

FORFEITING JUSTICE

How Texas Police & Prosecutors
Cash In on Seized Property

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EXECUTIVE SUMMARY

Texas law gives police and prosecutors generous rewards for seizing people's property—without even having to prove the owner committed any crime. And the law makes it so hard for owners to fight for the return of their property that many give up without even trying. As this report shows, Texas law enforcement agencies are increasingly profiting from this power of “civil forfeiture.”

Civil forfeiture is the power to take property suspected of involvement in a crime. But unlike *criminal* forfeiture, police and prosecutors never have to convict the owner of any crime to take away cash, cars, homes and more. And in Texas, 90 percent of the proceeds of such forfeitures go back to the law enforcement agencies that took the property. That strong incentive to seize property and Texas' limited protections for innocent citizens are why a recent national study ranked Texas as one of the five worst states for civil forfeiture abuse.

Using data from law enforcement agency reports to the Texas attorney general and federal sources, this report finds:

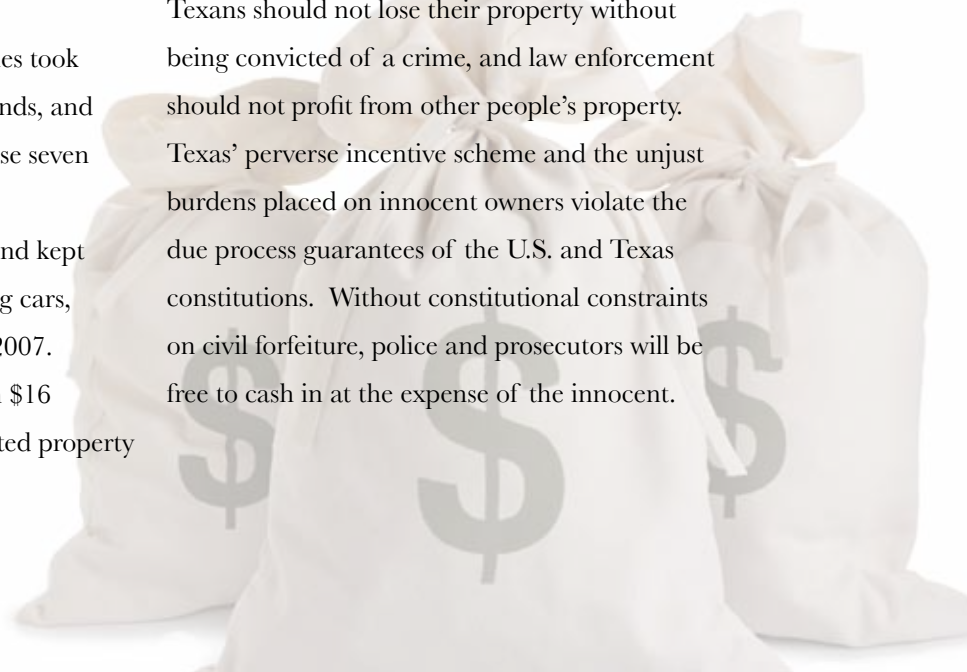
- From 2001 to 2007, Texas agencies took in at least \$280 million in forfeiture funds, and annual proceeds nearly *tripled* over those seven years, according to state data.
- Excluding cash, agencies seized and kept more than 35,000 properties, including cars, houses and computers, from 2001 to 2007.
- Texas agencies earned more than \$16 million in interest on seized and forfeited property from 2001 to 2007.

- From 2000 to 2008, Texas agencies received more than \$201 million from forfeitures conducted under federal law, according to federal data. Some of this is likely on top of forfeitures reported to the attorney general, but it is impossible to tell how much federal and state data may overlap.

- For the average Texas law enforcement agency, forfeiture proceeds represent 14 percent of its 2007 budget. For the 10 agencies that take in the most forfeiture funds, forfeiture proceeds equal more than one third (about 37 percent) of agency budgets.

- Texas agencies spent nearly \$315 million in forfeiture money from 2001 to 2007. About 74 percent was spent on equipment, while nearly one quarter—23.6 percent—was spent on salaries and overtime pay.

Texas' lax civil forfeiture laws dangerously shift law enforcement priorities away from the fair and impartial administration of justice and toward the pursuit of property and revenue. Texans should not lose their property without being convicted of a crime, and law enforcement should not profit from other people's property. Texas' perverse incentive scheme and the unjust burdens placed on innocent owners violate the due process guarantees of the U.S. and Texas constitutions. Without constitutional constraints on civil forfeiture, police and prosecutors will be free to cash in at the expense of the innocent.





INTRODUCTION

When Zaher El-Ali (who goes by “Ali”) moved to Houston in the 1970s, his goal was to realize the American Dream. He sought to start and provide for a family by owning a small business, and he heard Texas was the place to do it. Little did Ali know that the property he gained through his business would one day be taken, through no fault of his own, by people sworn to serve and protect citizens like him.

Through a scheme called civil asset forfeiture, law enforcement agencies confiscate property such as homes, cars and cash that they merely suspect may be connected to a crime. *Civil* forfeiture differs greatly from *criminal* forfeiture. With criminal forfeiture, it is the owner

who is on trial, and the property can be forfeited only if the owner has first been convicted of a crime. But with civil forfeiture, the government proceeds against the property directly under the legal fiction that the property somehow acted to assist in the commission of a crime. Thus, the owner need not be convicted or even charged with any crime to lose his property. For Ali and many others like him, the seizure and loss of property is no fiction.

Texas is among the worst abusers of forfeiture in the nation, with laws that fail to protect innocent citizens and instead encourage policing for profit. In the private sector, profits spur entrepreneurs and workers to provide better products and services at lower prices and drive innovation to the benefit of all. But in the public sector, the allure of financial benefits embedded in civil forfeiture laws encourages police and prosecutors to put pursuit of property ahead of the pursuit of justice.

As this report demonstrates, Texas law enforcement agencies' use of these laws is extensive and growing. From 2001 to 2007,

law enforcement forfeited cash and properties worth more than \$280 million. In that time, forfeiture proceeds nearly tripled from about \$21 million in 2001 to more than \$57 million in 2007. Excluding cash, Texas law enforcement agencies seized and kept more than 35,000 properties during that time period, including vehicles, houses and computers.

Texas statutes allow law enforcement agencies to profit directly from this forfeiture bounty. From 2001 to 2007, they spent \$315 million in forfeiture money, which went to everything from office renovations to equipment to trips, with nearly a quarter going toward salaries and overtime pay for employees in local police departments, county sheriffs' offices and district attorneys' offices.

According to several legal and criminal-justice scholars,¹ these numbers should be no surprise. Because Texas' statutes let law

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enforcement agencies gain directly from the proceeds of forfeiture, it creates incentives for them to pursue actions that will result in the greatest financial benefit, often at the expense of innocent owners like Ali.

The American Dream Seized

Ali is a classic American immigrant success story. After moving to the United States from Jordan in his twenties, he arrived in Houston in 1978 with \$500 in his pocket, knowing no one. On a bus from the airport he met a man who told Ali he could stay with his family until Ali got on his feet. He worked with the couple in their family business cleaning office buildings. He graduated with a degree in business from the University of Houston in 1984 and spent about 10 years in the insurance business. He became an American citizen in 1987. He started a family and had three sons; two are in school and one is a medic in the U.S. Army.

Ali yearned to pursue the American Dream by starting his own business, so he left the insurance industry and became primarily



a real estate investor. He buys homes and cars, fixes them up as necessary and then sells them. He lives and maintains his business in East Houston and largely serves a lower-income population.

In 2004, Ali sold a new Chevrolet Silverado truck to a man who paid him \$500 down and agreed to pay the rest on credit. As with all vehicles bought on credit, Ali held the title to the truck until he was paid in full, and he registered it in his own name. Five years later, the buyer was arrested for DWI. This was the driver's third DWI arrest; he pled guilty and was sentenced to six years in prison.

After the man's arrest, the Silverado was seized. In July and September 2009, Ali wrote to the district attorney, telling him of his interest

in the truck. He attached copies of the title and registration naming Ali as the owner and asked for its return. The driver had been in jail since July 2009 and stopped making payments, thereby depriving Ali of the income potential of his property. Instead of returning the truck to its innocent owner, the government filed a civil forfeiture action against the truck in order to keep it: *State of Texas v. One 2004 Chevrolet Silverado*. Represented by the Institute for Justice, Ali is now fighting for the return of his property and challenging Texas' forfeiture laws as unconstitutional.

Civil Forfeiture and Texas Law

Although seemingly a strange name for a legal case, *State of Texas v. One 2004 Chevrolet Silverado* perfectly represents the legal fiction at work in civil asset forfeiture. Unlike a criminal proceeding in which legal action is brought against an individual, in civil forfeiture, the government proceeds against the property directly, as if the property somehow acted to assist in the commission of a crime. It is a scheme based on 17th-century maritime law

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that permitted courts to obtain jurisdiction over property when it was virtually impossible to obtain jurisdiction over the property owners—pirates, for example—guilty of violating the law.

Although civil forfeiture remained a relative backwater in American law for many years, modern civil forfeiture expanded greatly during the early 1980s as governments at all levels stepped up the war on drugs. No longer tied to the practical necessities of enforcing maritime law, the forfeiture power now applies to a broad range of crimes. Nearly all states and the federal government have civil forfeiture laws, and Texas' is among the worst.

Indeed, a recent Institute for Justice report gave Texas a D- for its civil forfeiture laws and practices; only four other states received similarly low grades.² The current Texas asset

forfeiture statute was enacted in 1989.³ That law expanded both the underlying offenses that could give rise to forfeitures and the kinds of property that could be forfeited. Prior to 1989, forfeiture was tied only to controlled substances and driving while intoxicated. Now forfeiture includes most felony offenses and even some misdemeanors such as lying to a phone company and illegal dumping.⁴ And now police and prosecutors can seize and keep real property, such as homes and land, which was previously excluded. Under the Texas forfeiture statute, law enforcement agencies retain up to 90 percent of proceeds from forfeited property to use on everything from equipment to travel and even salaries and overtime, providing officers a strong incentive to seize property to boost agency budgets.⁵

One key feature of Texas' civil forfeiture law is how it shifts the burden of proof in forfeiture cases. In a criminal case, the government must prove its case against the accused, who is presumed innocent. If it cannot, the accused goes free. The burden

of proof is on the government. In Texas, the burden to prove that seized assets were not related to criminal acts rests on the person whose assets were seized. In other words, the property owner is presumed guilty and has to prove his innocence to get his property back.⁶ And the government only needs to meet a low “preponderance of the evidence” standard to hold on to seized assets.⁷ This standard is significantly lower than the “beyond a reasonable doubt” standard law enforcement must meet to convict a person of a crime, again putting owners at a disadvantage.

In short, under Texas law the bar for seizing assets is low, and the bar for getting them back is high. Thus, the government can seize assets, never charge the owner with any crime and then demand that the owner prove that his property was not connected to criminal activity. This process is so expensive and complicated—essentially proving a negative—that most individuals cannot afford to fight for the return of their assets. Indeed, when property owners lack the resources

or expertise to fight back in civil court, the government can often win by default.

Texas' Take: Large and Growing

It is not surprising, then, that Texas law enforcement agencies take in tens of millions of dollars each year in forfeited currency and property—and these numbers are growing. The numbers in Tables 1 and 2 come from annual asset forfeiture reports submitted to the Texas attorney general by district and county attorneys, police and sheriffs' departments and even fire departments and forest service agencies.⁸

All told, Texas agencies have taken in more than \$281 million from 2001 to 2007, as shown in Table 1, which does not include the value of property that law enforcement agencies kept for their own use. The largest and most common category of forfeitures is currency, or cash. From 2001 to 2007, all agencies took in more than \$200 million in currency. Although currency proceeds in 2002 were a little more than \$5 million, all other years ranged from \$17 million to more than \$44 million.

When agencies seize and keep property,

such as vehicles or computers, they have the option of using it in official business or selling the property and retaining the proceeds. As the table illustrates, proceeds from the sale of property grew steadily from 2001 to 2007, topping out at \$5.3 million. Across all seven years, proceeds from sales totaled almost \$26 million.

Not only do law enforcement agencies in Texas gain from forfeiture directly by using its proceeds, they also gain indirectly by earning interest on accounts where forfeiture funds are deposited. Moreover, the interest is generated on both seized and forfeited funds. Seizure is the first step in the forfeiture process and requires only probable cause. After that, the government must initiate forfeiture proceedings to permanently keep the property. If an owner successfully fights forfeiture, the seized property is returned. Meanwhile, Texas earns interest on seized property that may ultimately be returned to its owner, as well as forfeited property. As shown in Table 1, interest earnings on forfeiture funds have grown from less than \$1 million in 2001 to more than \$4 million annually.

*Table 1
Forfeiture Proceeds (Excluding Property Kept for Law Enforcement Use), 2001-2007*

	2001	2002	2003	2004	2005	2006	2007
<i>Currency Forfeited</i>							
District and County Attorneys	\$8,843,326	\$3,999,493	\$11,052,933	\$6,803,320	\$9,368,019	\$8,689,835	\$9,809,196
Police and Sheriffs*	\$8,602,313	\$1,185,027	\$28,949,135	\$29,178,922	\$15,940,660	\$24,372,454	\$34,268,314
Totals	\$17,445,639	\$5,184,519	\$40,002,068	\$35,982,242	\$25,308,679	\$33,062,289	\$44,077,510
<i>Proceeds from Sale of Property</i>							
District and County Attorneys	\$179,791	\$214,776	\$622,984	\$1,089,258	\$529,785	\$737,785	\$1,042,308
Police and Sheriffs*	\$1,357,844	\$1,895,027	\$2,791,105	\$3,726,853	\$3,652,974	\$3,788,702	\$4,294,473
Totals	\$1,537,634	\$2,109,803	\$3,414,090	\$4,816,111	\$4,182,759	\$4,526,487	\$5,336,781
<i>Proceeds from Another Agency</i>							
District and County Attorneys	\$169,352	\$56,921	\$1,231,138	\$1,445,004	\$8,713,632	\$1,170,470	\$1,293,985
Police and Sheriffs*	\$903,946	\$3,429,462	\$2,346,643	\$6,981,084	\$2,827,564	\$4,722,631	\$2,576,884
Totals	\$1,073,298	\$3,486,383	\$3,577,781	\$8,426,087	\$11,541,196	\$5,893,100	\$3,870,869
<i>Total Interest Generated from Forfeiture Funds</i>							
District and County Attorneys	\$602,308	\$298,029	\$684,344	\$596,362	\$864,731	\$1,782,730	\$2,058,308
Police and Sheriffs*	\$238,400	\$1,091,939	\$735,343	\$829,009	\$1,209,181	\$3,043,104	\$2,419,092
Totals	\$840,708	\$1,389,968	\$1,419,686	\$1,425,371	\$2,073,912	\$4,825,833	\$4,477,400
<i>Totals</i>							
District and County Attorneys	\$9,794,777	\$4,569,219	\$13,591,399	\$9,933,944	\$19,476,167	\$12,380,820	\$14,203,797
Police and Sheriffs*	\$11,102,502	\$7,601,455	\$34,822,226	\$40,715,868	\$23,630,378	\$35,926,890	\$43,558,763
Totals	\$20,897,279	\$12,170,674	\$48,413,626	\$50,649,812	\$43,106,546	\$48,307,710	\$57,762,560
<i>Annual Changes in Totals</i>							
District and County Attorneys		-53.35%	197.46%	-26.91%	96.06%	-36.43%	14.72%
Police and Sheriffs*		-31.53%	358.10%	16.92%	-41.96%	52.04%	21.24%
Totals		-41.76%	297.79%	4.62%	-14.89%	12.07%	19.57%
<i>Seven-Year Totals</i>							
District and County Attorneys	\$83,950,124						
Police and Sheriffs*	\$197,358,083						
Totals	\$281,308,206						
<i>Percent Change from 2001 to 2007</i>							
District and County Attorneys	45.01%						
Police and Sheriffs*	292.33%						
Totals	176.41%						

*Also includes fire departments, forest services, constables, narcotics task forces and other agencies.

As Figure 1 makes clear, the proceeds Texas law enforcement agencies receive from forfeiture are on the rise. In 2001, all agencies received nearly \$21 million from forfeiture, but by 2007 that number nearly tripled to more than \$57 million. Just for law enforcement agencies, the 2007 take was nearly four times that of 2001.

*Figure 1
Growth of Forfeiture Proceeds (Excluding Property Kept for Law Enforcement Use) from 2001 to 2007*

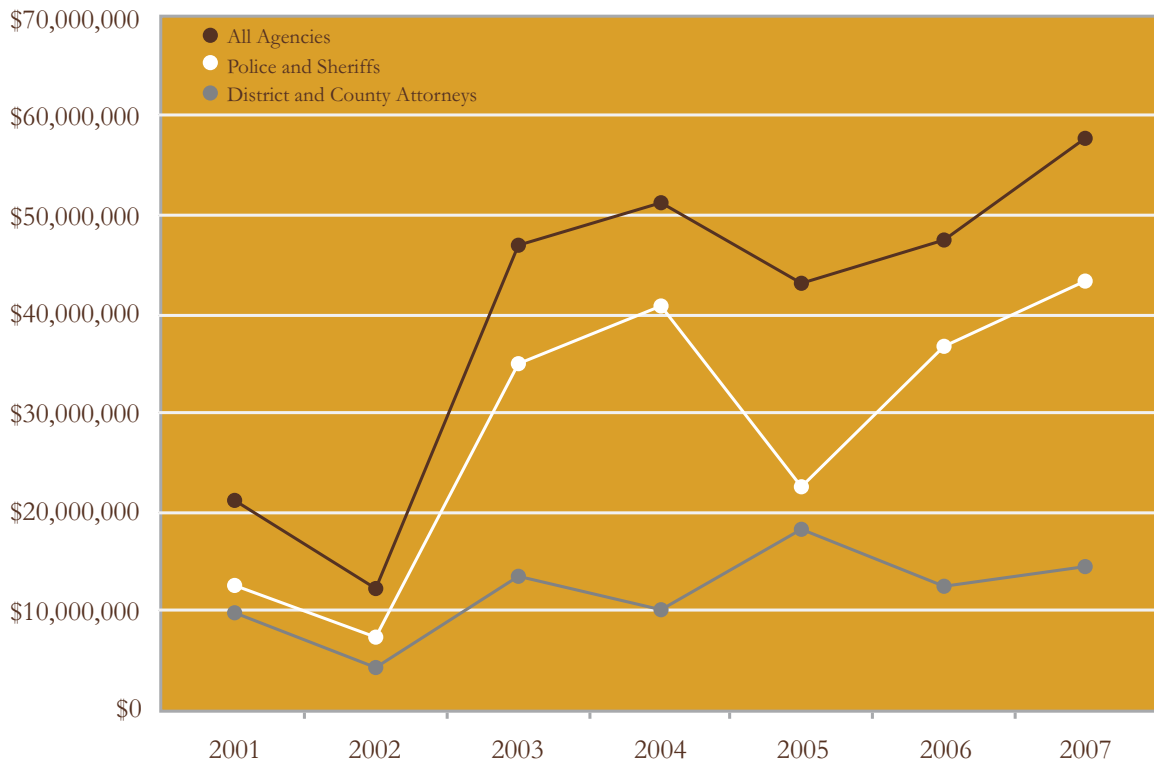


Table 2 reports real property forfeited by agencies from 2001 to 2007. More than 35,000 properties were forfeited during this time period, including vehicles (more than 10,000), real estate (760), computers (916) and firearms (3,110).

*Table 2
Real Property Forfeitures, 2001-2007*

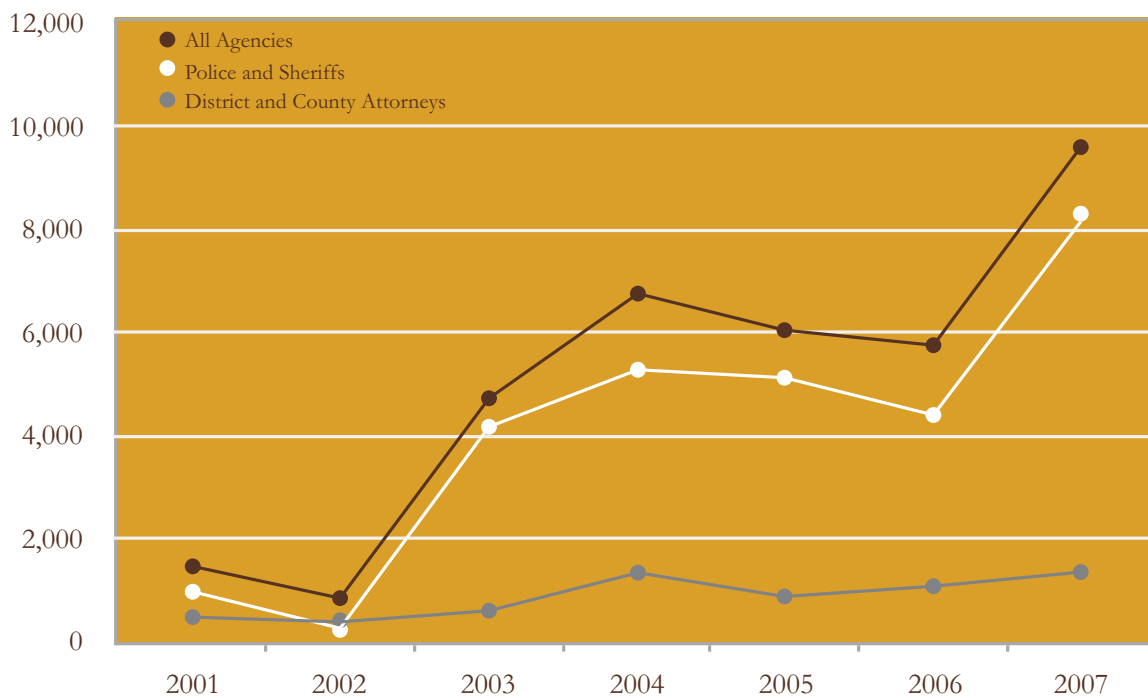
	2001	2002	2003	2004	2005	2006	2007
<i>Vehicles</i>							
District and County Attorneys	277	168	404	603	389	823	589
Police and Sheriffs*	261	41	1,177	1,570	1,318	1,177	1,481
Totals	538	209	1,581	2,173	1,707	2,000	2,070
<i>Real Estate</i>							
District and County Attorneys	13	1	38	17	21	6	16
Police and Sheriffs*	8	0	159	56	228	53	144
Totals	21	1	197	73	249	59	160
<i>Computers</i>							
District and County Attorneys	4	5	30	79	52	42	25
Police and Sheriffs*	32	18	74	124	120	159	152
Totals	36	23	104	203	172	201	177
<i>Firearms</i>							
District and County Attorneys	117	33	60	151	71	125	196
Police and Sheriffs*	174	44	500	467	538	385	249
Totals	291	77	560	618	609	510	445
<i>Other</i>							
District and County Attorneys	82	131	48	517	350	116	483
Police and Sheriffs*	651	150	2,213	3,161	2,905	2,921	6,275
Totals	733	281	2,261	3,678	3,225	3,037	6,758
<i>Total Real Property</i>							
District and County Attorneys	493	338	580	1,367	883	1,112	1,309
Police and Sheriffs*	1,126	253	4,123	5,378	5,109	4,695	8,301
Totals	1,619	591	4,703	6,745	5,992	5,807	9,610
<i>Annual Changes in Totals</i>							
District and County Attorneys		-31.44%	71.60%	135.69%	-35.41%	25.93%	17.72%
Police and Sheriffs*		-77.53%	1529.64%	30.44%	-5.00%	-8.10%	76.81%
Totals		-63.50%	695.77%	43.42%	-11.16%	-3.09%	65.49%
<i>Seven-Year Totals</i>							
District and County Attorneys							6,082
Police and Sheriffs*							28,985
Totals							35,067
<i>Percent Change from 2001 to 2007</i>							
District and County Attorneys							165.52%
Police and Sheriffs*							637.21%
Totals							493.58%

* Also includes fire departments, forest services, constables, narcotics task forces and other agencies.

Figure 2 shows the overall growth in property forfeitures from 2001 to 2007. Altogether, there were almost six times as many property forfeitures in 2007 as in 2001. As Table 2 shows, in 2007 law enforcement

forfeited four times as many vehicles as in 2001. The 2007 computer forfeitures were almost five times greater, and real estate forfeitures in 2007 were more than seven and a half times larger.

*Figure 2
Growth of Real Property Forfeitures from 2001 to 2007*



Texas' take is not limited just to properties forfeited under its own laws. Texas also takes advantage of a federal procedure known as equitable sharing, by which Texas law enforcement agencies "partner" with federal law enforcement agencies to seize and forfeit even more property. Under the federal Comprehensive Crime Control Act of 1984, state and local law enforcement agencies may transfer assets they seize to federal law enforcement agencies, which take possession of this property and initiate federal forfeiture actions as long as the "conduct giving rise to the seizure is in violation of federal law."⁹

Seized assets transferred to the federal government through equitable sharing agreements may be forfeited regardless of whether an individual is charged, let alone convicted, of a crime in either state or federal courts. If the federal government successfully forfeits the assets, the funds are deposited in the appropriate federal asset forfeiture fund. The forfeiting state and local agencies then receive

up to 80 percent back, resulting in payments totaling millions of dollars.¹⁰

As Table 3 indicates, deposits into the federal Asset Forfeiture Fund (AFF) from Texas exceeded \$426.7 million between 2000 and 2008. Of that, Texas received more than \$200 million back.¹¹ It is important to note that some deposits to the AFF also include forfeitures that are exclusively from federal agencies with offices in Texas and do not involve state agencies. In addition, there may be some overlap between what local agencies report to the state attorney general and equitable sharing funds reported by the U.S. Department of Justice, which means figures from Tables 1 and 3 cannot be added together. Regardless, the data make clear that asset forfeiture is widely used in Texas by law enforcement at all levels to the tune of tens of millions of dollars each year.

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*Table 3
Equitable Sharing in Texas*

Fiscal Year	Deposits to the Federal Asset Forfeiture Fund	Equitable Sharing Proceeds to Texas
2000	\$55,527,531	\$22,576,969
2001	\$26,719,688	\$19,668,285
2002	\$33,556,617	\$14,419,530
2003	\$35,349,667	\$13,659,504
2004	\$42,023,279	\$19,386,146
2005	\$41,648,902	\$17,123,807
2006	\$57,188,600	\$28,859,716
2007	\$82,669,967	\$36,200,059
2008	\$52,109,272	\$29,552,435
Totals	\$426,793,523	\$201,446,451

** Also includes fire departments, forest services, constables, narcotics task forces and other agencies.*

Reliance on Forfeiture Funds

To gain some perspective about the size of Texas law enforcement agencies' take from forfeiture, we examined the 2007 budgets of the top 10 forfeiture-earning agencies in the state, as well as a random sample of another 52 law enforcement agencies, and compared those budgets to their forfeiture proceeds.¹² We wanted to know: Are agencies taking in large sums through forfeiture relative to their budgets? If so, that would suggest agencies are relying on forfeiture as a means of generating revenue.

Looking at agency-level averages of the forfeiture-to-budget ratio we see that, for the average agency, forfeiture revenue represents 14 percent of its budget. A representative agency is the 38th judicial district, 80 miles west of San Antonio, which serves a population of about 73,000 people in Uvalde County. With a budget of \$385,000, this agency took in more than \$50,000 in forfeiture revenue in 2007.

Clearly, 14 percent is a sizable share of an agency budget. Indeed, the records we requested indicated that many agencies actually count on

securing forfeiture proceeds to fund their budgets.

But the biggest forfeiture money-makers in Texas are even more reliant on forfeited funds: The top 10 forfeiture earners take in, on average, about 37 percent of their budgets in forfeiture funds. (To calculate that percentage, we removed one agency, the 76th District Attorney in Camp County, from the top 10 because its forfeiture proceeds represented 1,344 percent of its budget, which skewed the average.)

Civil forfeiture advocates often claim that the process is used primarily by large agencies to target “high-profile” offenders.¹³ But we found that rural agencies in our sample of 52 Texas agencies appear to be even more dependent on forfeiture funds than others, with forfeiture proceeds representing, on average, nearly one fifth—18.3 percent—of their budgets.

Similarly, the smaller agencies (those serving less than 1 million people) among the top 10 forfeiture earners report forfeiture proceeds in excess of 65 percent of annual budgets.

In short, the data show many Texas law

enforcement agencies have become reliant on forfeiture funds as a source of revenue.

Spending the Booty

Texas statutes allow agencies to use forfeiture proceeds for their own purposes instead of depositing the assets in the state’s general fund or some other neutral repository. As Table 4 indicates, those purposes range from salaries to travel to facilities. Altogether, Texas agencies spent almost \$315 million in forfeiture proceeds between 2001 and 2007.¹⁴

Of all the categories reported in Table 4, agencies spent the most forfeiture funds on equipment, totaling more than \$234 million from 2001 to 2007. This is followed by the category from which those in law enforcement stand to benefit most personally—salaries. From 2001 to 2007, forfeiture proceeds funded more than \$62 million in salaries. On top of salaries, overtime pay totaled almost \$12 million. Overall, salaries plus overtime pay accounted for 23.6 percent of total forfeiture expenditures.

*Table 4
Forfeiture Expenditures, 2001-2007*

	2001	2002	2003	2004	2005	2006	2007
<i>Salaries</i>							
District and County Attorneys	\$1,831,203	\$1,154,447	\$2,794,234	\$3,999,456	\$2,947,874	\$5,495,831	\$4,726,015
Police and Sheriffs*	\$2,552,153	\$12,023,101	\$6,975,543	\$7,874,563	\$3,910,609	\$4,026,670	\$2,235,566
Totals	\$4,383,356	\$13,177,548	\$9,769,778	\$11,874,019	\$6,858,483	\$9,522,501	\$6,961,581
<i>Overtime</i>							
District and County Attorneys	\$2,056	\$5,143	\$223,526	\$268,925	\$29,293	\$17,056	\$118,178
Police and Sheriffs*	\$363,824	\$1,712,747	\$270,057	\$1,889,663	\$1,371,641	\$2,052,998	\$3,552,688
Totals	\$365,880	\$1,717,890	\$493,583	\$2,158,588	\$1,400,934	\$2,070,054	\$3,670,866
<i>Equipment</i>							
District and County Attorneys	\$176,268	\$321,797	\$135,525,809	\$1,545,124	\$2,838,022	\$1,516,569	\$1,432,880
Police and Sheriffs*	\$3,847,431	\$14,734,783	\$13,434,659	\$14,930,217	\$11,061,506	\$19,994,693	\$12,969,986
Totals	\$4,023,699	\$15,056,581	\$148,960,468	\$16,475,341	\$13,899,528	\$21,511,262	\$14,402,866
<i>Supplies</i>							
District and County Attorneys	\$155,441	\$178,737	\$517,765	\$416,286	\$446,890	\$737,618	\$916,914
Police and Sheriffs*	\$1,304,272	\$3,489,260	\$2,084,865	\$3,639,059	\$2,401,330	\$3,046,256	\$2,396,160
Totals	\$1,459,713	\$3,667,997	\$2,602,629	\$4,055,345	\$2,848,220	\$3,783,874	\$3,313,074
<i>Travel</i>							
District and County Attorneys	\$125,821	\$101,432	\$308,819	\$309,705	\$134,675	\$286,573	\$531,468
Police and Sheriffs*	\$221,691	\$264,817	\$181,491	\$284,019	\$319,898	\$249,265	\$298,127
Totals	\$347,512	\$366,249	\$490,311	\$593,724	\$454,572	\$535,839	\$829,595
<i>Training</i>							
District and County Attorneys	\$113,719	\$93,976	\$278,415	\$352,627	\$529,126	\$620,403	\$452,665
Police and Sheriffs*	\$141,358	\$321,184	\$267,922	\$324,524	\$327,185	\$371,552	\$397,584
Totals	\$255,077	\$415,160	\$546,337	\$677,152	\$856,311	\$991,955	\$850,250
<i>Paid/shared with Another Agency</i>							
District and County Attorneys	\$7,722,950	\$3,453,280	\$4,415,002	\$1,328,767	\$1,743,632	\$2,023,277	\$640,723
Police and Sheriffs*	\$3,971,591	\$893,228	\$6,356,824	\$2,809,765	\$2,409,752	\$3,148,272	\$1,877,965
Totals	\$11,694,541	\$4,346,508	\$10,771,826	\$4,138,532	\$4,153,384	\$5,171,549	\$2,518,688
<i>Informants</i>							
District and County Attorneys	\$53,040	\$131,856	\$764,622	\$2,298,041	\$48,787	\$74,648	\$77,591
Police and Sheriffs*	\$297,747	\$742,199	\$943,537	\$998,828	\$508,936	\$633,567	\$595,766
Totals	\$350,787	\$874,055	\$1,708,159	\$3,296,869	\$557,723	\$708,215	\$673,356
<i>Prevention/Treatment</i>							
District and County Attorneys	\$297,398	\$132,081	\$346,079	\$548,300	\$408,872	\$298,874	\$333,702
Police and Sheriffs*	\$84,562	\$134,350	\$453,920	\$318,373	\$250,763	\$176,627	\$152,416
Totals	\$381,960	\$266,431	\$799,999	\$866,673	\$659,636	\$475,501	\$486,119
<i>Facility</i>							
District and County Attorneys	\$275	NA	\$80,529	\$243,980	\$564,979	\$259,852	\$1,425,786

*Table 4 Continued
Forfeiture Expenditures, 2001-2007*

	2001	2002	2003	2004	2005	2006	2007
Police and Sheriffs*	\$49,131	NA	\$7,216,175	\$1,244,587	\$1,031,413	\$1,226,007	\$1,385,433
Totals	\$49,406	NA	\$7,296,704	\$1,488,567	\$1,596,392	\$1,485,858	\$2,811,219
<i>Other</i>							
District and County Attorneys	\$2,046,490	\$427,637	\$1,731,846	\$1,707,758	\$1,247,121	\$1,478,349	\$2,793,093
Police and Sheriffs*	\$1,839,937	\$5,029,010	\$5,446,072	\$3,515,262	\$3,801,092	\$2,795,169	\$2,614,192
Totals	\$3,886,428	\$5,456,647	\$7,177,918	\$5,223,021	\$5,048,214	\$4,273,518	\$5,407,285
<i>Expenditure Totals</i>							
Attorneys	\$19,394,925	\$5,972,319	\$12,702,791	\$12,786,473	\$10,943,680	\$12,604,866	\$13,431,954
Police and Sheriffs*	\$14,180,845	\$42,515,201	\$39,527,191	\$38,823,886	\$27,253,285	\$35,562,600	\$29,252,973
Totals	\$33,575,770	\$48,487,520	\$52,229,982	\$51,610,359	\$38,196,965	\$48,167,466	\$42,684,928
<i>Seven-Year Totals</i>							
District and County Attorneys	\$87,837,008						
Police and Sheriffs*	\$227,115,981						
Totals	\$314,952,989						

* Also includes fire departments, forest services, constables, narcotics task forces and other agencies.

Paying for salaries and overtime through forfeiture funds establishes particularly perverse incentives. It also leads to outright scandals. For example:

- In 2008, a west Texas district attorney used forfeiture funds to pay for his entire staff to travel to Hawaii for training.¹⁵ A district judge in that county was recently indicted for illegal use of \$34,000 of the forfeiture funds.¹⁶
- In 2008, an audit of the District Attorney for Texas' 79th Judicial District revealed that he distributed \$1.1 million to three employees between 2004 and 2008, and

many others may have received improper payments for “car allowances, stipends, reimbursements, advances, audits, travel (including to casinos), contract labor and other seemingly illogical purposes.”¹⁷

Incidents such as these led the Texas Senate Committee on Criminal Justice to issue a December 2008 report on asset forfeiture that concluded, “What was once a crime fighting and law enforcement tool has since become a profit-making, personal account for some law enforcement officials. Instances of abuse in both the confiscation and spending of asset forfeiture proceeds have increased at alarming rates.”¹⁸

CONCLUSION

The most troubling aspect of modern civil forfeiture laws is the perverse incentives at their core. The overriding goal for law enforcement officials—both prosecutors and police—should be fair and impartial administration of justice. However, civil forfeiture laws dangerously shift law enforcement priorities instead toward the pursuit of property and revenue.

The government holds most of the advantages in prosecuting civil forfeitures cases, and law enforcement agencies are usually entitled to keep most of the money and property confiscated from individuals, thus giving them a direct financial stake in the outcome of forfeiture efforts. Such statutory schemes distort law enforcement's responsibility to enforce the law fairly and spell disaster for innocent property owners like Ali caught up in forfeiture proceedings.

This is not just theoretical. In a national study published by the Institute for Justice, the authors examined whether law enforcement agencies respond to incentives by increasing the use of forfeiture when they can keep a higher percentage of forfeiture revenue for their own use and do so more easily.¹⁹ Unfortunately for property owners across the country, the analysis finds that they do just that.

But people like Ali and others across Texas should not lose their property without being convicted of a crime, and law enforcement should not be able to profit from other people's property. Texas' perverse incentive scheme and the unjust burdens placed on innocent owners violate the due process guarantees of the U.S. and Texas constitutions. Without constitutional constraints on civil forfeiture, police and prosecutors will be free to cash in at the expense of the innocent.



Endnotes

- 1 Baicker, K., & Jacobson, M. (2007). Finders keepers: Forfeiture laws, policing incentives, and local budgets. *Journal of Public Economics*, 91, 2113-2136; Benson, B. L., Rasmussen, D. W., & Sollars, D. L. (1995). Police bureaucrats, their incentives, and the new war on drugs. *Public Choice*, 83, 21-45; Geis, G. (2008). Asset forfeiture and policing. *Criminology and Public Policy*, 7(2), 215-218; Miller, J. M., & Selva, L. H. (1994). Drug enforcement's double-edged sword: An assessment of asset forfeiture programs. *Justice Quarterly*, 11, 313-335; Skolnick, J. H. (2008). Policing should not be for profit. *Criminology and Public Policy*, 7(2), 257-262; Warchol, G., & Johnson, B. R. (1996). Guilty property: A quantitative analysis of civil asset forfeiture. *American Journal of Criminal Justice*, 21(1), 61-81.
- 2 Williams, M. R., Holcomb, J. E., Kovandzic, T. V., Bullock, S. (2010). *Policing for profit: The abuse of civil asset forfeiture*. Arlington, VA: Institute for Justice.
- 3 H.B. 65, 71st Tex. Leg. 1st Special Session (1989).
- 4 Tex. Code Crim. Proc. Ann. art. 49.01(2) (Vernon 2010).
- 5 Tex. Code Crim. Proc. Ann. art. 59.06(c) (2) (Vernon 2010).
- 6 Tex. Code Crim. Proc. Ann. art. 59.05(d) (Vernon 2010).
- 7 Tex. Code Crim. Proc. Ann. art. 59.05(b) (Vernon 2010).
- 8 Reports to the Texas attorney general on forfeiture proceeds and use of forfeiture funds do not distinguish between civil and criminal forfeiture, so the data in this report include both. However, given reports that 80 percent of federal forfeitures occur absent prosecution—see Benson, B. L., Rasmussen, D. W., & Sollars, D. L. (1995). Police bureaucrats, their incentives, and the new war on drugs. *Public Choice*, 83, 21-45; Blumenson, E., & Nilsen, E. (1998). Policing for profit: The drug war's hidden economic agenda. *University of Chicago Law Review*, 65(1), 35-114—and the relative ease of civil forfeiture under Texas law, it is likely that the civil forfeitures make up the majority of the data.
- 9 United States Department of Justice. (2009). *Guide to equitable sharing for state and local law enforcement agencies*. Washington, D.C., p. 6.
- 10 Williams, et al., 2010.
- 11 Data obtained from DOJ Asset Forfeiture Program website (<http://www.justice.gov/jmd/afp/>), “Reports to Congress.”
- 12 The random sample was stratified by agency size, with 21 percent of the sample represented by agencies in cities and suburbs and the rest in rural locations. After creating the random list of agencies, the respective budgets were collected either from the agencies' websites or through direct requests to the agencies.
- 13 Cassella, S. (2007). Overview of asset forfeiture law in the United States. *United States Attorneys' Bulletin*, 55, 8-21; Edgeworth, D. (2008). *Asset forfeiture: Practice and procedure in state and federal courts*. Chicago: American Bar Association; Williams, H. (2002). *Asset forfeiture: A law enforcement perspective*. Springfield, IL: Charles C. Thomas.
- 14 The difference between the \$315 million in expenditures and the \$281 million in forfeiture proceeds over the same time period is likely accounted for by equitable sharing dollars and funds forfeited prior to 2001 but spent later.
- 15 The Sheriff's Stash. (2008, July 12). *The Economist*, 388(8588), 42.
- 16 Pannebaker, J. (2010, February 25). Indictments continue in 198th Judicial District, *Bandera County Courier*, http://www.bccourier.com/Archives/News_detail.php?recordID=100225N7.
- 17 Cuellar, Jr., M. J. (2009, July 14). State asks for audit of DAs forfeiture fund; Saenz details 'the scheme' to commissioners. *Alice Echo-News Journal*, npn; Cuellar, Jr., M. J. (2009, August 5). More details emerge from DA forfeiture fund; 46 others received more than \$400,000 from fund. *Alice Echo-News Journal*, npn; Powell, J., & Malan, D. (2009, May 2008). Jim Wells probes drug-fund use; \$4.2 million spent by ex-DA Garza. *Corpus Christi Caller-Times*, p. B17.
- 18 Texas Senate Committee on Criminal Justice. (2008, December). *Interim Report to the 81st Legislature*. Austin, TX, pp. 65-66.
- 19 Williams, et al., 2010.

ABOUT THE AUTHORS

Scott Bullock joined the Institute for Justice at its founding in 1991 and now serves as a senior attorney. Although he has litigated in all of the Institute's areas, his current work focuses on property rights and economic liberty cases in federal and state courts.

In property rights, Bullock has been involved in many cases challenging the use of eminent domain for private development. He argued the landmark case, *Kelo v. City of New London*, one of the most controversial and widely discussed U.S. Supreme Court decisions in decades. He also served as the lead counsel on the Institute's challenges to abusive civil forfeiture schemes in New Jersey and Utah.

Bullock's articles and views on constitutional litigation have appeared in a wide variety of media. He has published articles in *The New York Times* and *The Wall Street Journal* and he has appeared on *60 Minutes*, *ABC World News*, and National Public Radio, among many other publications and broadcasts.

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His research for IJ has resulted in reports such as *Disclosure Costs: Unintended Consequences of Campaign Finance Reform*, *Designing Cartels: How Industry Insiders Cut Out Competition*, *Victimizing the Vulnerable: The Demographics of Eminent Domain Abuse* and *Doomsday No Way: Economic Trends and Post-Kelo Eminent Domain Reform*.

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