



## Asset Forfeiture by Texas Law Enforcement

by Derek Cohen

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### Key Points

- Rural areas run the greatest risk of overextension.
- Forfeiture is not common across the full length of the border.
- Populous areas use less forfeiture per resident.
- Forfeiture is used most extensively along or near highways.

### EXECUTIVE SUMMARY

While the abstract debate on civil asset forfeiture remains hotly contested in Texas, two elements often omitted from the discussion is “how much,” and “where” the practice takes place. Unfortunately, delineating civil forfeiture from that which occurs pursuant to a criminal conviction is impossible under current reporting law.

Still, insight into the volume and location of forfeitures is telling. It reveals where the practice may be overused, establishing a reliance on the proceeds of the legally dubious practice. Further, it also shows where and when standardized per-capita localities are aggressively pursuing more forfeiture, regardless of size. This report aims to demonstrate spatial patterns of forfeiture in raw and per-capita terms, and highlight potential misconceptions and problem areas.

### INTRODUCTION

Asset forfeiture, the process whereby state and local agencies take permanent ownership of property under the finding or suggestion of criminal activity, has fostered growing concern not only in Texas but also across the nation as a whole in recent years. The greatest problem is with the use of civil asset forfeiture, where representatives of the state can seize and forfeit property without a criminal finding, fundamentally flips the precepts of the adversarial American justice system, and divests the property owner of the basic protections granted in the criminal process.

Much has been written admonishing civil asset forfeiture in Texas. From the conservative Texas Public Policy Foundation ([Cohen 2015; 2014](#)), to the libertarian Institute for Justice ([Bullock and Carpenter](#)), to the liberal Texas Appleseed ([McDonald](#)), groups have taken umbrage with the practice’s abhorrence to the rule-of-law, disregard for basic property rights, and disproportionate effect on certain communities.

Still, defining just how much civil asset forfeiture occurs in Texas is impossible. Currently, Chapter 59 of the Texas Code of Criminal Procedure ([Art. 59.06](#)) mandates that agencies that engage in asset forfeiture only report topline summaries of the value of what is forfeited to the Office of the Attorney General (OAG). Further, until the 84th Legislature’s regular session had concluded, the OAG was not required to aggregate or publish this information ([HB 530](#)). Previous legislation seeking more transparency in the process had been defeated, garnering opposition from those that directly benefit from the practice.

Thus, it has yet to be shown where forfeiture (of any stripe) is occurring in Texas, specifically those benefiting law enforcement; the quintessential “policing for profit” allegation.

This report does not seek to provide commentary about the legitimacy of the forfeitures discussed herein; such is impossible under current reporting law. Further, this report does not concern itself with the forfeiture accounts of prosecuting attorneys. While district attorney agencies are fewer in number, their jurisdictional makeup and job responsibilities (to say nothing of their role as prime executor of forfeiture proceedings) warrants a separate discussion and analysis.

Calculating location and per-capita amounts for district and county attorneys is difficult because 1) their jurisdiction often straddles reporting areas of the Census, and 2) for larger districts, the location would be less accurate in depicting where the seizures were being made. Rather, this report seeks to provide new data to the forfeiture policy discussion as to how the practice is used by law enforcement agencies across the Lone Star State.

## METHODOLOGY

An open records request was filed with the Office of the Texas Attorney General in late 2014, requesting full state compilations of forfeiture activity (should such exist) for the three most recent fiscal years, and additionally the five most recent copies of audit submissions from the district attorney and sheriff's offices of Harris, Dallas, Tarrant, Bexar, Travis, and El Paso counties. Further, the request asked for audit submissions from the largest municipal police departments in these counties: Houston, Dallas, Fort Worth, San Antonio, Austin, and El Paso.

This request returned three spreadsheets, consisting of aggregations of all forfeiture audit reports from FY 2011 to 2013. Additionally, the vast majority of the requested audit copies were returned as well. The spreadsheets were the most illuminating, containing a field-by-field transcription of the form prepared by the OAG to satisfy Chapter 59 of the Texas Code of Criminal Procedure's reporting requirements. Since the FY 2013 audit compilation was in progress when the request was returned, the FY 2012 audit was used.

For the purpose of this report, only two fields were used: Section II (Forfeited Funds) Field B (Ending Balance), and Section VII (Expenditures) Field M (Total Expenditures). These fields provided the best snapshot of 1) how much cash is on hand at the agency, and 2) how much had been used during the reporting period. Additional fields, such as amount of forfeited funds received during the reporting period were present, but not included since this could only serve to inflate the cash on hand and make it seem as if the departments had more funds available during the whole of the year when such determination could not be made.

The two fields (year-end total and total expenditures) were summed in a new column titled, "Total for FY 12," taking account of the year-end balance, plus the amount spent during the year.

Two additional variables were created: population and ZIP code. The former was extracted from the U.S. Census Bureau's 2012 projection (1) of the specific jurisdiction's

population (e.g.: the entire county's population for sheriff's offices, the whole of the municipality for police departments) and entered into the spreadsheet.

The ZIP code used correlates to where the agency's headquarters are stationed. This allowed for "heat maps" to be generated that correspond to each agency's location in the Texas.

Some agencies with forfeiture accounts, such as county constables and independent school district (ISD) police departments, do not conform to a specific area as designated by the U.S. Census. Even in larger, more populous counties, constables' forfeiture accounts (and related spending) is dwarfed by agencies with a broader role, such as the county sheriff or municipal police department. For the handful of constables who reported a balance kept in or spent from their forfeiture account, the overall county population was used as the denominator. For ISDs and universities, the overall student enrollment and campus enrollment were used, respectively.

Funds that at the time of reporting had only been seized—that is, those which were confiscated by law enforcement, ideally to be used in a forthcoming criminal proceeding but that have ownership transfer to the state—were not included in the heat map. Only the value of property fully forfeited was used in this report.

It is likely with a run of data this large that there will be important cases omitted, either through omission, missing a reporting deadline, or any number of data management errors. One such example in the 2012 data was the El Paso Police Department, omitted wholesale from audit. However, since the initial information request included all agencies operating in El Paso County, the scanned hard copy of the signed audit report was included in delivery. The totals were entered into the master sheet, and the \$2.7 million of forfeiture activity was included in the heat map.

There are several state agencies that maintain balances in their forfeiture account, such as the Department of Public Safety and the Alcoholic Beverage Commission. As their purview covers the length and breadth of the state, their totals were not included in the heat map.

There were several anomalous totals included in the data returned in the open records request. For example, the 2012 total for Denison—a city in Grayson County astride U.S. 75 just before the Oklahoma border—posted a staggering amount in their forfeiture account of nearly \$54 million. This was well beyond the amounts of previous years, and if accurate would give the town the largest account in the state;

over 10 times larger than all reported accounts from Harris County combined. As the trailing two digits were both zero, it is plausible that a keystroke error or a nondescript decimal point on the written report are more plausible causes. As such, the number was reduced by a factor of 100. Still, even with access to a major interstate, the \$538,000 reported in the forfeiture account is amongst the largest among cities of that size. No reported totals were increased under similar conditions.

Two more variables were then created: per-capita forfeiture (simply the quotient of total for FY 12 over population), and per-capita expenditure (the quotient of total expenditures over population). This allows the total forfeiture and expenditures for a jurisdiction to be represented by its underlying population, functionally controlling for density. Further, those agencies reporting a \$0 year-end account balance and expenditures were eliminated for parsimony. The remaining data was uploaded to a service that transformed ZIP codes to latitude and longitude coordinates, allowing the heat map to be created.

## OBSERVATIONS

The heat maps produced with the OAG data both confirmed some preexisting heuristics on the collective practice of forfeiture in the state, and raised some additional concerns about where the activity is being seen. The heat maps below show low-level activity as a “cooler” purple, with the brightness increasing to yellow as the activity relevant to other observations increases.

### *Aggregate Forfeiture Use is Similar to Population Distribution*

Perhaps the most readily observed and most easily explained observations of the heat map is that the aggregate amounts of forfeited property generally follow the state’s distribution of population. Large metropolitan areas show dense collections of forfeiture activity, while rural areas tend to show less.

Large cities categorically have larger police forces and patrol presences, and by extension more instances when property can be seized through police interaction. Property forfeiture also may be more efficient, with several jurisdictions employing dedicated staff simply to handle forfeiture proceedings.

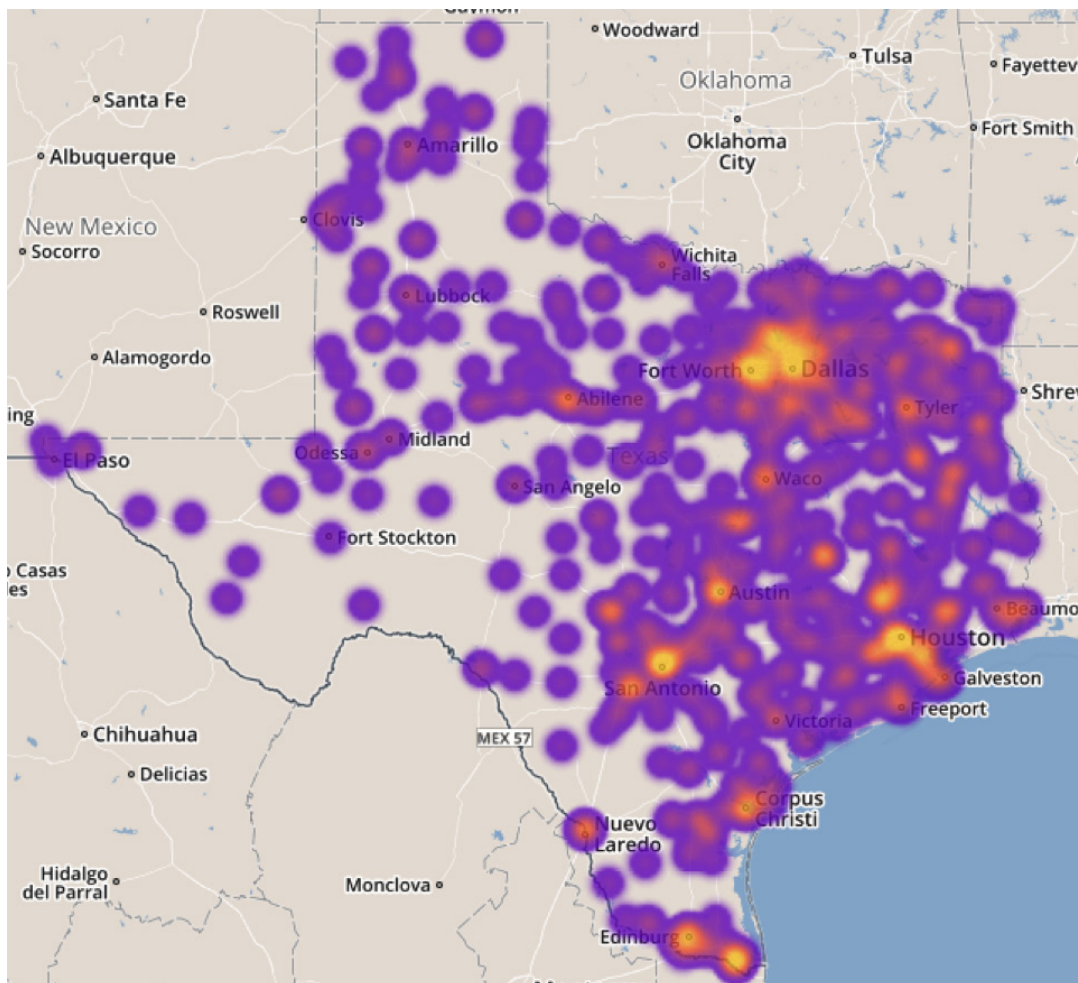


Image 1: Total Law Enforcement Forfeiture Use, 2012



Further, the process through which heat maps are created considers both volume of activity and spatial proximity. For example, Carrollton and Coppell, two close jurisdictions in northwest Dallas County that reported forfeiture use for FY 2012 of over \$100,000 apiece, will show brightly on the map as two large-yet-proximate observations; brighter than two similar observations located farther apart on the map. The same thing may happen in sparser areas, but it is less likely for the reasons mentioned above.

**Forfeiture Used Most Extensively Along or Near Highways**

In tandem with the concentration of forfeiture in major population centers, one can also see that forfeiture is common along many state highways, even when that jurisdiction lacks a large residential population. For example, forfeiture activity is seen on almost the entire 407-mile length of I-35 in Texas and across a good deal of I-20 as it traverses the state.

This poses a causal conundrum: is forfeiture being used extensively along these routes because of criminal activity

between major population centers, or do overzealous agencies along these routes have a deeper pool of motorist to stop and relieve of their property through dubious means? With the current state of forfeiture reporting, there simply is no way to delineate between the two.

**Forfeiture is Not Common Across the Full Length of the Border**

Local agencies surrounding several major border crossings have reported little-to-no forfeiture activity for the year analyzed. For example, Eagle Pass, the 8th busiest crossing location on the entirety of the southern border, reported no forfeiture income, despite seeing over 117 thousand trucks and nearly 2.3 million passenger vehicles in 2012. Del Rio, just 50 miles north and with roughly half of the traffic seen in Eagle Pass, reported more than \$43,000 of forfeiture activity in FY 2012 ([Bureau of Transportation Statistics](#)).

Presidio, the border crossing located along U.S. 67, also recorded a \$0 in activity in FY 12. In fact, one could travel the highway most of the way from the border crossing to

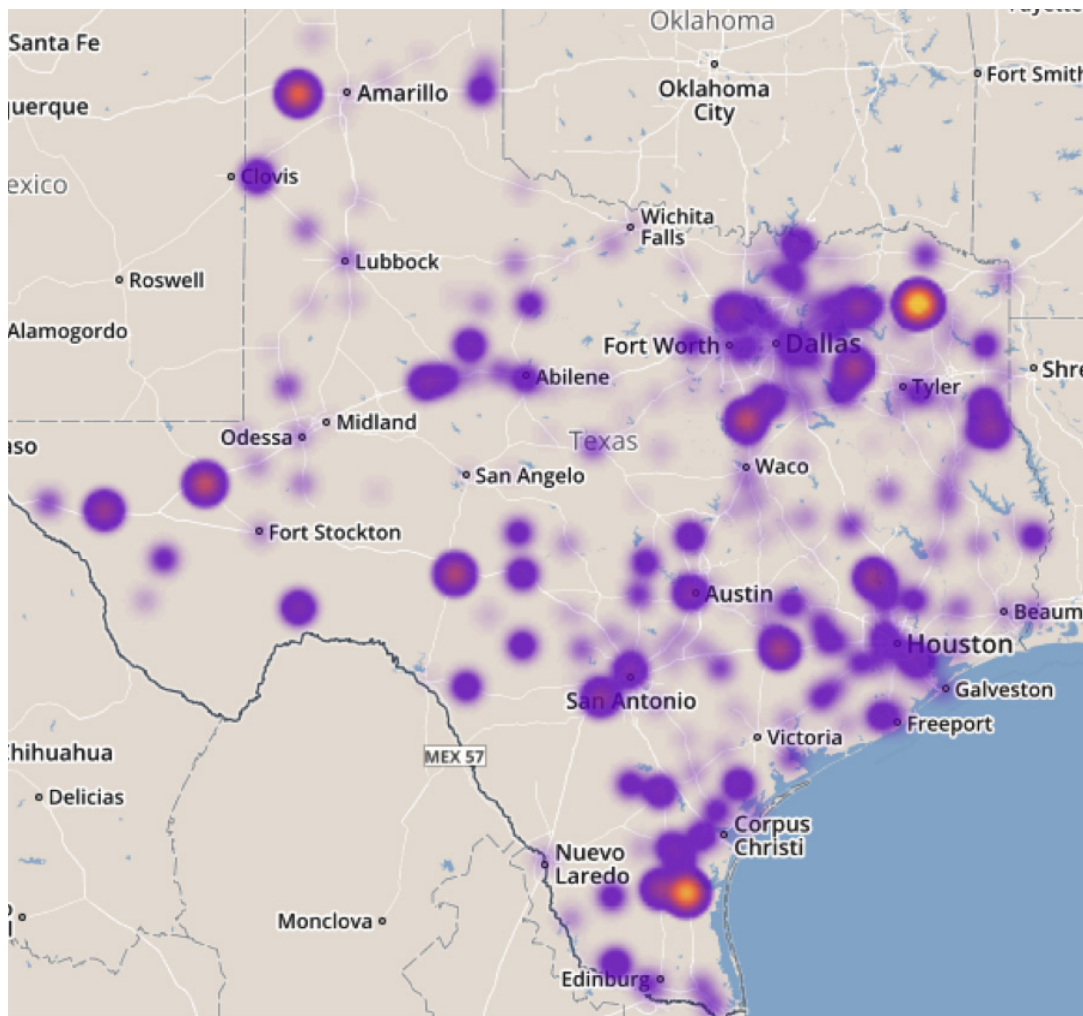


Image 2: Per-capita Forfeiture, 2012

Marfa, an hour's drive, before forfeiture activity was reported. By this point, would-be narcotics traffickers have had access to several other major transportation arteries and an international airport.

These findings stand in contrast to the common idea that forfeiture is always needed to interdict international drug trafficking. While forfeiture in general is certainly a legitimate function of state and local law enforcement and an observation bolstered by dense clustering in border areas like McAllen and El Paso, these several notable exceptions indicate that it may not always be needed. This almost certainly would be the case with civil asset forfeiture as it is currently used. Modifications to civil asset forfeiture laws would still leave it as an option for law enforcement, along with criminal asset forfeiture.

**Populous Areas Use Less Forfeiture Per Resident Than Rural Ones**

As seen in Image 2, dividing the amount of summary activity by the number of residents in the population shows that,

per capita, rural areas use forfeiture more than larger cities. When taking into account population density, the picture of forfeiture use in Texas changes dramatically. While major metropolitan areas still show sustained use of forfeiture, the volume of their accounts and spending are more muted when examined on a dollar-per-resident basis.

**Rural Areas Tend to Use Forfeiture as a Source of Funds Rather Than as a Means of Law Enforcement**

Rural jurisdictions show higher per-capita forfeiture use and expenditure than populous areas. Part of this is due to the low denominator used in the calculation. So while this finding is not revelatory *per se*, it highlights an alarming parallel to problematic trends seen elsewhere.

Image 3 illustrates each reporting agency's dollars spent from forfeiture funds per Census-reported person in the agency's jurisdiction. While this represents only one year of observations, it is apparent that many rural agencies are wont to spend more per-capita, a proxy for their accessible tax base,

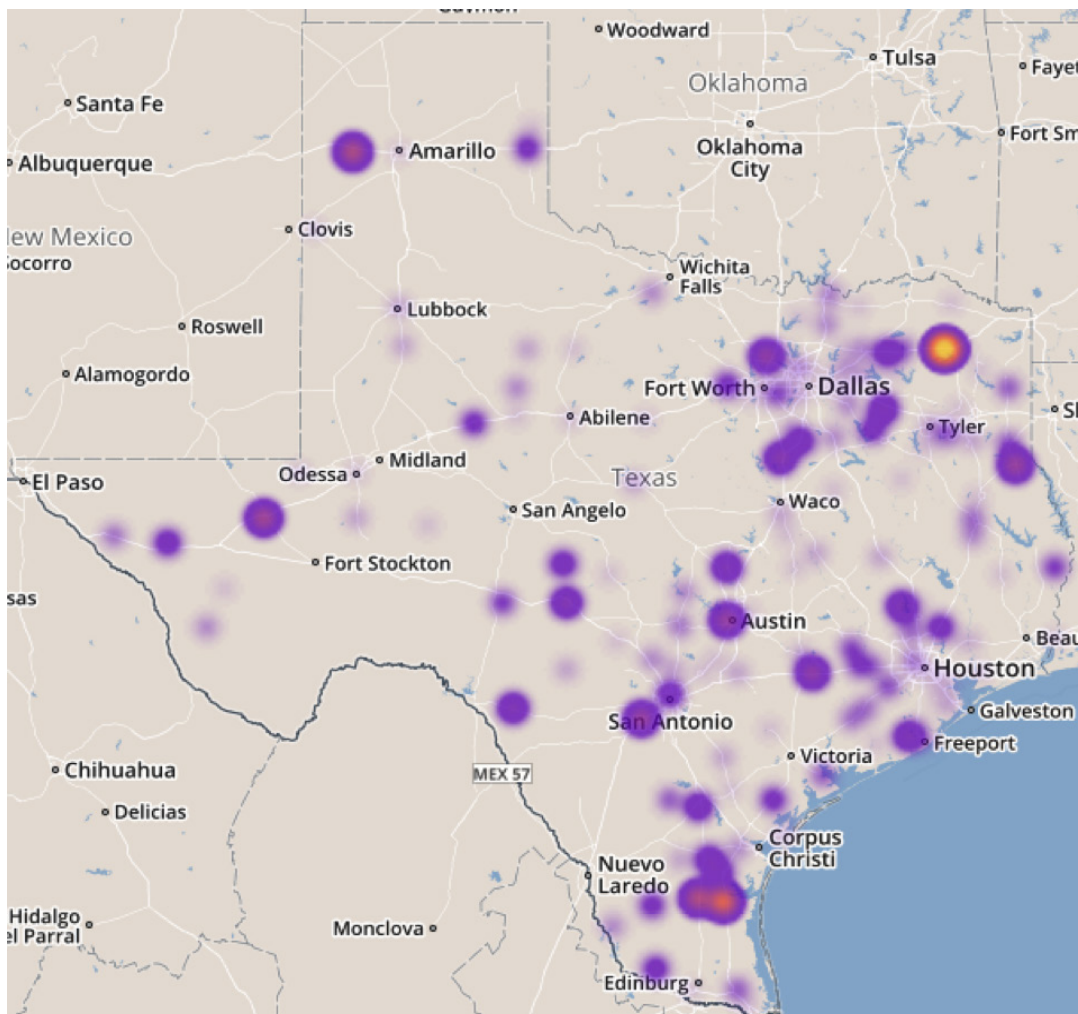


Image 3: Per-capita Expenditures from Forfeiture Accounts, 2012

than are larger departments. These jurisdictions are almost uniformly located along highways of varying size, and can reasonably be expected to fill their forfeiture coffers through roadside interdiction.

However, forfeiture is not supposed to be a source of revenue; it is supposed to be a tool by which local jurisdictions can reduce criminal activity. After decades of government growth and a shrinking tax base, Ferguson city leadership began turning to forfeiture and the assessment of fines to square the budget. Between the years of 2011 and 2013, Ferguson's reliance on fine and forfeiture as a percentage of the city's income grew nearly 54 percent, accounting for one-fifth of the city's revenue ([Maciag](#)). Per-capita expenditure from forfeiture accounts demonstrate the reliance these jurisdictions place on income generated from asset forfeiture.

## CONCLUSION

This report introduces the first visual representations of the use of asset forfeiture in the State of Texas. However, due to permissive law on the practice and lack of transparency in reporting, one cannot use this as a definitive proxy of where and how much civil asset forfeiture is taking place. Still, several unique phenomena can be seen in the heat maps.

As expected, larger and more densely-populated areas produce richer concentrations of forfeiture activity. Larger police forces and more residents can produce more interactions in which the seizure and forfeiture can occur, regardless of circumstance. Oddly, proximity to the southern border does not seem to influence the amount of forfeiture versus population alone, a puzzling revelation for a practice intended to interdict transnational narcotics trafficking.

However, the amount of per-capita forfeiture activity tends to be greater outside of the major urban centers. This is doubly so in rural areas along major and minor highways, where it is not uncommon for a jurisdiction of only a few thousand Texans to disproportionately forfeit tens and even hundreds of thousands of dollars per year.

The most concerning observation is how rural agencies seem to be using forfeiture as a source of revenue rather than a law enforcement tool. There is a danger that local law enforcement jurisdictions will increasingly make spending decisions based on the availability of forfeiture revenue at the cost of both legitimacy of function and liberty of its citizens. ★

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## About the Author



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Cohen graduated with a B.S. in criminal justice from Bowling Green State University and an M.S. in criminal justice from the University of Cincinnati, where he is currently completing his Ph.D. dissertation on the long-term costs and outcomes associated with correctional programming. His academic work can be found in *Policing: An International Journal of Police Strategies &*

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