2	1	Lonoke
Totals	\$ 5,720,405	400	534	71	
*Includes, but is not limited to, all-terrain vehicles, campers, trailers, electronics, jewelry, and real property. **Represents the number of incidents in which these types of items were seized. The Arkansas Drug Director's ASTS Report listing does not provide an actual count of these items.					
\$ 60,782,986		4,778	4,899	10 Year Totals (2012 through 2021)	

Source: Arkansas Drug Director (unaudited by Arkansas Legislative Audit)

Appendix A

Management Responses Fourteenth and Nineteenth East Judicial District Prosecuting Attorneys



DAVID L. ETHREDGE
PROSECUTING ATTORNEY
STATE OF ARKANSAS
FOURTEENTH JUDICIAL DISTRICT
BAXTER – BOONE – MARION – NEWTON



Main Office: 301 E. 6th St., Ste. 170, Mountain Home, AR 72653, ph. (870) 425-2595, fax (870) 425-2596
Boone / Newton County Office: 414 West Central Ave - Suite A, P.O. Box 483, Harrison, AR 72601,
ph. (870) 741-6361, fax (870) 741-6120

May 27, 2022

Mr. Josh Davis
Staff Auditor
Arkansas Legislative Audit
Josh.Davis@arklegaudit.com

Mr. Davis,

This letter is in response to an exception noted in the *Review of Property Seized for Forfeiture Records of the 14th Judicial District Prosecuting Attorney's Office for the year ended December 31, 2021*. Specifically, that my office filed a civil forfeiture complaint seeking the forfeiture of seized property more than 60 days after receiving the confiscation report for the property at issue. To ensure that no such exception occurs in the future, my office will take the following corrective action and initiate the following processes.

A letter will be sent by email and U.S. Mail to each law enforcement agency in our district as well as to the 14th Judicial District Drug Task Force reminding them of the necessity to timely provide both the confiscation notice and a factual basis for pursuing a civil forfeiture action of property seized in the district.

Further, all confiscation reports will be entered on an automated calendar in our offices' (Outlook Calendar) noting the date on which 60 days will have passed from receipt of the confiscation report.

Upon a finding that 60 days has lapsed since our office received the confiscation report, our office will do one of the following:

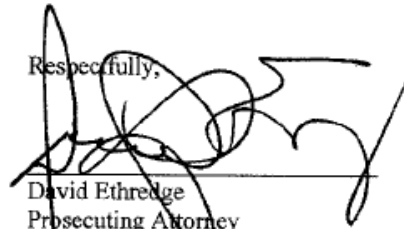
1. Return the seized property as allowed by law;
2. Maintain the property as evidence as required/allowed by law, but not seek civil forfeiture of said property; or,
3. Notify the agency responsible for the confiscation they must provide a reasonable justification as to the delay in providing a factual basis to believe the property either was

Appendix A (Continued)

involved in, or is the proceeds of, criminal violations of the law. Then file the civil forfeiture complaint accompanied by a statement of good cause for filing the complaint beyond 60 days of the subject property being seized.

I greatly appreciate you're letting me know of this issue, and my office will take all necessary and recommended steps to ensure it does not happen again. I would also appreciate your letting the LJAC know of the corrective action and processes outlined above, which I intend to implement immediately.

Respectfully,



David Ethredge
Prosecuting Attorney
14th Judicial District
State of Arkansas

CHIEF DEPUTY PROSECUTING ATTORNEY
CRAIG PARKER

202 NORTH SPRINGFIELD
P.O. BOX 536
BERRYVILLE, AR 72616

STATE OF ARKANSAS
CARROLL COUNTY



19TH JUDICIAL DISTRICT - EAST

ROBERT T. ROGERS, II

PROSECUTING ATTORNEY

DEPUTY PROSECUTING ATTORNEY
THOMAS ALLGOOD

PHONE: 870-423-6869
FAX: 870-423-6624

June 3, 2022

VIA EMAIL: joshua.davis@arklegaudit.gov

Joshua Davis
Arkansas Legislative Audit
State Capitol
500 Woodlane St., Ste. 172
Little Rock, AR 72201-1099

RE: Christopher Mulholland
Uniform Controlled Substances Act, Asset Forfeiture Special Report of 5/2/22
Response by Chief Deputy Prosecuting Attorney, 19th-East Judicial District

Mr. Davis:

I am writing this in reply to your office's report concerning an open civil forfeiture matter relating to Christopher Mulholland which was initiated by a seizure of property by the Eureka Springs Police Department. While I note that your report formally addresses the Eureka Springs Police Department, I – Chief Deputy Prosecuting Attorney for the 19th-East Judicial District of the State of Arkansas – am responsible for not filing a Petition in this matter within the time constraints imposed by statute.

I. POSTURE OF CHRISTOPHER MULHOLLAND FORFEITURE CASES

Subsequent to receipt of your report (a copy of which is attached for your review), I commenced an examination of several of our open civil forfeiture files to determine their status, and to determine what further actions each required.

Christopher Mulholland presently has two open civil forfeiture files in our office. The identifying information and posture of each is as follows:

Re: Christopher Mulholland Special Report

June 3, 2022
Page 2 of 3

MULHOLLAND, Christopher
OADD Tracking: 0398-21-19E-169
(not filed)
LEO: ESPD
4/1/21: JCP signed and dated acknowledgment of receipt
6/3/22: State has not yet filed its Petition.
428 days have elapsed since seizure, exceeding filing deadline.
NOT PROCEEDING: ADVISE OADD, LEO & DEFENSE ATTY VIA LETTER

MULHOLLAND, Christopher
OADD Tracking: 0573-21-19E-169
(not filed)
LEO: ESPD
5/4/21: JCP signed and dated acknowledgment of receipt
6/3/22: State has not yet filed its Petition.
395 days have elapsed since seizure, exceeding filing deadline.
NOT PROCEEDING: ADVISE OADD, LEO & DEFENSE ATTY VIA LETTER

I would note that provisions concerning these seizures were made in a comprehensive plea agreement disposing of several felony offenses committed by Mr. Mulholland some time ago. Specifically, Mr. Mulholland agreed to cooperate fully with the separate civil forfeiture proceedings the State intended at that time to pursue. However, that Agreement does not appear to cure my failure timely to file Petitions in the above cases; and accordingly, in each case, I will notify the Office of the Arkansas Drug Director, the Eureka Springs Police Department, and counsel for the Defendant, via separate letters, that the State will not be proceeding with forfeiture actions in the above cases.

II. PROPOSED CORRECTIVE ACTION BY OUR OFFICE

I concur with your report's "recommend[ation] that corrective action" be taken to prevent a recurrence of noncompliance with certain provisions of our Uniform Controlled Substances Act (specifically, the Prosecutor missing or exceeding the 60 [or for good cause only, 120]-day filing deadline for Petitions in civil forfeiture cases). I can say plainly that such deadlines would never be missed by our office if known to be approaching; and accordingly, effective corrective action will entail (a) making certain the deadlines are calculated, noted and known, and (b) exceeded, in terms of timely filing, by a healthy margin.

Re: Christopher Mulholland Special Report

June 3, 2022
Page 3 of 3

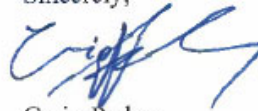
I propose implementation of the following corrective actions:

- (1) Inform principal paralegals in the Office of the Prosecuting Attorney for our district of the time requirements (and the importance of observing those time requirements) for filing civil forfeitures, principally for those instances in which acknowledgments are executed by attorneys in our office other than the attorney responsible for pursuing civil forfeitures.
- (2) For the attorney responsible for pursuing civil forfeitures, institute use of a paper calendar to be used, *inter alia*, to record civil forfeiture filing deadlines, and commit to its daily review and revision.
- (3) Institute an office policy requiring the filing of petitions in civil forfeiture cases within 5 business days of receipt by our office whenever possible.

The above proposals have been implemented in our office since approximately May 9, 2022.

Thank you for your time. Should you have further questions, please do not hesitate to contact me.

Sincerely,



Craig Parker
Chief Deputy Prosecuting Attorney
19th-East Judicial District
State of Arkansas

Encl.

cc: Robert T. Rogers, II
Josh Jackson, Eureka Springs Police Department

