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# PAY THE RENT OR FACE ARREST

Abusive Impacts of Arkansas's Draconian Evictions Law



# **Pay the Rent or Face Arrest**

**Abusive Impacts of Arkansas's Draconian Evictions Law**

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# Pay the Rent or Face Arrest

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## Summary

One summer evening in Little Rock, a middle-aged couple named Steve and Angela were preparing for Bible study class when there was a knock at the door. Steve answered and found two police officers standing outside with a warrant for their arrest. Angela fainted on the spot. The couple had been two weeks late paying the rent and when their landlord ordered them out within ten days, they had not moved fast enough. In Arkansas, that is a crime.

Arkansas is the only US state where tenants can end up as convicted criminals because they did not pay their rent on time. The state's unique "failure to vacate" law sees tenants charged as criminals purely on their landlords' say-so, without any independent investigation by prosecutors. Tenants who run afoul of the law face fines—sometimes in excess of the rent they could not pay to begin with—as well as possible jail time, and can be saddled with a criminal record. On top of all that, the law is written in a way that tramples on tenants' due process rights, punishing those who do not plead guilty with harsher sentences.

Every other US state treats evictions as a purely civil matter. In those jurisdictions, aggrieved landlords can use the courts to force out tenants who no longer have lawful claim to occupancy and claim any damages that might be owed them, but they cannot have tenants arrested and charged with crimes for failing to pay rent in a timely manner. But an Arkansas tenant who fails to pay their rent on time—even if they are only a day late—can be evicted on 10 days' notice. If they have not moved out at the end of those 10 days, their landlord can have a warrant issued for their arrest and see them charged with a misdemeanor offense that operates as if it imposed strict and absolute liability.

Arkansas's draconian criminal evictions law allows landlords to evict tenants if they fail to pay their rent on time and then have them charged as criminals if they have not vacated the property within 10 days. That law, along with the many abuses that flow from its application and at least occasional misuse, is the subject of this report. In researching this report, Human Rights Watch conducted interviews in Little Rock, North Little Rock, Cabot, and West Memphis. Those interviewed included tenants, landlords, a district judge, attorneys, and independent legal experts.

Proponents of the criminal evictions law say it is a useful tool to remove abusive tenants who refuse to move out even though they cannot or will not pay their rent. Arkansas landlords inevitably have their fair share of tenant horror stories, just like landlords everywhere do. But roughly a third of all Arkansans are renters. Working families hit with job losses or other sudden economic distress; longtime renters who were only a week or two behind; and even people whose only “crime” was getting on the bad side of a vindictive landlord are all hauled into criminal court.

Many accused tenants do not understand the law they are being charged under and most face trial without legal representation. They sit in court alongside accused murderers and thieves waiting for their cases to be called. Some leave court with criminal records after hearings that last less than five minutes. Many others are intimidated into moving out even when they do not feel they have broken the law, because the only way they can have their day in court is to wait for police officers to arrive at their door with an arrest warrant.

Once in court, some tenants go before the judge armed with folders overstuffed with documents. With little or no knowledge of the law they are being charged under, they make the mistaken assumption that they will have a chance to tell their side of a complicated story. Some tenants withhold rent to try and press an abusive landlord to repair a broken hot water heater, or a leaky roof. Others have far more complicated stories to tell. But under Arkansas law none of this is relevant, so many judges cut tenants off before they can utter a word of the stories they wanted the court to hear. The only questions legally relevant to a judge are, “Did you pay the rent on time?” and “Are you out?” Human Rights Watch met tenants in the hallways outside their courtrooms who seemed stunned and sometimes outraged—but mostly incredulous to learn that, just by staying in their homes while waiting for their day in court, they had actually committed a crime.

For all practical purposes, the criminal evictions law operates as if the renter bears strict and absolute liability. Although the law refers to situations where the renter “willfully” refuses to vacate a property, when it comes to determining criminal guilt, the judge only assesses if the two constituent acts of the offence—failure to pay on time and failure to leave the property within ten days of notice—have been met.

The law also turns prosecutors into the personal attorneys of aggrieved landlords—at taxpayer expense. At the same time, for some tenants, the law has the practical effect of

criminalizing economic hardship at a time when many are struggling to cope with the impacts of a bad economy.

The law is completely indifferent to the circumstances that might have led to a late rent payment, or a tenant's inability to move out within 10 days of getting notice. The law imposes fines that can exceed the rent payments tenants could not scrape together in the first place, potentially plunging people even deeper into financial distress. Human Rights Watch saw one woman sentenced to probation even though she said she had been in the hospital after suffering a stroke when the eviction notice was served against her.

The law can sometimes be even more abusive in practice than it is on paper. Some judges are respectful of the people who appear before them in court and others are not. Human Rights Watch saw one district judge shout down a woman who tried to explain her side of a rent dispute and compare her to a bank robber.

What's much worse, in some cases, unscrupulous landlords are able to exploit the credulity with which many prosecutors treat their assertions to wrongfully evict or otherwise harass tenants. The criminal evictions process is initiated by the landlord filling out an affidavit, and many counties issue arrest warrants and file criminal charges purely on the say-so of the landlord, without any further investigation. Human Rights Watch documented one case where a landlord had her tenant hauled up on criminal charges even though she only gave her three days to vacate rather than the ten required by law. In another case, a man in West Memphis managed to get criminal charges filed repeatedly against a woman he had actually *sold* a house to by claiming that she was a tenant who had stopped paying rent.

Even within the bounds of legality, creative landlords have at least some latitude to use the law against tenants in ways its authors probably never contemplated. For instance, one Little Rock attorney's website advises landlords that the state's criminal evictions law can be used to circumvent federal laws that bar them from evicting active duty service members while they are serving overseas. A landlord who uses the civil evictions process to do the same thing could find themselves facing federal criminal charges.

The criminal evictions law's most draconian provisions are not universally applied. The law is badly written and requires a certain amount of improvisation by the district judges



called upon to implement it. Different judges handle this in different ways—there may well be no two courts in Arkansas that apply the statute in exactly the same way. Many district judges deal with criminal evictions cases in ways that are entirely inconsistent with what the law actually requires. Some judges depart from the law out of a desire to help accused tenants, but in some cases the prevailing norm of judicial improvisation makes the criminal evictions law even more capricious and arbitrary than it is already. A tenant’s fate in court can depend as much on the whims of the judge before whom they appear as it does on the letter of the law.

Some prosecutors refuse to apply the criminal evictions statute altogether. Some district judges find the law so extreme that they modify or ignore its harshest provisions, without any legal justification. Others bend over backwards to avoid convicting anyone at all—some tell the tenants who appear before them in court that they will dismiss all of the charges against them if they vacate their residence within the next week. The law does not make provision for this, but landlords have not been vocal in objecting. They achieve the goal of regaining possession of their property cheaply and quickly, and may have little interest in punishing their tenants as criminals.

On the other hand, some courts regularly impose guilty verdicts and hand down fines that can exceed US\$400. In at least one city—Jacksonville—tenants charged under the law are subjected to pretrial detention. And some judges issue orders of restitution compelling convicted tenants to pay their landlords the money allegedly owed them even if they plead guilty—an outcome that would be perfectly at place in civil court, but is contemplated nowhere in the actual text of the criminal evictions law.

Statewide data on the application of the statute does not exist. As a result no one actually knows what the full range of judicial practice is with criminal evictions cases, or even how many tenants are convicted or what sentences they face. What is clear is that the law applies to some 900,000 renters and is used every day in courts across Arkansas. Landlords’ representatives estimate that it is used to effect a large majority of the evictions that take place across the state every year.

Human Rights Watch, working in partnership with a faculty member at the University of Arkansas law school, was able to determine that over 1,200 people were charged under Arkansas’ criminal evictions law in 2012—and that figure leaves many counties wholly

unaccounted for. Over 100 of those tenants were ultimately convicted of a crime; in hundreds of other cases, courts or prosecutors let the charges drop if tenants agreed to move out of their homes immediately.

Arkansas's legislature should promptly repeal its abusive criminal evictions law. It violates the basic human rights of tenants, and is out of step with US legal norms. But the political weight of the state's landlords' lobby means that the likelihood of reform will depend on the support—or least quiet acceptance—of a significant proportion of the state's landlords.

Many Arkansas landlords contend that the only reason they rely on the criminal evictions statute is the state's lack of a viable civil evictions process. While Arkansas does have a civil evictions statute, landlords complain that it is slow, expensive, and cumbersome relative to those in other states. The civil process is avoided at all costs by many landlords. Landlords argue that the costs they incur pursuing a civil eviction in Arkansas can sometimes dwarf the revenues they stand to earn from the property they want to regain. If that argument is valid, the solution is to improve the civil process, not to rely instead on an abusive criminal statute.

A potential solution is already on the table. In 2011, the Arkansas state legislature set up the Non-Legislative Commission on the Study of Landlord-Tenant Laws to compare the state's legal framework with norms in other states. The commission—whose members included landlords, realtors, independent legal experts, and others—recommended that the state legislature should scrap the criminal evictions law *and* streamline Arkansas' civil evictions law to make it a more practical tool for landlords while still respecting the rights of tenants. It also recommended a number of other key steps to modernize Arkansas' outmoded legal framework.

This is a reasonable compromise and the state legislature should take up the commission's recommendations. But the criminal evictions law should be taken off the books during the state's 2013 legislative session, regardless of how long it takes to reform the civil process. It is an abusive statute that serves no defensible public purpose. If Arkansas landlords want the two steps be taken simultaneously, they should encourage legislators to fast-track changes to the civil evictions process rather than delay repeal of the criminal evictions statute.

## **Recommendations**

### **To the State of Arkansas**

- Repeal section 18-16-101 of the Arkansas Code—the “failure to vacate” statute described in this report—in its entirety during the state’s 2013 legislative session.
- Until such time as section 18-16-101 is repealed, require district courts to regularly report to the Administrative Office of the Courts the number of cases under the law they hear and the verdicts and sentences, if any, they hand down in those cases.
- Act on the full range of recommendations issued by Arkansas’ Non-Legislative Commission on the Study of Landlord-Tenant Laws, including proposals aimed at modernizing the civil evictions process and establishing legal recognition of a warranty of habitability.

### **To the Landlords Association of Arkansas**

- Urge Arkansas landlords to express strong support for prompt legislative action to adopt the full range of recommendations issued by the Non-Legislative Commission on the Study of Landlord-Tenant Laws.

## Methodology

This report focuses on Arkansas' draconian criminal evictions law which allows landlords to evict tenants if they fail to pay their rent on time and then have them charged as criminals if they have not vacated the property within 10 days, along with the many abuses that flow from its application. For this research, Human Rights Watch carried out 20 interviews in Little Rock, North Little Rock, Cabot, and West Memphis, and two additional interviews conducted by phone. Those interviewed included tenants charged under the Arkansas criminal evictions law, landlords, a district judge, attorneys including legal aid lawyers, a city attorney and a former prosecutor, and independent legal experts including the vice chair and another member of Arkansas' Non-Legislative Commission on the Study of Landlord-Tenant Laws.

The names of some interviewees have been withheld or replaced with pseudonyms at their request. Human Rights Watch also observed district court sessions in Little Rock, North Little Rock, and West Memphis when criminal evictions cases were being heard and interviewed some of the accused following their hearings. The report also draws on an extensive review of existing literature on the criminal evictions law and on landlord-tenant law in Arkansas more broadly, including the report of the state's Non-Legislative Commission on the Study of Landlord-Tenant Laws.

Because neither the courts nor any other state agency maintains any sort of baseline data on the application of the criminal evictions law across Arkansas, Human Rights Watch also collaborated with a faculty member at the University of Arkansas Little Rock to obtain data on the number and disposition of criminal evictions cases dealt with by 17 district courts across the state, including four district courts (Little Rock, North Little Rock, Springdale, and Hot Springs) that between them appear to hear a majority of all the failure to vacate cases that are heard across Arkansas each year (those four courts heard approximately 870 failure to vacate cases in total during 2012).

This work was done by law students who visited each of those district courts and reviewed their dockets for 2012 in order to determine how many criminal evictions cases were heard during that period and how those cases were dealt with by the courts. In addition to this, the district court in Little Rock and the city attorney in Springdale provided additional information about the nature and handling of failure to vacate caseloads in those localities.

## Background: Landlord-Tenant Law in Arkansas

Arkansas' landlord-tenant law is extremely favorable to landlords.<sup>1</sup> Relative to other US states, Arkansas offers very few rights or other legal assurances to tenants—with very real impacts on the 33 percent of Arkansans who live in rental properties.<sup>2</sup> Some of the more important examples of what this means in practice are as follows:

- Arkansas is the only US state that does not recognize a “warranty of habitability” implicit in every residential rental agreement.<sup>3</sup> This means that unless specifically stated in the lease, Arkansas landlords are under no contractual obligation to provide their tenants with a property that is safe, sanitary, and fit for human habitation. Tenants in Arkansas cannot go to court to compel their landlords to provide heat or hot water, for instance, or prevent the property they are renting from deteriorating to the point where it becomes a health and safety hazard. Nor can they deduct money from their rent in order to carry out such repairs themselves.<sup>4</sup>
- Arkansas does not recognize the doctrine of unconscionability in rental agreements—the notion that some lease terms may be so manifestly unjust or contrary to public policy that courts will not enforce them. This puts tenants, who

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<sup>1</sup> For a broad critique of Arkansas landlord-tenant law from a tenants' rights perspective, see Marshall Prettyman, “The Landlord Protection Act, Arkansas Code § 18-17-101 et seq.” *Arkansas Law Notes*, 2008, <http://lawnotes.law.uark.edu/wp-content/uploads/Prettyman-The-Landlord-Protection-Act-Arkansas-Law-Notes-2008.pdf> (accessed December 12, 2012), pp. 71-82.

<sup>2</sup> US Census Bureau, “Census Bureau Releases 2010 Census Demographic Profiles for the United States, Arkansas, Illinois, Indiana, Iowa, Louisiana, Maryland, New Jersey, Oklahoma, Oregon, South Dakota, Texas, Vermont and Virginia,” May 26, 2011, [http://www.census.gov/newsroom/releases/archives/2010\\_census/cb11-cn144.html](http://www.census.gov/newsroom/releases/archives/2010_census/cb11-cn144.html) (accessed January 28, 2013). For more census data on homeownership and renting in Arkansas, see US Census Bureau, “2010 Census Interactive Population Search, Arkansas, Housing Status” 2011, <http://www.census.gov/2010census/popmap/ipmtext.php?fl=05>, (accessed January 28, 2013).

<sup>3</sup> Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” December 31, 2012, <http://www.arkansasjustice.org/sites/default/files/file%20attachments/Landlord-Tenant%20Commission%20Report.pdf>, (accessed January 23, 2013), p. 19. Arkansas law does recognize a warranty of habitability for home buyers, but not for renters. *Ibid.* p. 19.

<sup>4</sup> *Ibid.* See also Prettyman, “The Landlord Protection Act,” *Arkansas Law Notes*, pp. 75-76. While tenants have no recourse for unsafe conditions, they can report landlords to local authorities for violations of housing codes, and code enforcement officials may fine landlords for violations. However not all Arkansas municipalities actually have housing codes. Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 20.

often are not equipped to read and understand a complex lease agreement with many pages of fine print, at real risk of exploitation and abuse.<sup>5</sup>

- Once a tenant moves in, Arkansas law gives their landlord the right to enter their home without permission in an unusually wide variety of circumstances—including where they wish to “investigate possible criminal activity” by a tenant.<sup>6</sup>

Arkansas’ lopsided legal framework is largely the product of the Residential Landlord and Tenant Act of 2007.<sup>7</sup> That act was supposedly based on the Uniform Residential Landlord and Tenant Act (URLTA), a model statute that many states have either adopted or used as a guide for writing their own laws.<sup>8</sup> The URLTA attempts to strike a balance between the rights of tenants and the rights of landlords that is both equitable and consistent with good public policy.<sup>9</sup> But the Arkansas state legislature purged the URLTA of almost all references to the rights of tenants and the obligations of landlords before adopting most of what remained.<sup>10</sup>

The result is a legal framework that requires a great deal of tenants and virtually nothing of their landlords. Tenants are required to keep plumbing fixtures clean, but landlords are not required to maintain them. Tenants are required to keep their units clean and safe, but landlords are not required to do the same for a building’s common areas. In addition to being lopsided, some of the legal obligations Arkansas imposes on tenants are rendered somewhat nonsensical by the absence of reciprocal obligations the URLTA would impose on landlords. For instance, tenants are required to dispose of refuse safely, but landlords are not required to provide any garbage receptacles to make this possible.<sup>11</sup>

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<sup>5</sup> See Prettyman, “The Landlord Protection Act,” *Arkansas Law Notes*, pp. 72-73.

<sup>6</sup> Arkansas Code (Ark Code), 18-17-602(a).

<sup>7</sup> Arkansas Residential Landlord-Tenant Act of 2007, Act No. 1004 of 2007.

<sup>8</sup> See Uniform Residential Landlord and Tenant Act (URLTA), National Conference of Commissioners on Uniform State Laws, 1974. For a list of states that have enacted or are considering enacting the URLTA, see Uniform Laws Commission, “Residential Landlord and Tenant Act, Enactment Status Map,” 2012, <http://uniformlaws.org/Act.aspx?title=Residential%20Landlord%20and%20Tenant%20Act>, (accessed December 12, 2012).

<sup>9</sup> See URLTA, sec. 1.102.

<sup>10</sup> See Prettyman, “The Landlord Protection Act,” *Arkansas Law Notes*, pp. 72-82; Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” pp. 24-25.

<sup>11</sup> Ark Code 18-17-601. See also Prettyman, “The Landlord Protection Act,” *Arkansas Law Notes*, p. 75.

## Evictions in Arkansas

Unsurprisingly, the law relevant to evictions in Arkansas is in many ways extremely favorable to landlords. Arkansas is one of just 13 states with no statute criminalizing “self-help” evictions, where a landlord eschews a formal eviction and instead attempts to force an unwanted tenant out of their residence by changing the locks, removing the tenant’s property, and so on.<sup>12</sup> Similarly, most state governments forbid “retaliatory evictions”—situations where a landlord evicts a tenant to punish them for exercising their legal rights, for instance by complaining about housing code violations.<sup>13</sup> Arkansas law forbids retaliatory evictions only in limited cases that involve lead poisoning.<sup>14</sup>

All that said, Arkansas landlords complain that the state’s civil evictions procedures are slow, cumbersome, and expensive.<sup>15</sup> Landlords may have the law on their side, but it can take a long time for that law to help them regain possession of their property and involves considerable expense.

Arkansas actually has two different laws laying out civil evictions processes but landlords complain that neither is particularly useful. Landlords see the first as so cumbersome that many bend over backwards to avoid it. The other was so badly drafted that it is legally unusable.<sup>16</sup>

Arkansas’ unlawful detainer statute allows a landlord to evict a tenant on three days’ notice for failure to pay rent or a handful of other enumerated transgressions.<sup>17</sup> But landlords and legal experts generally agree that process is too legally complicated for most

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<sup>12</sup> The Arkansas Supreme Court, however, has ruled that self-help evictions are illegal, and tenants—if they can afford an attorney—can bring civil suits against landlords who engage in the practice. *Gorman v. Ratliff*, 289 Ark. 332, 712 S.W.2d 888 (1986). Thirty seven states have statutes criminalizing self-help evictions and several others have made self-help evictions illegal through case law. Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 17.

<sup>13</sup> *Ibid*, pp. 17-18.

<sup>14</sup> Ark. Code 20-27-608. This statute was enacted as part of state government efforts to combat and prevent lead poisoning, and appears to have been adopted with little thought as to whether it was broadly consistent with Arkansas landlord-tenant law.

<sup>15</sup> Human Rights Watch interviews with landlords, Little Rock, Arkansas, August 2012. Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” pp. 8-10.

<sup>16</sup> For a broader discussion of both procedures, see *Ibid*, pp. 8-14.

<sup>17</sup> Ark Code 18-60-301 et seq.

landlords to handle pro se, meaning that they must incur the expense of hiring an attorney. And because those cases are heard exclusively in Arkansas’s higher-level circuit courts rather than in local-level district courts, they move quite slowly—which can impose its own costs in the form of unpaid rent that landlords may never actually manage to recover.<sup>18</sup> These are real issues. As one landlord told Human Rights Watch, “You might rent [out] a trailer and make only \$2,400 a year off of it. And then you blow it all on an eviction.”<sup>19</sup> The practical result of these complaints is that many residential landlords avoid using the unlawful detainer process at all costs. One district court judge called the statute “archaic and cumbersome,” adding, “they might as well take it off the books.”<sup>20</sup>

Arkansas created a second civil evictions procedure in 2007 in an attempt to address these problems.<sup>21</sup> On paper it is quite favorable to landlords. For example, it allows them to immediately terminate a rental agreement if a tenant is five days behind on their rent. The tenant has no opportunity to bring the rent current, they must simply leave.<sup>22</sup> However, the statute purports to assign jurisdiction over these evictions cases to local-level district courts. That might be a good way to make the process cheaper and more accessible to landlords, but it is not something the state legislature actually has the power to do. Under Arkansas’ constitution, the state supreme court has the sole power to determine what kinds of cases district courts can hear, and civil evictions cases are not on the list.<sup>23</sup> As a result, the law is completely unusable.<sup>24</sup>

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<sup>18</sup> Human Rights Watch interviews with landlords and attorneys, Little Rock, Arkansas, August 2012. Filing fees are also more expensive in circuit court than in district court—\$165 as opposed to \$65. Technically, circuit courts can transfer unlawful detainer cases to the district courts—but they would still need to be filed in circuit court as an initial matter. In any case, it is not clear whether this power is ever used.

<sup>19</sup> Human Rights Watch interview with Howard Warren, Landlords Association of Arkansas, Little Rock, Arkansas, August 27, 2012.

<sup>20</sup> Human Rights Watch interview with District Judge (name withheld), Arkansas, August 2012.

<sup>21</sup> Ark Code 18-17-902.

<sup>22</sup> Ark Code 18-17-902. This is a much harsher version of a procedure contained in the URLTA, which allows landlords to notify a tenant that they will be evicted in 14 days if their rent is not brought current. URLTA, sec. 4.201. For more on Arkansas’ 2007 civil evictions procedure and the ways it neglects tenants rights in favor of landlords prerogatives, see Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 14.

<sup>23</sup> Constitution of the State of Arkansas, Amendment 80; State Supreme Court Administrative Rule 18.

<sup>24</sup> Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 13.



Arkansas does have one other evictions law on the books: the only one of its kind anywhere in the United States. The state's draconian criminal evictions law allows landlords to evict tenants if they fail to pay their rent on time and then have them charged as criminals if they have not vacated the property within 10 days. That law, along with the many abuses that flow from its application and at least occasional misuse, is the subject of this report.

# The Crime of Not Paying Rent

## Overview of the Law

Arkansas is the only US state where a tenant can go to jail as a consequence of failing to pay their rent on time.

Under state law, a landlord can require any residential tenant who fails to pay their rent in full and on time to move out. Once the landlord exercises this right by posting notice, the tenant has exactly 10 days to get out.<sup>25</sup> Any tenant who fails to move out within that 10 day window can be arrested, tried, and convicted of a misdemeanor criminal offense.<sup>26</sup> It does not matter why they failed to pay their rent on time, and it does not matter if they were only late by a single day.

The logic behind the criminal evictions law is simple enough. The tenant who continues to occupy a home that he or she has not paid the rent for is essentially stealing the use of that property from its rightful owner. The law does not contemplate the possibility that a tenant could be *unable* to move out within the 10 day notice period for some reason. It assumes that if they have not vacated by the end of those 10 days it is because they have *refused* to do so. The crime the law establishes is “failure to pay rent/refusal to vacate upon notice.”<sup>27</sup>

Supporters and critics of the criminal evictions law both point out that it effectively transforms public prosecutors into landlords’ personal attorneys. Depending on one’s perspective, this is either an egregious misuse of taxpayer resources or a useful government service. One Little Rock landlord and attorney who is supportive of the criminal evictions statute put it this way: “The reality is, landlords are cheap bastards and

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<sup>25</sup> Technically, this is not an “eviction.” The law takes the view that the lease agreement between landlord and tenant is terminated by the tenant’s failure to pay rent. The tenant then “shall at once forfeit all right to longer occupy” the rented property. Ark Code 18-16-101 (2012) sec (a). For the sake of simplicity, this report refers regularly to the statute as Arkansas’ “criminal evictions law”—which is exactly what it is for all practical purposes.

<sup>26</sup> Ark Code 18-16-101.

<sup>27</sup> Ark Code 18-16-101.

the margins you make are too small to hire an attorney to handle an eviction.... Effectively what this does is, it makes the prosecuting attorney *their* attorney.”<sup>28</sup>

Unlike Arkansas’ convoluted civil evictions procedures, for landlords, the criminal process is fast, cheap, and easy to use. Practices vary according to county, and as discussed below some county prosecutors refuse to enforce the law at all. But in most jurisdictions that do enforce the statute, a landlord need only file an affidavit with their county prosecutor or city attorney stating that: (1) a tenant did not pay their rent on time and (2) the tenant failed to vacate within the 10 day notice period. In counties that enforce the law, a warrant will then be issued for the tenant’s arrest almost automatically.<sup>29</sup>

In most Arkansas counties, law enforcement officers usually release accused tenants on personal recognizance agreements rather than subjecting them to pretrial detention and a bail hearing.<sup>30</sup> But in Jacksonville, tenants facing failure to vacate charges are regularly detained and then held in pretrial detention unless they can make bail payments that are typically set at around \$250. Other courts may—or may not—do the same.<sup>31</sup> As discussed in more detail below, statewide data simply does not exist.

Once in court, the only way a tenant can defend themselves against a failure to pay rent or refusal to vacate charge is to argue either that they did in fact pay their rent on time, or that they were not given a full 10 days’ notice when they were evicted. All other facts are irrelevant. The law calls for guilty tenants to be convicted on misdemeanor charges and sentenced to a fine of \$25 for every day they have remained in the property beyond the 10 day notice period.<sup>32</sup>

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<sup>28</sup> Human Rights Watch interview with Jason Bolden, Little Rock, landlord and attorney, Arkansas, August 28, 2012.

<sup>29</sup> Human Rights Watch interviews with attorneys and legal experts, Little Rock, Arkansas, August 2012. See also Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 15.

<sup>30</sup> Human Rights Watch interviews with attorneys and legal experts, Little Rock, Arkansas, August 2012. See also Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House.” Under Arkansas law a failure to appear in court, or unauthorized departure from the state, after being released on personal recognizance in a misdemeanor case is punishable with a \$1,000 fine, one year in jail or both. Ark Code 43-723-1.

<sup>31</sup> Data on file with Human Rights Watch.

<sup>32</sup> Ark Code 18-16-101 (b).

The statute also imposes much harsher sentences on tenants who refuse to plead guilty. These provisions—and their questionable legality—are discussed in more detail below.<sup>33</sup>

## A Primary Tool for Landlords

Arkansas' criminal evictions law is very widely used. Jason Bolden, a Little Rock attorney who “handle[s] evictions for a living” and owns 60 rental properties himself, estimated to Human Rights Watch that “90 percent of evictions in this state happen through the criminal evictions process.”<sup>34</sup> That percentage is admittedly no more than a guess, and statewide data does not exist. However, the idea that the criminal evictions law is used to effect many more evictions across the state than the civil court process seems to be uncontested.

Landlords' heavy reliance on the criminal evictions law translates into over 1,000 criminal charges every year. The district court in Pulaski County— home to the state capital Little Rock—heard 599 criminal evictions cases in 2011 and 475 in 2012.<sup>35</sup> Statewide statistics do not exist, but acting in partnership with the law school at University of Arkansas Little Rock, Human Rights Watch was able to obtain data from 17 district courts including four (Little Rock, North Little Rock, Springdale, and Hot Springs) that together almost certainly account for a majority of the state's entire caseload of criminal evictions cases.<sup>36</sup> All told, these 11 district courts saw over 1,200 separate criminal evictions cases in 2012.<sup>37</sup>

In all likelihood, these figures vastly understate the number of cases where landlords use the criminal evictions law to get a tenant out of their property. As discussed below, in most cases, tenants simply find a way to move out before the 10 day notice period expires, so no charges are ever filed.<sup>38</sup>

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<sup>33</sup> See below, Steep Price for a Day in Court.

<sup>34</sup> Human Rights Watch interview with Jason Bolden, Little Rock, Arkansas, August 28, 2012.

<sup>35</sup> Data on file with Human Rights Watch.

<sup>36</sup> In addition to Little Rock's 475, Springdale had 100 cases in 2012, Hot Springs had 293, and North Little Rock had 104. Most other district courts—many of which serve much smaller, more rural populations—had vastly lower numbers of cases, often less than 10 over the course of the entire year. The other district courts surveyed were in West Memphis, Searcy County (two different courts), Malvern, Batesville, Fort Smith, Russellville, Arkadelphia, Forrest City, Osceola, Blytheville, Jacksonville, and Jonesboro. Data on file with Human Rights Watch.

<sup>37</sup> Data on file with Human Rights Watch.

<sup>38</sup> See below, Steep Price for a Day in Court.

## An Abusive Law

Defenders of the criminal evictions law portray it as a straightforward tool that landlords need to help them deal with tenants who are either too poor or irresponsible to pay their rent, but expect to continue living in their homes for free. Chatting with a Human Rights Watch researcher outside of criminal court in Little Rock on a morning when several criminal evictions cases were on the docket, one attorney quipped, “If they had just paid their rent on time, they would not be here.”<sup>39</sup>

Reality is far less simple and quite a bit grimmer. Arkansas’ criminal evictions law tramples on the fundamental rights of tenants. Quite apart from whether it can be justified to use the criminal law for evictions over the civil law, the Arkansas law denies renters due process; harshly penalizes them for trying to exercise their right to a fair trial; criminalizes simple nonperformance of a civil contract; and fails to provide appropriate legal protection against arbitrary or unlawful interference with renters’ privacy, homes, and families.<sup>40</sup> In some cases, the law labels tenants criminals because they become entangled in rent disputes they incorrectly but honestly think they are on the right side of. Making all of this even worse is the ease with which unscrupulous landlords can exploit the law to have criminal charges brought against people who they *know* have not violated the statute.

### Steep Price for a Day in Court

Those familiar with the operation of the law estimate that only a minority of the cases where landlords use the criminal law’s 10 day notice procedure to evict a tenant result in criminal charges or a court hearing.<sup>41</sup> Most tenants find a way to vacate before the 10 day notice period expires, so criminal charges are never filed. As Howard Warren of the landlords’ association put it, “Usually by day nine there is a U-Haul there.”<sup>42</sup> Little Rock landlord and attorney Jason Bolden argued that this proves the law is not as “ominous” as it sounds on paper: “80 percent or more of tenants vacate within that [10 day]

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<sup>39</sup> Human Rights Watch interview with attorney (name withheld), Little Rock, Arkansas, August 29, 2012.

<sup>40</sup> See below, Violations of Legal and Human Rights Norms.

<sup>41</sup> Human Rights Watch interviews with attorneys, landlords, and legal experts, Arkansas, August 2012.

<sup>42</sup> Human Rights Watch interview with Howard Warren, Little Rock, Arkansas, August 27, 2012.

period ... [it] gives tenants enough time to move voluntarily—which is why they are moving without coming to court.”<sup>43</sup>

Such arguments ignore the fact that the criminal evictions law strongly and explicitly discourages tenants from trying to *have* their day in court. The only way a tenant can contest their landlord’s efforts to evict them using the criminal evictions law is to stay in their home until they find themselves charged with a criminal offense. And while tenants in most of Arkansas don’t face pretrial detention when charged with failure to vacate, they do in Jacksonville and perhaps other localities as well.<sup>44</sup> If they go to court and lose, they are not just facing eviction or a possible order of restitution—they are facing a criminal conviction and the sentence that goes along with it. Many tenants, intimidated by this prospect, move out even if they believe they are in the right. In the words of one legal aid attorney, “Nine times out of ten, the tenant will be terrified and get the heck out whether they owe money or not.”<sup>45</sup>

Compounding all of this is the fact that on its face, the criminal evictions law strongly discourages tenants from pleading not guilty. A tenant who pleads not guilty and chooses to remain in the contested property until trial must pay the total amount the landlord alleges they owe to court up front.<sup>46</sup> If they are then found guilty, the money reverts to the landlord.<sup>47</sup> In other words, a tenant is required to pay a bond to the court for the privilege of having a trial. By contrast, a tenant who pleads guilty is not required to make any kind of restitution.<sup>48</sup> If a tenant who pleads not guilty cannot or will not deposit the amount they allegedly owe, they face a fine of up to \$1,000 and/or up to 90

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<sup>43</sup> Human Rights Watch interview with Jason Bolden, Little Rock, Arkansas, August 28, 2012.

<sup>44</sup> Data on file with Human Rights Watch; See below, Bad Drafting and Inconsistent Application.

<sup>45</sup> Human Rights Watch interview with legal aid attorney (name withheld), Little Rock, Arkansas, August 27, 2012.

<sup>46</sup> Ark Code 18-16-101(c)(1). The statute provides that any tenant who pleads not guilty and remains in their home “shall be required to deposit into the registry of the court a sum equal to the amount of rent due on the premises. The rental payments shall continue to be paid into the registry of the court during the pendency of the proceedings in accordance with the rental agreement between the landlord and the tenant, whether the agreement is written or oral. Ibid.

<sup>47</sup> Ark Code 18-16-101(c)(2)(B).

<sup>48</sup> Ark Code 18-16-101(b).

days in jail if convicted.<sup>49</sup> Tenants who plead guilty face no jail time at all, and only the \$25 per day fine described above.

Even proponents of the criminal evictions law acknowledge that there are serious questions about the propriety of these provisions. Landlord and attorney Jason Bolden acknowledged that, “Basically it says that in order to get a trial you have to pay money into the court registry. That’s a little crazy.”<sup>50</sup> As described below, some judges simply refuse to apply these penalties or modify them as they see fit.

### *A Frightening Ordeal*

Steve and his wife Angela [surnames withheld at their request] are active in their church and had never been in trouble with the law before August 2012. One evening that month, the couple were preparing for Bible study class when they heard a knock at the door. Two police officers were standing outside. “One of them said, ‘We have a warrant for y’all’s arrest,’ Angela recalled. “The next thing I remember is my husband dragging me from the kitchen. I had fainted.” The couple had not been able to make their \$585 rent payment that month.

When Human Rights Watch interviewed the couple outside of the District Court in Little Rock several days later, Angela was clutching a gallon-sized plastic bag full of pills. She had undergone heart transplant surgery and her body was rejecting the new organ. Afraid that their landlord would change the locks while they were away in court, she brought her entire supply of anti-rejection medicine along with her just in case.

Steve had been living in his apartment for eight-and-a-half years; Angela had moved in with him when they married in 2010. “The place is OK, and a lot of

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<sup>49</sup> A tenant in this situation is guilty of a class B misdemeanor, which under Arkansas law carries with it the penalties listed above. Ark Code 5-4-201 and 5-4-401. In all other situations a tenant is guilty of an unclassified misdemeanor, which in this case carries only the \$25/day fine described above as a penalty. Ark Code 5-4-201 and 5-4-401.

<sup>50</sup> Human Rights Watch interview with Jason Bolden, Little Rock, Arkansas, August 28, 2012. See also Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 15, noting that, “Even if a tenant is truly not guilty, few tenants have the money to pay for a trial.”

folks there said they'd be sorry to see us go," Steve said. "We didn't have any problems in there, and I've never been more than one month late. Then they stick this notice on the door and said get out in 10 days."

Two weeks after the rent was due, Steve approached their landlord. "I told her I have half of the money," he explained, "but she didn't accept it. I tried to borrow from everyone. She said, 'If I do it for you I'll have to do it for everyone else.' I said, 'But Miss, I've been here eight-and-a-half years!'"

Steve and Angela continued trying to negotiate with their landlord after she posted the 10 day notice to vacate. They thought they might somehow persuade her to give them more time. They had also set about looking for a new apartment, but had not found anything by the time the 10 day notice expired. "We were *trying* to find a place," Steve said.

Steve and Angela sat in court with their arms around each other for almost two hours, watching a procession of criminal defendants accused of theft, drug offenses, and violent crimes called up before the judge. When their case was finally called, the court clerk asked Angela to face him so he could take her mug shot. She broke down in tears, grabbed her husband's arm and screamed, "Steve, are we going to jail? I don't want to go to jail!" The room went silent as the judge tried to calm her down, telling the couple she would dismiss the charges against them if they moved out within a week—a mercy the law does not actually allow judges to extend to the accused.

Standing outside the courthouse afterwards, Steve and Angela were visibly shaken. "I felt like a criminal," Angela said. "I just wanted to be here with my husband. But at the same time, I didn't want to be here at all, you know?" Asked what they would do next, Steve shook his head. "I don't know. We're just praying. That's about it."



## Over in Five Minutes

Criminal court can indeed be quite terrifying for tenants facing failure to pay rent or refusal to vacate charges. Tenants are called up amidst crowded court dockets packed with people accused of other crimes. They are not eligible to receive assistance from the public defender's office because the charge is a misdemeanor. And as the tenants facing these charges often struggle even to meet their rent, few if any can afford lawyers.

Some tenants come to court under the misapprehension that they will have some chance to tell their side of what might be a very complicated story. In particular, many assume that their *reasons* for failing to pay the rent, or failing to move out within the 10 day notice period, will be somehow relevant. They are not. Human Rights Watch saw tenants arrive in court to face the charges against them armed with folders brimming with documentation that they felt helped present their side of a very complicated story. In each case, the judge refused to hear any of it.

Human Rights Watch saw one district judge interrupt a tenant who started to try and explain her decision to withhold a week's rent from her landlord and shout at her, "You rob a bank and then you give the money back, and then it's OK!? You do not get to make these decisions!"<sup>51</sup> Human Rights Watch interviewed the woman, who had come to court carrying an overstuffed folder of correspondence and other documents she had thought might be relevant, after her hearing. Visibly upset, she complained, "What was he talking about, 'robbing a bank?' I want someone to hear me. That's all I wanted today."<sup>52</sup>

This is a common complaint. As one legal aid attorney in West Memphis put it, "It's bad enough when you owe the money but what if you didn't pay because the sewage is backed up in the backyard?"<sup>53</sup> One district judge explained that tenants often come into court saying, "I didn't pay the rent *but*..." Her typical response: "'Sorry, I can't hear the '*but*.' It doesn't matter what you were promised or anything else.' All I can ask is, 'did you pay the rent?' I end up saying, 'I'm sorry. The way the statute is written I'm not allowed to hear a

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<sup>51</sup> North Little Rock district court hearing, North Little Rock, Arkansas, August 28, 2012; See below, Bad Drafting and Inconsistent Application.

<sup>52</sup> Human Rights Watch interview with Latisha Baker, North Little Rock, Arkansas, August 28, 2012.

<sup>53</sup> Human Rights Watch telephone interview with Jeanette Whatley, August 24, 2012.

counterclaim.”<sup>54</sup> But few if any tenants have legal representation in these cases, and many come before the judge not realizing that there is no room for explaining their actions—or that in trying to do, so they might be admitting their guilt.

In the district court sessions observed by Human Rights Watch, prosecuting attorneys did not participate directly in criminal evictions cases. Instead, district judges briefly questioned the accused tenants before disposing of the case and moving on. One attorney who sees this happen on a regular basis put it, “The landlord just stands there [if they are present at all] and the prosecutor doesn’t even say anything.”<sup>55</sup>

The seven cases observed by Human Rights Watch were all disposed of in less than five minutes by the judges who heard them. In West Memphis one afternoon, the district judge was confronted with a woman who said that she had recently been released from the hospital after suffering a stroke, only to find herself facing failure to vacate charges—a story the court never actually heard.<sup>56</sup> Weak, emaciated, and unable to speak above a hoarse whisper, she issued a plea of no contest through her daughter-in-law. The judge, after asking the daughter-in-law whether the accused “know[s] what she is doing,” sentenced her to probation and sent her on her way, all of that in the space of about three minutes.<sup>57</sup>

### *An Abusive Landlord is No Defense*

Cashwana Chitman moved into a three bedroom house in October 2011 with her three children. She did not have running water for the first month. “I had to fill water jugs to wash clothes and flush the toilet,” she recalled. “I had to take my kids to other people’s houses to shower—and they were in school at the time.” In February 2012, the landlord stopped providing receipts for Ms. Chitman’s monthly rent of \$800. When this had gone on for three months, Ms. Chitman began to think it was deliberate. She complained repeatedly, with no result. Then, at the beginning of summer, the air conditioning broke down in half of the house. The landlord made repeated promises

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<sup>54</sup> Human Rights Watch interview with District Judge (name withheld), Arkansas, August 2012.

<sup>55</sup> Human Rights Watch interview with legal aid attorney (name withheld), Little Rock, Arkansas, August 27, 2012.

<sup>56</sup> Human Rights Watch interview with Latricia Alexander, West Memphis, Arkansas, August 29, 2012.

<sup>57</sup> West Memphis district court hearing, West Memphis, Arkansas, August 29, 2012, recording on file with Human Rights Watch.

to fix it, but never did. “I got sick from heat exhaustion,” she said. “My daughter had to sleep on the sofa in the living room all summer.”

By late July, Ms. Chitman had had enough. She decided to withhold her rent in protest—something few US states allow a tenant to do— and told her landlord that she would only pay when she got her receipts. She also called code enforcement to report her landlord’s failure to fix the air conditioner. A short while later, she found a 10 day eviction notice in her mailbox.

Ms. Chitman scrambled to find a new home, but failed to move out within the 10 day period. The police came looking for her at the primary care clinic where she had worked as a receptionist for five years. “When the police showed up, I was out at lunch,” she explained. “When I came back, my coworkers were looking all crazy saying, ‘The police were here looking for you.’ I said, ‘Quit lying!’ It was so embarrassing. And I’m the cashier!” When the police caught up with her later that day, they told her she had a warrant out for her arrest and served her with a court date.

Ms. Chitman managed to pack the last of her things into a borrowed truck the night before her court appearance and moved in with a friend. The day of her hearing, she told Human Rights Watch, “I don’t have anywhere to go. I’m looking for a house. My things are in storage. We have been completely displaced.”

Ms. Chitman came to court prepared. She had a sheaf of papers under one arm and a laptop where she had stored recordings of conversations she’d had with her landlord to demand receipts. The judge would not hear any of that, but Ms. Chitman was lucky. Even though she had admitted facts that established her as guilty, the judge dismissed all charges when Ms. Chitman said she had already moved out of the house. The entire hearing lasted about three minutes.

Afterwards, Ms. Chitman was angry. She had wanted to present her side of the story. “[My landlord] sent the police to my *job* as if I’m a *criminal* and I’ve done something *wrong*,” she said. “I was waiting for the judge to ask me *questions*.” She did not understand that, legally, none of her complaints were in any way relevant to the charges against her.

## Gaming the System: Unscrupulous Landlords and Victim Tenants

Many county prosecutors rely exclusively on information provided by landlords when deciding to issue arrest warrants and pursue criminal charges against tenants. Generally, if a landlord brings a copy of an expired 10 day eviction notice to a prosecuting attorney's office and attests that the tenant has failed to move out, charges against the tenant will flow almost automatically.<sup>58</sup>

In Springdale, City Attorney Jeff Harper has posted a memorandum to all local landlords explaining how the process works in his jurisdiction. It reads in relevant part as follows:

After 10 days passes from the day notice is first served on the tenant, come by my office to file charges and bring a copy of the notice that was served.... I will help you to the fullest legal extent that I can, and will be glad to answer further questions that you may have. Hopefully, we can solve this problem as quick as possible without further inconvenience to you.<sup>59</sup>

The letter includes a sample 10 day eviction notice, advice about how to serve the notice in ways most likely to hold up in court, and other helpful guidance for landlords.<sup>60</sup>

The posture of extreme credulity many prosecutors display towards landlords' assertions leaves the law wide open to abuse. As Arkansas' Non-Legislative Commission on the Study of Landlord-Tenant Laws noted and as Human Rights Watch's own research indicates, "No prosecutorial investigation is made of the landlord's claims, and it is thus possible for landlords to make false representations, just because they want to evict the tenant."<sup>61</sup> One legal aid attorney in West Memphis told Human Rights Watch that, "With a typical warrant it should be that the prosecutor and/or the judge evaluates it to

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<sup>58</sup> Human Rights Watch interviews with attorneys and legal experts, Arkansas, August 2012. Non-Legislative Commission on the Study of Landlord-Tenant Laws, "Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House," p. 15.

<sup>59</sup> Memorandum from Jeff C. Harper, City Attorney, "RE: FILING CHARGES FOR FAILURE TO PAY RENT/REFUSAL TO VACATE AFTER 10 DAYS WRITTEN NOTICE," to Landlords of Springdale, Arkansas, [http://www.springdalear.gov/departments/city\\_attorney/docs/Landlord\\_Packet\\_2\\_.pdf](http://www.springdalear.gov/departments/city_attorney/docs/Landlord_Packet_2_.pdf), (accessed December 12, 2012).

<sup>60</sup> *Ibid.*

<sup>61</sup> Non-Legislative Commission on the Study of Landlord-Tenant Laws, "Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House," p. 15.

determine whether there is probable cause ... [but] I'd be surprised if anybody's looking at these very closely. Because there wouldn't be so many aberrant cases if there was more fact development.”<sup>62</sup>

Using the criminal evictions law, unscrupulous landlords and others can turn prosecutors, courts, and law enforcement agencies into agents of retribution against people who they *know* have not actually violated the law. This may not be at all common, but it is not just a hypothetical problem either. Human Rights Watch interviewed one woman from Lonoke County whose landlord allegedly crossed out the “10” on a 10 day eviction notice and replaced it with a “3” before posting it to her door. Three days later, the landlord managed to have an arrest warrant issued for her tenant by filing an affidavit that stated only the following: “The above mentioned was to be out of the premises by 8/17/11 and has failed to do so.” The affidavit did not even claim that she had given the accused tenant 10 days to vacate the property—and as it turned out, she had not. Nonetheless, district judge Joe O’Brien signed the arrest warrant and the tenant had to face criminal charges in court.<sup>63</sup> Human Rights Watch has seen no evidence that landlords have been able to secure convictions by initiating frivolous criminal evictions cases—but it is abuse enough that some are able to harass and intimidate their tenants by getting those charges filed.

The speed with which many district judges try to dispose of criminal evictions cases as they move through crowded dockets limits the possibility that they will discover or act on malfeasance by a landlord who has sparked a frivolous and vindictive prosecution. As one legal aid attorney said,

From just the handful of cases we’ve seen, the process is being very badly abused [in some cases.] The landlord is not even filling out the required information on forms and in court, the tenant is not getting a chance to tell their own side of the story. The judge is just looking down from the bench and says, “Are you out?”<sup>64</sup>

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<sup>62</sup> Human Rights Watch telephone interview with Jeanette Whatley, August 24, 2012.

<sup>63</sup> Human Rights Watch interview with Debbie Leslie, Cabot, Arkansas, August 30, 2012. With the help of a legal aid attorney, Ms. Leslie and her husband later won a civil suit against their former landlord, alleging malicious prosecution. Leslie judgment, on file with Human Rights Watch. Also see below, From Homeowner, to Renter, to Criminal.

<sup>64</sup> Human Rights Watch interview with legal aid attorney (name withheld), Little Rock, Arkansas, August 27, 2012.

### *Evicted From Her Own Home*

In 2001, Charlotte Moton's husband signed a contract to purchase their West Memphis home for just over \$35,000.<sup>65</sup> When he died of cancer in 2008, the couple was just over a year away from their final payment. But less than two months after the funeral, their seller stopped accepting Charlotte's payments and claimed that the sale contract had been voided by the death of her husband. "He wanted me out. He was saying no, your husband died and he was the only party to the contract so all the money you gave me was just rent," she recalled. "It was terrible. I'd send a payment and he would send them right back. I would just put them back in the mail."

Soon, Charlotte was served with a 10 day eviction notice and had to appear in court to defend herself against criminal charges when she refused to vacate her house. The judge threw out the case upon hearing that there was no rental agreement between the parties, and the seller started accepting Charlotte's payments again. She made her last payment on schedule in August 2009. "Right after I paid it off we agreed over the phone that he would give me the deed to the house," Charlotte said. But she never got that deed. "He stopped answering my calls," she explained. "He still thinks it's his house."

In early 2011 Charlotte found another 10 day eviction notice posted to her door. She was incredulous—the house belonged to her now. She had to appear in court again, charged as a criminal, and the case was thrown out a second time. This was the beginning of a long period of harassment and intimidation. The courts will never evict Charlotte Moton from her home, but neither have they stopped her house's former owner from misusing the criminal evictions law to deploy law enforcement officers as a tool of harassment against her.

By the time Human Rights Watch interviewed Charlotte in August 2012 she estimated that the police had been to her house at least 10 times, often trying to serve her with 10 day eviction notices. "They just keep coming," she complained. "They want to give me a 10 day eviction notice ... they will just come every day until they catch me at

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<sup>65</sup> Moton sale contract, on file with Human Rights Watch.

home.... Just imagine what it looks like to the neighbors that they keep coming up to my house with these summons. Three years after I finished paying off the house, I am still dealing with this.”

In November 2011, Charlotte received a call at work from her 12-year-old daughter, who was home by herself. “She called me and said, ‘Mom, someone is beating on the door really hard.’ I asked her who and she said it was the sheriff’s department and I said, ‘Don’t open the door.’” A copy of the notice to vacate the police posted to her door that day—emblazoned with the logo of the Crittenden County detention facility—includes the handwritten notation: “Someone peeked out the window but would not come to the door (left on front door).”<sup>66</sup>

All of this took a real psychological toll. “It scares the kids and it scares me too, when I see a police officer at my door,” Charlotte explained. “Sometimes I lie down and someone knocks on the door and I think, ‘Oh my God, it’s the police.’ Because [the former owner] has picked at me so much. You can’t even feel comfortable at home.”

In addition to being open to misuse as a tool of intimidation, the law has disturbing but perfectly legal applications that were probably not contemplated by the state legislators who passed it into law. For instance, the federal Servicemembers Civil Relief Act (SCRA) protects active duty service members from evictions except by court order.<sup>67</sup> This is to ensure that men and women in uniform are not denied their day in court and summarily evicted while serving overseas. Landlords who pursue evictions in violation of the act face up to a year in prison.<sup>68</sup>

But as Little Rock attorney Jason Bolden notes on his website, Arkansas landlords can get around these protections by using the criminal evictions law against their active duty tenants instead of the civil process. This works because the criminal process is “technically not an eviction” but rather a criminal prosecution. “Nonetheless,” as the attorney’s website notes helpfully, “the criminal notice to vacate procedure serves much of

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<sup>66</sup> Notice to vacate served on November 4, 2011, on file with Human Rights Watch.

<sup>67</sup> Servicemembers Civil Relief Act, sec. 531. Under the Act, the maximum rent covered is adjusted for inflation annually and in 2011 that amount was \$2,975.11. The law also provides protections to the dependents of active duty service members in some situations.

<sup>68</sup> Servicemembers Civil Relief Act, sec. 531(c).

the same purposes [sic].”<sup>69</sup> In other words, the criminal evictions law could not only be used to circumvent federal protections of active duty service members and their families, but could be used to have them charged with a criminal offense in addition to being thrown out of their homes.

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<sup>69</sup> Jason Bolden, “Military Tenants: Are Your Tenants Members of the Military?” undated, <http://jasonbolden.com/practice-areas/landlord-tenant-law/military-tenants/> (accessed January 23, 2013).



## Bad Drafting and Inconsistent Application

Arkansas' criminal evictions law is a strange blend of archaic lawmaking, modern day lobbying, and shoddy drafting. It has been on the books since 1901 but its most draconian provisions—those imposing harsher penalties for tenants who choose to plead not guilty—were added by the state legislature in 2001.<sup>70</sup>

Principle aside, the law is badly constructed, with confusing and inconsistent results. For instance, the 2001 amendments added the requirement that defendants who plead not guilty deposit the money they allegedly owe their landlord into the district court registry. But Arkansas district courts do not actually *have* registries.<sup>71</sup> This leaves judges with a conundrum. Some judges simply ignore that section of the law and do not apply it.<sup>72</sup> Others choose to read the law less narrowly and find a creative way to address the problem, for instance, by having tenants deposit the money using mechanisms they actually do possess and use in other contexts.<sup>73</sup> Other judges refuse to implement the provisions of the law requiring tenants to post bond in order to plead not guilty and obtain a trial, believing the provisions to be unconstitutional—but without actually issuing a ruling to that effect.<sup>74</sup>

This goes to a much broader point. The fact that the law arguably *cannot* be applied exactly as written may help encourage what is a clear tendency on the part of many district judges to ignore the parts of it they do not like or to apply them in a way that seems fair to them, even if this is plainly inconsistent with the law. As Arkansas' Non-Legislative Commission on the Study of Landlord-Tenant Laws noted in its report to Governor Mike Beebe in December 2012,

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<sup>70</sup> The 2001 amendments increased the fine to \$25 per day and added the requirement that any tenant who pleads not guilty must pay an amount equal to their total outstanding rent obligation into the court registry or risk jail time. Act No. 1733 of 2001.

<sup>71</sup> See Non-Legislative Commission on the Study of Landlord-Tenant Laws, "Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House," p. 15.

<sup>72</sup> *Ibid*, p. 16.

<sup>73</sup> In Springdale, for instance, the city attorney told Human Rights Watch that it would be "no problem" for the district court to find a way to receive the bond money contemplated by the criminal evictions statute, though he also noted that he couldn't remember a tenant ever paying it because "this is the same money they couldn't afford to pay in the first place." Human Rights Watch phone interview with Jeff Harper, Springdale city attorney, December 6, 2012.

<sup>74</sup> Human Rights Watch interview with District Judge (name withheld), Arkansas, August 2012.

the result is that there is “a strange dual state of affairs under this statute: what the statute says, and what actually happens.”<sup>75</sup>

Since there is no statewide data that tracks how courts are applying the criminal evictions law across the state, no one actually knows what the full range of judicial practice actually looks like—only that it is wildly and sometimes arbitrarily inconsistent. As Howard Warren of the Landlords Association of Arkansas acknowledged, “The law is not used evenly across the state. Many [county] prosecuting attorneys won’t touch it. Even in the counties where it is used ... every county implements it differently and with every election every county can change that.”<sup>76</sup>

One Pulaski County attorney told Human Rights Watch how law enforcement officers typically serve arrest warrants issued under the criminal law in his jurisdiction this way: “Here, a warrant is issued [when a tenant is charged] but it’s only a citation to appear. What they do in other counties, Lord knows.”<sup>77</sup> Once in court, counties and judges apply the law differently. Some county prosecutors refuse to apply it at all.<sup>78</sup> Some judges never convict tenants who are ready to admit their guilt, instead telling them that they will dismiss the charges against them if they vacate within a week or some other period of time.<sup>79</sup> Others routinely hold trials, convicting and sentencing tenants. Practice varies just as widely when it comes to sentencing and many district judges do not actually follow the law. Some regularly hand down fines—either in the amounts stipulated under the law or some entirely different amount they determine according to their own whims.

The data Human Rights Watch gained in partnership with the University of Arkansas Little Rock law school underscores just how little consistency there is. For instance, according to court records:

- In Jacksonville, district court officials indicated (and court records confirm) that tenants facing charges under the criminal evictions law are routinely arrested and

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<sup>75</sup> Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 14.

<sup>76</sup> Human Rights Watch interview with Howard Warren, Little Rock, Arkansas, August 27, 2012.

<sup>77</sup> Human Rights Watch interview with attorney (name withheld), Little Rock, Arkansas, August 28, 2012.

<sup>78</sup> Human Rights Watch interviews with landlords and attorneys, Little Rock, Arkansas, August 2012. See also Non-Legislative Commission on the Study of Landlord-Tenant Laws, “Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House,” p. 15, reporting that “Some prosecuting attorneys, for example those in Fayetteville and Pine Bluff, refuse to file these actions.”

<sup>79</sup> All of the cases observed by Human Rights Watch in Little Rock and North Little Rock district courts ended this way.

held in detention until they can appear before a judge to be arraigned—sometimes overnight. Some of those tenants are then required to post a \$250 bond if they wish to secure their release pending trial.<sup>80</sup> In all of the other 10 courts surveyed by Human Rights Watch, tenants were never subject to detention or any bond obligation unless they failed to appear for their assigned court date and attracted new charges on that basis.<sup>81</sup>

- All but a handful of the 475 cases heard in Little Rock district court in 2012 were dismissed. Typically, the court offers to drop charges against accused tenants so long as they agree to vacate their residence within a short window of time. The law does not allow for this approach to these cases, but Little Rock is not unique in adopting it—the courts in North Little Rock and Fort Smith often use the same approach.<sup>82</sup>
- By contrast, the district court in West Memphis issued guilty verdicts in 49 of the 65 criminal evictions cases where verdicts were handed down in 2012, along with fines and court costs typically in excess of \$200. Some district courts did not impose fines at all in 2012, even in the event of a guilty verdict. Others routinely imposed fines and costs totaling anywhere from \$25 to \$475.<sup>83</sup>
- The criminal evictions law makes no provision for restitution, the remedy an aggrieved landlord would typically seek in the context of a civil eviction. Nonetheless, some Arkansas district courts do issue orders of restitution in criminal evictions cases. The district courts in Springdale, Arkadelphia, and Hot Springs did so as a matter of course in 2012, with ordered restitution ranging from a few hundred dollars to as much as \$2,000, generally to be paid on an installment plan defined by the court.<sup>84</sup>

The disturbing reality is that no one knows exactly how the law is used across the whole of Arkansas—only that district judges have exercised wide latitude to mold the law into something they think they can work with, often with no clear legal justification, in different ways and with divergent impacts on defendants.

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<sup>80</sup> Data on file with Human Rights Watch; Human Rights Watch telephone interview with Jacksonville district court clerk's office, January 22, 2013.

<sup>81</sup> Data on file with Human Rights Watch.

<sup>82</sup> Data on file with Human Rights Watch; Human Rights Watch interviews with Little Rock attorneys and landlords representatives, Little Rock, Arkansas, August 2012.

<sup>83</sup> Data on file with Human Rights Watch.

<sup>84</sup> Data on file with Human Rights Watch.

## Criminalizing Economic Hardship

For some working families, Arkansas' criminal evictions law has had the practical effect of turning economic hardship into a criminal offense. Across the US, the economic downturn that began in 2008 has hit the working poor particularly hard. Arkansas is no exception. There are people across the state who have worked for decades building businesses only to see a lifetime's worth of achievement swept away by a bad economy.

Arkansas landlords certainly have their share of tenant horror stories. Human Rights Watch heard stories of tenants who turned their homes into meth labs, and others who—after getting an eviction notice—stuffed their curtain rods with raw shrimp, punched holes in the walls, or even threatened their landlords' lives.<sup>85</sup> Unsurprisingly, landlords and their attorneys often emphasize stories about abusive or wildly irresponsible tenants while playing down the impact of Arkansas' criminal evictions law on honest renters who fall on hard times. As Warren put it, “For every poor grandmother story there are 12 where the tenant bought a smartphone or a tattoo.” But the fact is that some people in Arkansas are hauled up to face criminal charges not because they refused to pay their rent, but because they could not—and because they then also could not manage to find a new home and move into it within the space of just 10 days.

Hard economic times do not mean that tenants should not be paying their rent. But it does not logically follow that they should be viewed as criminals either. Some have argued that the treatment meted out to renters under the criminal evictions statute would get a lot more attention if the same standards were applied to relatively wealthy, home-owning Arkansans. The report of the Arkansas Non-Legislative Commission on the Study of Landlord-Tenant Laws put it this way:

It can be argued that this statute victimizes the poor. There is really no difference between this statute and a statute that would criminalize persons who default on their mortgages. However, if instead of being subject to a foreclosure process, homeowners were summoned into

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<sup>85</sup> Human Rights Watch interviews with landlords and attorneys, Arkansas, August 2012.

district court by police, and fined by a judge unless they agreed to move out, more lawmakers and enforcers would be concerned about this law.<sup>86</sup>

Even beyond the broader question of whether a tenant's inability to pay rent should be treated as a criminal offense, the criminal evictions law reaches absurd extremes in its disregard for the economic distress of many of the people who run afoul of it. At \$175 per week, the fine Arkansas imposes on some guilty tenants can exceed the rent payments many had been unable to make in the first place.<sup>87</sup> By the same token, the law's requirement that tenants who choose to plead not guilty deposit a bond equal to the total amount they allegedly owe their landlord with the court seems to defy reality. Springdale City Attorney Jeff Harper told Human Rights Watch that in 26 years of practice he could not recall ever seeing a tenant who pleaded not guilty actually deposit this money with the court, explaining, "This is the same money they couldn't afford to pay in the first place." He added, "I've seen a lot of deadbeat tenants but also some good, hard working folks brought to court under this law."<sup>88</sup>

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<sup>86</sup> Non-Legislative Commission on the Study of Landlord-Tenant Laws, "Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House," p. 16.

<sup>87</sup> In 2012, the average Fair Market Rent for a two bedroom dwelling in Arkansas was \$593. See, National Low Income Housing Coalition, "Out of Reach 2012: America's Forgotten Housing Crisis," March 2012, <http://nlihc.org/sites/default/files/oor/2012-OOR.pdf> (accessed December 12, 2012) p. 12. Rents vary considerably across the state. As of August 2012, three bedroom houses could be had near Little Rock for \$800/month while some trailers in lower-income parts of the state rented for as little as \$200/month. Human Rights Watch interview with Howard Warren, Little Rock, Arkansas, August 27, 2012.

<sup>88</sup> Human Rights Watch telephone interview with Jeff Harper, Springdale city attorney, December 6, 2012.

### *From Homeowner, to Renter, to Criminal*

Debbie Leslie and her husband owned a spacious four bedroom house and ran a 40-year-old family business. But the economic crisis was hard on Leslie Upholstery. The Leslies took out a loan against their house to try and save the business, but they failed. “We couldn’t keep up,” Debbie said. They lost the house.

The Leslies took as many of their belongings as they could, leaving many things behind, and rented a trailer. Debbie took a job changing sheets at a nursing home in Cabot. The new owner of their house threw away or auctioned off most of the things they had been forced to leave behind. And soon, the couple developed a bad relationship with their new landlord. After an argument one Friday afternoon in August, they were evicted. The couple was a week late on their rent at the time. The landlord cut off the electricity and water to their trailer that same night. “It was really hot,” Debbie told Human Rights Watch. “We just started packing our stuff in the dark with candles.”

Three days later, the landlord posted a notice to vacate on their trailer. She had crossed out the “10” on the 10 day notice form and replaced it with a “3.” “Even three days would have given us until Thursday,” Debbie said. But when her husband came to the trailer that Wednesday with a borrowed truck to carry off their things, the locks had already been changed. “We lost a whole lot of our stuff,” Debbie said. “I had one change of clothing and one uniform for work.” The couple bought some new clothes and shoes at yard sales. They also lost their twelve-year-old parrot and a six-month-old puppy; both were still inside the trailer when the landlord changed their locks. The parrot was sold before they ever got to court. “Maybe people say it’s just a bird,” Debbie said somewhat defensively, “but he only liked me.”

The Leslies had every right to sue their landlord—and much later they did

exactly that and won—but after being illegally evicted, they found the law in pursuit of them instead of defending their rights.<sup>89</sup> Failure to vacate charges were filed against the couple on the basis of an affidavit filed by their landlord.<sup>90</sup> “I had a warrant out for my arrest and so did my husband,” Debbie explained, “and that was on the third day after she evicted us. I’ve never been arrested in my life. We’d already been through so much with our home and there was just this feeling like, ‘Where are we going to go? What are we going to do? And she’s just sitting there laughing?’” Debbie’s husband went to the Lonoke County sheriff’s office to try and sort things out. When he got home he told Debbie that he had been kept there for over an hour, chained to a bench, before being released with a notice to appear in court.

When the Leslies appeared in court to face the charges against them, it was all over in minutes. The judge gently admonished their former landlord not to try and use the criminal law to evict people unless she gave them a full 10 days to move out. The case was dismissed. Their landlord was not sanctioned in any way.

The Leslies never got back most of their belongings. They got a court order allowing them to reclaim their possessions—but by then almost a year had gone by since they were first evicted. “She had put all of our things in a storage shed by her house,” Debbie explained. “Dead mice and feces were all in my clothes.” A cedar chest Debbie had inherited from her grandmother was left outside and ruined by the rain.

Things did not seem set to get any easier for the Leslies after that. “We’re living in another trailer now,” Debbie told Human Rights Watch just over a year on from the eviction. “I always said things will probably get easier when you get old. But we had it easy before. Now I’m 54 and I’m making minimum wage. I made more money when I was 20 years old than I am making now.”

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<sup>89</sup> The Leslies were ultimately awarded \$6,332 in damages in the civil suit they brought against their former landlord with the help of a legal aid attorney. Lonoke County Circuit Court judgment, on file with Human Rights Watch.

<sup>90</sup> Affidavit, Judge O’Brien, Warrant # 11-1337, August 19, 2011, on file with Human Rights Watch.

## Violations of Legal and Human Rights Norms

The archaic and specious logic behind Arkansas' criminal evictions statute is that when a tenant is unable to pay their rent and then fails to leave their home fast enough when their landlord demands it, they are actually *stealing* the use of their home from its rightful owner— their landlord. As some of the examples presented in this report illustrate, this rather simplistic view ignores a whole range of real-world complexities that can factor into a tenant's refusal or inability to move out within 10 days of their landlord's demand that they do so. Many tenants may well simply "refuse to vacate" even though they are not paying rent. But others may be scrambling, and failing, to find a new home in a very short timeframe. In some cases it might be that the law should allow the aggrieved landlord to claim some form of compensation. But to argue that those tenants trapped in desperate situations are actually thieves defies logic and reality. The legal regime the law establishes is more like debtors' prison than the criminalization of petty theft.

For tenants who want to contest their landlord's efforts to force them out of their homes using the criminal evictions statute, the statute violates a number of key international human rights norms, and US obligations under the International Covenant on Civil and Political Rights (ICCPR).<sup>91</sup>

### Violations of the International Covenant on Civil and Political Rights

#### *Failure to Protect Against Attacks on the Home, Article 17*

The US became a party to—legally bound by—the ICCPR in 1992, having first signed up to the human rights treaty in 1977. Article 17 of the ICCPR provides that “no one shall be subjected to arbitrary or unlawful interference with his privacy, family, home, or correspondence” and that “everyone has the right to the protection of the law against such interference...” A ‘home’ is not dependent on ownership, but the “place where a person resides or carries out his or her usual occupation.”<sup>92</sup> This means that state authorities—

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<sup>91</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Signed by the U.S. on October 5, 1977, ratified on June 8, 1992.

<sup>92</sup> General Comment No. 16: The right to respect of privacy, family, home and correspondence, and protection of honour and reputation (Art. 17), para. 5; adopted by the Human Rights Committee August 4, 1988. The



both at state and federal level—have an obligation to protect the home—in law—against unlawful and arbitrary interferences whether they emanate from the state itself or from natural or legal persons.<sup>93</sup> For the purposes of Article 17 "arbitrary interference" includes interferences that may be provided for in law (such as the criminal evictions law), but are still not in accordance with the provisions, aims, and objectives of the ICCPR or are unreasonable in the particular circumstances.<sup>94</sup> Part of the obligation to protect an individual's home from arbitrary interference is the provision of an effective legal remedy against such interference.<sup>95</sup> There is no question that the criminal evictions law constitutes an interference with the homes of Arkansas' nearly one million renters. Its lack of basic due process safeguards and a fair process for the renters put it at odds with several provisions of the ICCPR, as well as its aims and objectives and render it unreasonable; and so as written and applied it is an arbitrary interference.

### *Protection from Arbitrary Eviction*

The fact that a renter in Arkansas can be evicted by means of criminal process simply as a result of being one day late with the rent, with no effective remedy available to them to challenge the eviction, or to ensure that the court is required to give due consideration to their rights and interests, amounts to an arbitrary eviction under international law. Article 17 of the ICCPR neither unduly restricts a landlord's proprietary rights nor suggests that evictions for non-payment of rent be prohibited. It does however require that a fair procedure is in place to pursue and enforce evictions that respect due process and take into account all the interests and rights at stake.<sup>96</sup>

The criminal evictions law makes no provision to consider the plight of vulnerable tenants who may be in a position to pay, but need time; who may have missed a timely payment due to ill-health; or who may not be able to find alternative accommodation

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Human Rights Committee is the body mandated to interpret, adjudicate upon and ensure compliance with the treaty by state parties.

<sup>93</sup> General Comment No. 16 paras. 1 and 9.

<sup>94</sup> General Comment No. 16 para. 4.

<sup>95</sup> General Comment No. 16, para. 11.

<sup>96</sup> In a case involving the forced evictions of a community of Roma from property on which they had lived for a long time, but did not own, the Human Rights Committee deemed the evictions a violation of Article 17, because although the authorities were in principle entitled to remove the families, in the process they had not given due consideration to the impact on the families, and in that case had taken no measures to ensure adequate alternative accommodation was available. *Naidenova et al. v Bulgaria*, Communication No. 2073/2011, November 27, 2012, CCPR/C/106/D/2073/2011.

within 10 days – hardly a reasonable period of time. Even if a tenant maintains that they have paid their rent in full and on time, they can only contest a landlord’s efforts to force them out if they are willing to face criminal charges and possible fines or jail time. This has the practical effect of coercing tenants to vacate their homes without going to court, because the risks involved in doing so are simply too great.

In addition to the fact that this is a criminal sanction with all that entails, the failure to give any consideration to the circumstances of the renters and the consequences of the eviction constitutes an arbitrary interference and a violation of Article 17 of the ICCPR.

### **Abuse of the Criminal Law and Due Process, Article 14**

Arkansas is unique in granting landlords the entitlement to invoke the criminal law as a tool to enforce their contractual and proprietary rights. The use of the criminal law is the most coercive legal tool used by the state, and the threat of imprisonment is the harshest sanction. Therefore governmental decisions to impose it are subject to human rights constraints, and the fair trial norms required in criminal procedures are higher than that imposed on civil proceedings. Article 14 of the ICCPR provides:

1. All persons shall be equal before the courts and tribunals. In the determination of any criminal charge against him, or of his rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent, and impartial tribunal established by law.
2. Everyone charged with a criminal offence shall have the right to be presumed innocent until proved guilty according to law.
3. In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality:
4. Not to be compelled to testify against himself or to confess guilt.
5. Everyone convicted of a crime shall have the right to his conviction and sentence being reviewed by a higher tribunal according to law.

### *Equality of Access*

Equality before courts and tribunals includes equal access to court and equality of arms during the process. Access to court must effectively be guaranteed so that no individual is deprived, in procedural terms, of his or her right to claim justice.<sup>97</sup>

However in Arkansas a tenant who is accused of failing to pay their rent cannot contest either their eviction or the criminal charges against them without facing possible jail time—unless they are willing and able to pay a substantial sum of money in order to have their day in court. This is one of the most glaringly abusive provisions of the criminal evictions statute (introduced by amendments made to the statute in 2001). Since 2001, any tenant who wishes to plead not guilty and remain in their home until trial must deposit the amount they *allegedly* owe their landlord with the court. A tenant who fails to do so and is then found guilty faces up to 90 days in jail and a fine.<sup>98</sup> Tenants willing to plead guilty and forego their day in court are required to pay nothing. Such a requirement is incompatible with the right of equality of access to court as guaranteed by ICCPR.

### *Prohibition on Compulsion to Confess Guilt*

The measure is also an interference with the right to a fair trial in so far as it violates the prohibition on not being compelled to confess guilt in Article 14 (3) (g). The thinking behind this provision of the law may have been to ensure that landlords are able to claim rent that is owed them if tenants try to draw out the legal process in order to remain in their home as long as possible without paying rent. But in practice, in the context of a criminal statute, this has the effect of coercing tenants into pleading guilty. The measure's clear intent is to put pressure on tenants to plead guilty, and by penalizing those who choose to exercise their right to a fair and public hearing before an independent tribunal, seeks to discourage them from contesting the charges or going to court.

### *Equality of Arms*

In criminal trials, where the prosecution has all the machinery of the state behind it, the principle of equality of arms is an essential guarantee of the right to defend oneself.<sup>99</sup> Yet

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<sup>97</sup> Human Rights Committee, General Comment No. 32, Article 14: Right to equality before courts and tribunals and to a fair trial, U.N. Doc. CCPR/C/GC/32 (2007), para. 8.

<sup>98</sup> See above, The Crime of Not Paying Rent.

<sup>99</sup> Human Rights Committee, General Comment No. 32.

in the application of the criminal evictions law, defendants are in effect held strictly and absolutely liable. The manner in which the law operates does not require the prosecution to establish criminal intent on the part of a delinquent renter, and a renter has no meaningful right to enter a defense. Although strict and absolute liability offences are not prohibited by fair trial norms, they should be the exception, not the rule, and should be necessary to meet a pressing and compelling need. They should be “within reasonable limits which take into account the importance of what is at stake and maintain the rights of the defense.”<sup>100</sup> The application of a proportionality test is central to the determination of whether strict and absolute liability offences will offend against human rights norms or not. Given that in every other jurisdiction, landlords’ contractual and proprietary rights are protected by the civil law, there is little if any credibility to the claim that a criminal law, in particular one that in effect imposes strict and absolute liability, is a necessary response to a pressing and compelling need in Arkansas. Moreover, the criminal evictions law makes what is at stake for the renter completely irrelevant, and preserves only the most perfunctory rights for the defense. The right to equality of arms means that procedural rules—such as the burden and standard of proof—should be objective and reasonable, and not entail actual disadvantage or other unfairness to the defendant.<sup>101</sup>

### *Financial Barriers to Equality*

Although this is a criminal process, and jail time—as well as homelessness—is a potential consequence for those who plead not guilty, renters who cannot afford legal counsel must face the charges without legal assistance. The availability of legal assistance often determines whether or not a person can participate in proceedings in a meaningful way, and an issue which Human Rights Watch notes arises in the application of the criminal evictions law.<sup>102</sup> Likewise the imposition of a payment—such as that required of defendants to criminal holding over charges—could de facto prevent their right to access justice.<sup>103</sup>

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<sup>100</sup> See for example, the findings of the European Court of Human Rights in *Salabiaku v France* (1988) 13 EHRR 37.

<sup>101</sup> General Comment No. 32, para. 13.

<sup>102</sup> General Comment No. 32, para. 10.

<sup>103</sup> General Comment No. 32, para. 11. See also Communication No. 646/1995, *Lindon v. Australia*, para. 6.4. “The Committee notes that if administrative, prosecutorial or judicial authorities of a State party laid such a cost burden on an individual that his access to court de facto would be prevented, then this might give rise to issues under Article 14, paragraph 1”; also Communication No. 779/1997, *Äärelä and Näkkäläjärvi v. Finland*, para. 7.2. “a rigid duty under law to award costs to a winning party without consideration of the implications thereof or without providing legal aid may have a deterrent effect on the ability of persons to pursue the vindication of their rights under the Covenant in proceedings available to them.”

## Arbitrary Detention, Article 9

Article 9(1) of the ICCPR provides, “Everyone has the right to liberty and security of person.... No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.”<sup>104</sup> The right to liberty and security of person means the circumstances in which it can be taken away are limited, and a disproportionate sanction involving inappropriate imprisonment may be incompatible with the right to liberty. A core principle of criminal justice is that the punishment should fit the crime; and imprisonment is generally appropriate for conduct that seriously harms or has threatened to harm important legally protected interests or rights. This is not what is at stake when a renter, irrespective of the circumstances, has simply failed to pay rent on time, or failed to vacate a premise in 10 days. Therefore, the threat of imprisonment for an individual who challenges their eviction is at best a questionable interference with the right to liberty, and if imprisonment is actually imposed may constitute arbitrary detention.

## Compatibility with the US Constitution

In 1989 the Arkansas Supreme Court found the criminal evictions statute to be constitutional,<sup>105</sup> but several commentators have argued that the law may be unconstitutional as a matter of US law. Many advocates disagree with the decision of the Arkansas Supreme Court, which was handed down before the draconian 2001 amendments were added to the statute. Some advocates and legal experts have argued that those amendments run afoul of US constitutional guarantees even if the statute did not already do so before. The argument most widely advanced here focuses in particular on the notion that the amendments violate the constitutionally-guaranteed right to due process, for reason substantially similar to those outlined above.<sup>106</sup>

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<sup>104</sup> International Covenant on Civil and Political Rights (ICCPR), G.A. res. 2200A (XXI), 21 U.N. GAOR Supp. (No. 16) at 52, U.N. Doc. A/6316 (1966), 999 U.N.T.S. 171, entered into force Mar. 23, 1976. Signed by the U.S. on October 5, 1977, ratified on June 8, 1992, Art. 19 (1).

<sup>105</sup> *Duhon v. State*, 299 Ark. 503, 774 S.W.2d 830 (1989).

<sup>106</sup> For a detailed analysis, see Carol R. Goforth, “Arkansas Code § 18-16-101: A Challenge to the Constitutionality and Desirability of Arkansas’ Criminal Eviction Statute,” *Arkansas Law Notes*, 2003, <http://lawnotes.law.uark.edu/wp-content/uploads/Goforth-A-Challenge-to-the-Constitutionality-and-Desirability-of-Arkansas-Criminal-Eviction-Statute-Arkansas-Law-Notes-2003.pdf> (accessed December 12, 2012).

## Fixing the Law

I think if people really knew what a horrible law it is, they would not be in favor of it.

— Arkansas legal aid attorney [name withheld], August 2012

Arkansas should urgently repeal its abusive criminal evictions law, during the state's 2013 legislative session. As written and even more so as applied, it runs roughshod over the basic rights of tenants.<sup>107</sup> In Human Rights Watch's view, the most significant obstacle standing in the way is a simple lack of political will to take the issue forward—a problem that is exacerbated by the strength of the state's landlords' lobby.

Not all Arkansas landlords are enthusiastic supporters of the state's criminal evictions law. But whatever their views in principle, many landlords argue that the law is a necessary evil—a tool they simply cannot do without in the context they have to do business in.

This perspective is undercut rather severely by the fact that landlords in 49 other states get by without any sort of criminal evictions process. Nonetheless, Arkansas landlords do have complaints about the state's civil evictions legal framework that may need to be addressed. Addressing these head-on is probably the only way to dilute landlords' resistance to the idea that the criminal evictions law should be repealed. And practically speaking, any repeal effort is far less likely to move forward in the state legislature if it is met with implacable and unified opposition from the state's powerful landlords' lobby.

The basic components of a compromise that could allow progress on this issue already exist—articulated by the Non-Legislative Commission on the Study of Landlord-Tenant Laws that was set up by the Arkansas General Assembly in 2011. The commission's members included appointees of Arkansas state universities, the governor's office, legislature, landlords, realtors, the state bar association, bankers, and the state's affordable housing association. Its mandate was quite broad—members were tasked

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<sup>107</sup> See above, Violations of Legal and Human Rights Norms.

with comparing Arkansas' landlord-tenant law across the board against norms in other states and issuing recommendations in a report to the governor's office.<sup>108</sup>

The non-legislative commission issued its report in December 2012. It demonstrated in great detail how, in the commission's words, Arkansas' landlord tenant law is "significantly out of balance," and that "Arkansas residential tenants have significantly fewer rights than tenants in any other state."<sup>109</sup> It made a number of recommendations, which, if implemented, would bring Arkansas law more into line with prevailing US legal norms across a range of issues. For instance, the commission unanimously recommended that the state adopt an implied warranty of habitability—a basic legal protection tenants in enjoy in every other US state. It also recommended repeal of the criminal evictions law—alongside measures that would eliminate the most widely articulated rationales for keeping it in place. The commission's members were deadlocked on whether to recommend immediate repeal of the criminal evictions statute, but they voted unanimously that it should at the very least be repealed as soon as the civil evictions process can be reformed.

The most persuasive arguments Arkansas landlords advance in support of the criminal evictions law's continued existence have mostly to do with the shortcomings of their only alternative—the state's civil evictions process. As described in more detail earlier in this report, civil evictions in Arkansas are governed by a legal framework that is too cumbersome and expensive to be of much use in many situations.<sup>110</sup>

Landlords want a civil evictions process that is faster, cheaper, and possible for them to navigate pro se. The commission's report recommends that they get it—alongside the repeal of the criminal statute. Human Rights Watch takes no position on the adequacy of Arkansas' current civil evictions process, but putting reforms in place would leave defenders of the criminal evictions law with very little ground left to stand on. Some landlords have reportedly argued that even if the civil evictions process is modernized

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<sup>108</sup> The commission's mandate was to "study, review and report on the landlord-tenant laws in Arkansas and other states" and to issue a report with "the results of its findings and activities and any of its recommendations." Act no. 1198 of 2011.

<sup>109</sup> Non-Legislative Commission on the Study of Landlord-Tenant Laws, "Report to Governor Mike Beebe, President Pro Tempore of the Senate, and Speaker of the House," p. 2.

<sup>110</sup> See above, Background: Landlord-Tenant Law in Arkansas.

and streamlined, the criminal process should be left in place—where it would supposedly wither naturally on the vine if it is no longer needed. The testimonies presented in this report illustrate why that idea is unacceptable. The state legislature should repeal the criminal evictions statute in 2013 regardless of whether they are able to reform the civil evictions process in the same time frame. If Arkansas landlords feel strongly that the two initiatives should go hand-in-hand, they should encourage legislators to speed up reform of the civil process rather than slow down the elimination of the criminal statute.

As long as Arkansas' draconian criminal evictions law is on the books and as long as at least some county prosecutors are willing to enforce it, some of the state's 900,000 tenants will continue to face abuse of their basic rights and face arrest and conviction over matters that should not be handled through the criminal law at all. Unscrupulous landlords will be able to misuse the criminal justice system as a tool of harassment and abuse. What's more, Arkansas renters who fall into economic distress will risk having their problems compounded by a law that imposes financial penalties in excess of the rent they could not afford to pay in the first place.



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# PAY THE RENT OR FACE ARREST

## Abusive Impacts of Arkansas's Draconian Evictions Law

Every day in courts across Arkansas, tenants are charged as criminals as a consequence of not paying their rent on time. Under state law if a tenant fails to pay their rent on time, their landlord can order them to move out within 10 days. A tenant who fails to do so is guilty of a crime. The law treats as entirely irrelevant their reasons for a delayed or missed rent payment, or not managing to move out within that 10 day window.

No other state in the United States uses criminal law against tenants who have trouble paying rent—instead, they treat all evictions as civil matters between the landlord and their tenant. This report describes the human rights impacts of a law that is intrinsically abusive and arbitrary in its application. In the midst of a persistent economic downturn, the Arkansas law also falls disproportionately hard on renters facing economic hardship. And it lends itself to easy abuse by unscrupulous landlords because prosecutors file criminal charges against tenants whenever landlords claim they have violated the law, without any independent investigation.

The Arkansas criminal evictions law is out of step with US legal norms, and violates the country's human rights obligations. Fortunately, in 2012 a state-appointed commission on landlord-tenant law recommended a range of useful reforms—including the repeal of the criminal evictions statute. This report shows why that recommendation is so urgent. The criminal evictions law should be repealed without delay.