

# Asset Forfeiture in Texas: DPS and County Interactions



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# Asset Forfeiture in Texas: DPS and County Interactions

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## EXECUTIVE SUMMARY

Between 2003 and 2012, law enforcement agencies in Texas confiscated approximately \$486 million in asset forfeiture cases. Texas is a target-rich environment for this law enforcement method due to the state's proximity to the Mexican border. Large shipments of drugs are sent north on Texan highways, while money earned from drug trafficking heads south.

One of the most active interdiction agencies is the Texas Department of Public Safety (DPS). Stops made by Highway Patrol can sometimes lead to multi-million dollar asset seizures. DPS can pursue either federal or state prosecution of suspects in these cases. This decision has important implications for District Attorneys (DA) in Texas, who receive a share of forfeited funds when state prosecution is pursued but will usually receive nothing in a federal prosecution. The choice can create tension between DAs and DPS.

As requested by the legislature, this report explores the dynamic between DPS and the DAs in DPS-initiated forfeitures. Case data in 20 sampled counties from 2003 to 2012 are analyzed to determine: 1) trends in DPS interdiction behavior, 2) net benefits for counties of an average forfeiture case, and 3) patterns of expenditures and reliance on forfeiture funds in counties. Statewide forfeiture audit data reported to the Office of the Attorney General and interviews with DPS officials and nine district attorneys were also incorporated into the analysis. Major findings include the following.

### **DPS has increased interdiction over the past decade and primarily collaborates with state DAs in prosecuting forfeiture cases.**

DPS-initiated drug and asset interdiction has increased since 2003. Though it has declined somewhat since 2008, it remains above the 10-year average. Total forfeiture value and average value per forfeiture are also above 2003 levels.

DPS partners with state DAs in the majority of forfeiture-related prosecutions. In 2012, just 17% of cases were prosecuted federally. DPS does not benefit financially from collaboration with federal partners. In fact, DPS's potential for financial gain is better in state cases. However, federal collaboration can offer important advantages in law enforcement and in achieving convictions in larger and more complex asset seizures. Federal prosecution is therefore likely to continue for these types of cases in the future.

## **Counties reap significant net benefits from the average DPS-initiated forfeiture case.**

PPRI's analysis of the costs incurred by counties relative to revenue shows that DPS-initiated forfeiture cases are extremely profitable for DAs. Because DAs may purchase equipment and training for local law enforcement agencies with these funds, forfeiture cases have trickle down benefits throughout a county. On average, a DA will spend just \$702 prosecuting a forfeiture case and will receive \$15,182 in proceeds.

Total costs in the county for a single forfeiture case include the DA's costs, district clerk costs, costs of assigned counsel, and jail costs. District clerks can recover their costs directly from the forfeited assets, but jail costs and costs of assigned counsel are not directly reimbursed. About one-third of DAs receiving forfeiture proceeds choose to share them with other county departments. With these costs averaging \$5,289 per forfeiture case, the net benefit to a county in an average forfeiture case is \$9,884.

## **In most jurisdictions, forfeiture makes up a small part of the DA's overall budget, but in a few counties DAs receive significant income from asset seizures.**

In 13 of the 20 counties sampled for this report, forfeiture revenue was less than 10% of the size of the DA's budget. In three counties it was between 12% and 32%. However, four counties are far more dependent on forfeited assets with revenue making up 70% or more of their budget. Three of those counties received more in revenue from forfeited assets in 2012 than they did in their budgeted appropriations in that year.

Commissioners' courts are prohibited by law from using forfeiture assets to supplant local funding, but they are allowed to reduce a DA's budget based on the expectation of future forfeiture revenue. DAs state that this can complicate their negotiations with the commissioners' court.

## **DAs frequently use forfeited funds to supplement salaries in their office.**

Half of the state's DAs receiving forfeiture funds use the monies to supplement office salaries. DAs interviewed state that this is an important use of forfeiture funds, as commissioners' courts rarely allocate money for salary increases. Forfeiture funds are critical to retaining experienced staff.

**Reporting requirements for forfeiture funds are not sufficiently detailed to easily detect abuses.**

State DAs receiving forfeiture proceeds are required to report annually to the Office of the Attorney General regarding uses of the money. However, the report is general, requiring minimal detail about expenditures in ten broad categories. The broad reporting format makes it difficult to detect questionable expenditures and may have contributed to spending abuses, some of which have been widely reported in the media.

**Conclusion: DPS and Texas DAs collaborate effectively in prosecuting civil asset forfeitures.**

This study offers context to policymakers and other stakeholders regarding the ways DPS and district attorneys collaborate and share resources related to civil asset forfeitures. DPS works with Texas DAs in prosecuting the large majority of asset seizures and shared proceeds more than offset related costs to counties.





# 1: INTRODUCTION

In the general appropriations bill for the Texas Legislature's 83<sup>rd</sup> Regular Session, the Office of Court Administration (OCA) was directed to conduct a "Study of Department of Public Safety Sting Operations"<sup>1</sup> with results reported to the legislature no later than January 1, 2015. The text of the rider is provided below.

**Study of Department of Public Safety Sting Operations.** Included in amounts appropriated above in Strategy A.1.1, Court Administration, the Office of Court Administration (OCA) is appropriated \$40,000 in fiscal year 2014 to conduct a study to determine the financial impact on local governments of statewide sting operations conducted by the Department of Public Safety (DPS), in particular the costs of the prosecution and defense of court cases resulting from these sting operations in small or exurban communities and counties near urban areas. The study shall include a review of past sting operations conducted by DPS, including those involving drugs, human trafficking, and similar activity. The study shall also include a review of all forfeiture funds collected as a result of these sting operations, including an analysis of who receives these funds and the purposes for which they are used. Any unexpended balances as of August 31, 2014 in funds appropriated for this purpose are appropriated for the same purpose in the fiscal year beginning September 1, 2014. OCA shall report to the Legislature the findings from this study no later than January 1, 2015.

OCA contracted with Texas A&M University's Public Policy Research Institute (PPRI) to fulfill the terms of this legislative rider. This report is the result. PPRI sampled 20 counties that border drug trafficking corridors. The counties were randomly selected from among the 44 counties with the highest asset forfeitures during this period. The research team obtained data on all forfeiture cases in those counties involving DPS between 2003 and 2012. To provide additional background, PPRI interviewed DPS officials and nine district attorneys in the sampled counties. Finally, forfeiture audit data maintained by the Attorney General for every law enforcement unit in Texas was analyzed. Although PPRI was sensitive to legislative text relating to "human trafficking, and similar activity," while working on this report, none of the cases in

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<sup>1</sup> Conference Committee Report, SB No. 1, General Appropriations Bill. 83<sup>rd</sup> Regular Session of the Texas Legislature.

the 20 sampled counties for the 10-year study period involved human trafficking according to the short case summaries provided by DPS. Appendix A explains the research methods more fully including the sample design.

Any law enforcement office can make an asset seizure, but in keeping with the legislative language, this report focuses on just one type of forfeiture case: those that are initiated by Highway Patrol officers and therefore involve DPS. This is only a small portion of all asset forfeiture in Texas. Using the legislative language and guidance from legislative staff, PPRI identified three primary research questions. Chapter 2 gives a brief overview of forfeiture law and patterns of forfeiture in Texas. Chapters 3, 4, and 5 are the primary substantive chapters, dealing with each of the following questions in turn. Conclusions are offered in Chapter 6.

**1. What is the recent history of DPS prosecution of forfeiture cases? What incentives does DPS have to work with partners inside and outside the state?**

Chapter 3 examines how DPS conducts its interdiction activities. It begins with a review of the quantity of DPS-initiated cases and the amount of forfeiture revenue generated by these cases between 2003 and 2012. The second half of the chapter analyzes DPS's decision to work with a federal agency or the district attorney in case prosecution.

**2. What is the financial impact on local governments of DPS forfeiture operations?**

Chapter 4 estimates the costs borne by DAs and compares them to the revenues DAs receive from forfeiture. Costs to other local government units are also considered as county governments may have to bear the cost jailing the defendant and providing the defendant with a lawyer.

**3. How are forfeiture funds spent by the awarded parties?**

Some DA offices rely on forfeiture for a significant portion of their overall revenues. Chapter 5 evaluates the statutory language governing budget allocations for DAs in the presence of potential forfeiture revenues. It also examines itemized expenditures from DPS and self-reported expenditures from DAs.

## 2: PROCESS FOR SEIZING AND FORFEITING ASSETS

### ROLE OF CIVIL FORFEITURE IN LAW ENFORCEMENT

Chapter 59 of the Texas Code of Criminal Procedure was enacted in 1989 to govern contraband seized by any Texas peace officers, including DPS, Sheriffs, and all levels of local law enforcement. Forfeiture laws in Texas are similar to federal forfeiture laws in that the case proceeds against the seized asset rather than the individual. As such, the case is against the asset itself, not the individual, and the matter is resolved through a civil proceeding rather than a criminal trial.

The U.S. Department of Justice gives the following rationale for forfeiture: “(forfeiture) removes the tools of crime from criminal organizations, deprives wrongdoers of the proceeds of their crimes, recovers property that may be used to compensate victims, and deters crime.”<sup>2</sup> There is no question that the federal program and similar state programs have resulted in the confiscation of a significant amount of revenue from criminal enterprises; in 2007, state and local law enforcement reported seizing more than \$800 million in assets.<sup>3</sup>

These revenues are important to many law enforcement agencies as supplements to their budget, allowing them to buy equipment that aids in the prevention of crime and interdiction of criminal activities. State law enforcement agencies often report that after paying salaries, they have little money left over to buy necessary equipment.<sup>4</sup>

### Criticisms of Civil Forfeiture

Civil forfeiture has come under scrutiny, however, after recent reports and editorials published by media outlets like the Washington Post,<sup>5</sup> the Wall Street Journal,<sup>6</sup> and others. The focus of these criticisms is the prosecution of forfeiture as a civil case. There are three important implications of forfeiture hearings being civil trials.

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<sup>2</sup> U.S. Department of Justice. April 2009. “Guide to Equitable Sharing for State and Local Law Enforcement Agencies.”

<sup>3</sup> Cohen, Derek. (March 2014). “Taking Contraband without Taking our Liberties: Civil Asset Forfeiture Reform in Texas.” Texas Public Policy Foundation. <http://www.texaspolicy.com/center/effective-justice/reports/taking-contraband-without-taking-our-liberties-civil-asset>.

<sup>4</sup> See, for example, Government Accountability Office. (July 2012). “Justice Assets Forfeiture Fund: Transparency of Balances and Controls over Equitable Sharing Should be Improved.”

<sup>5</sup> Sallah, Michael, Robert O’Harrow Jr., and Steven Rich. (September 6, 2014). “Stop and Seize.” *The Washington Post*. Last accessed October 21<sup>st</sup>, 2014. <http://wapo.st/1oQU4T1>.

<sup>6</sup> Editorial. “What’s Yours is Theirs.” *The Wall Street Journal*. Last accessed December 15<sup>th</sup>, 2014. <http://www.wsj.com/articles/whats-yours-is-theirs-1409702898>.

1. Unlike in a criminal trial, the owner of the assets is not entitled to state-provided legal representation, so recovering assets often requires hiring an attorney.
2. The prosecutor does not have to meet the “beyond a reasonable doubt” standard of evidence used in criminal cases. Instead, the prosecutor need only establish that the asset be forfeited by “a preponderance of the evidence.”
3. No criminal conviction is necessary.<sup>7</sup>

These three features of civil forfeiture hearings make it extremely difficult for asset owners to recover their assets in a forfeiture hearing even if the claims to the assets are legitimate. In a best-case scenario, assets could be tied up for months in the legal system.

Potential abuses of civil forfeiture were highlighted by the case *Morrow v. City of Tenaha*.<sup>8</sup> Plaintiffs in this class-action suit charged that police officers stopped motorists and asked them to sign over any cash they were carrying to avoid facing criminal charges. The plaintiffs also charged that many of these stops involved racial profiling. As part of the settlement in this case, police in Tenaha are now required to videotape all stops, provide a justification for the stop, and advise the motorist of their right to refuse a search.

Such cases have united national organizations with disparate policy agendas in opposition to civil forfeiture. Common reforms suggested by these organizations include raising the evidentiary standard in forfeiture hearings or requiring a criminal conviction to make an asset forfeiture.

## **PATTERNS OF FORFEITURE IN TEXAS**

Assets can be seized by any law enforcement agency in Texas. As requested by the legislature, this report focuses on seizures made by DPS. However, sheriff’s departments, city police departments, and other law enforcement agencies all participate in seizure and forfeiture.

### **Forfeiture in Texas Follows Drug Trafficking Corridors**

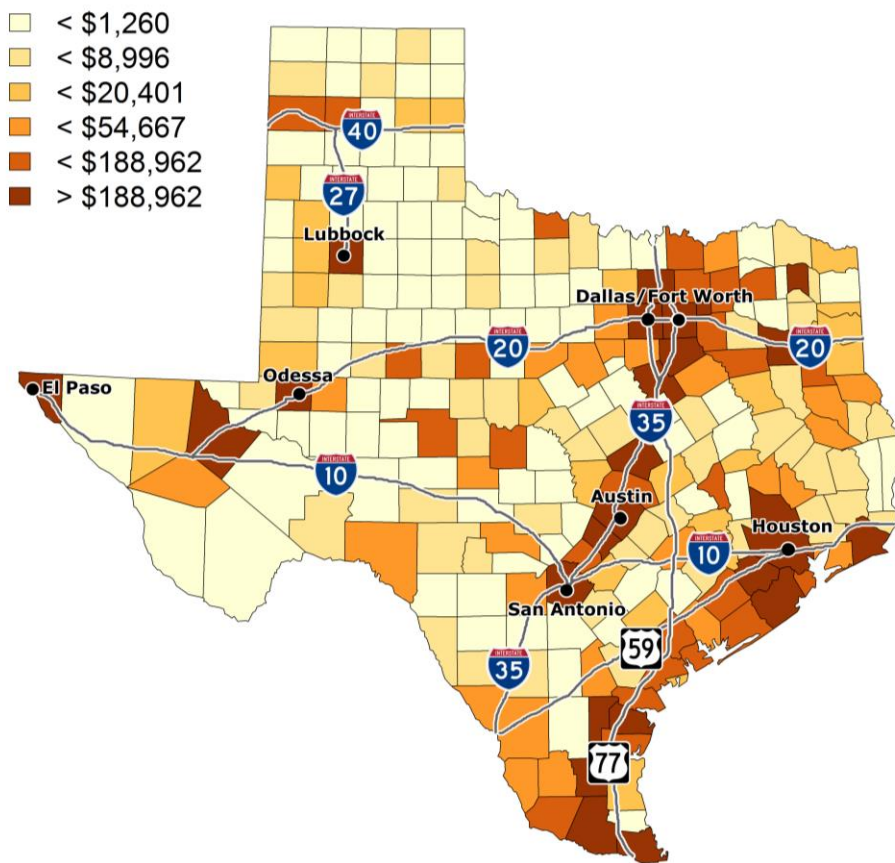
In Texas, as in other states, most asset forfeitures occur in conjunction with a traffic stop along one of the state’s drug corridors. As part of an intentional strategy to disrupt illegal trafficking, Highway Patrol agents are trained to recognize potential signs that money or drugs

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<sup>7</sup> Chapter 59 (in 59.05(d) makes this point explicitly: “A final conviction for an underlying offense is not a requirement for forfeiture...”

<sup>8</sup> *Morrow v. City of Tenaha Deputy City Marshall Barry Washington*. United States District Court, E.D. Texas, Marshall Division. 30 July 2010.

**Figure 1.1: Geographic distribution of forfeiture by local law enforcement agencies in Texas in 2012.**



are being transported.<sup>9</sup> If a search of the vehicle reveals goods that the officer believes may be contraband, these assets, as well as the vehicle itself, may be seized. As a border state, a significant amount of money is moved through Texas highways, often by couriers who are not themselves involved in any other criminal activity.

Because most seizures are related to drug-trafficking, forfeiture in Texas is concentrated along highways that follow distribution networks. Figure 1.1 shows the geographic distribution and cash value of forfeitures by DPS as well as other law enforcement agencies statewide in 2012.<sup>10</sup> Areas of significant forfeiture activity include I-40 in the Panhandle, I-20 in West Texas

<sup>9</sup> For example, a car may have a visibly fake muffler or other suspicious alteration. After conducting a routine stop, patrol officers look for nervousness on the part of the driver, an inability to answer basic questions (“where are you headed today?”) and other signs that the driver may be involved in criminal activity.

<sup>10</sup> From Asset Forfeiture Forms submitted to the Texas Attorney General’s Office.

and in the Dallas-Fort Worth area, I-35 from San Antonio to Oklahoma, US-59 along the Gulf Coast region, Lubbock County, and US-77 in the southeast.

The amount of funds seized varies greatly by county. Proximity to a highway corridor tends to be the most important determinant of law enforcement targeting and forfeiture enforcement activity, but proximity to the border is also important. In the ten years between 2003 and 2012, cash forfeitures initiated by county jurisdictions have brought in about \$486 million<sup>11</sup> to the coffers of local law enforcement agencies and district attorney offices in Texas.

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<sup>11</sup> According to Asset Forfeiture Forms submitted to the Texas Attorney General's Office. Inflation adjusted to 2014 dollars.

### 3. HISTORY OF DPS ENFORCEMENT OPERATIONS AND PARTNERSHIP INCENTIVES

Before the financial impact of forfeitures on counties can be assessed, it is first useful to explore DPS’s law enforcement operations. The frequency of seizures and DPS’s decision to collaborate with local or federal partners each have significant financial implications for counties on interdiction corridors. This chapter reviews past DPS forfeiture cases and gives an overview of when and why DPS chooses to pursue federal prosecution.

This chapter addresses the section of the legislative rider that reads “The study shall include a review of past sting operations conducted by DPS, including those involving drugs, human trafficking, and similar activity.” The second section, on DPS’s decision to involve federal agencies, addresses the first component of the rider’s directive to: “[A]lso include a review of all forfeiture funds collected as a result of these sting operations, including an analysis of who receives these funds.”

#### TRENDS IN DPS-INITIATED ASSET SEIZURE

DPS-initiated seizures occur primarily through traffic stops. Highway Patrol Officers are trained to notice signs of possible smuggling and to ask the right questions to make search and seizure possible. The amount and type of contraband discovered is in part related to the frequency of enforcement. Landing a high-value forfeiture also involves an element of chance, so there is not necessarily a direct relationship between frequency of stops and the amount of contraband seized. This section examines the interplay between these factors.

#### Findings

- DPS interdiction in the 20 sampled counties increased steadily between 2003 and 2008. It has since declined, falling from 75 cases in 2008 to 40 cases in 2012.
- DPS officials could not cite a specific reason for the fall in seizure rates but noted that a change in agency leadership occurred in 2009.
- Total asset value has also dropped from \$9.9 million in 2007 to \$5.7 million in 2012 (amounts adjusted for inflation).
- Declines in asset valuation are attributable to a combination of reduced interdiction and lower seizure values.

Figure 3.1: Number of DPS forfeiture cases in all 20 sampled counties, by year.

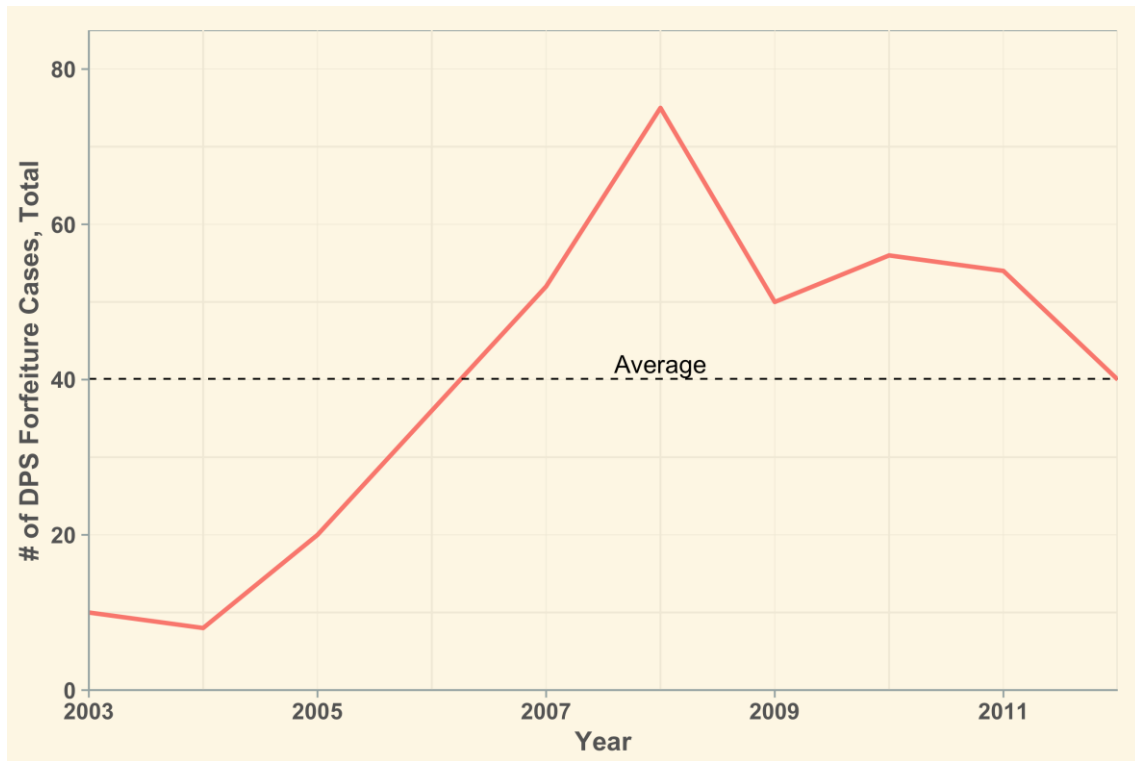
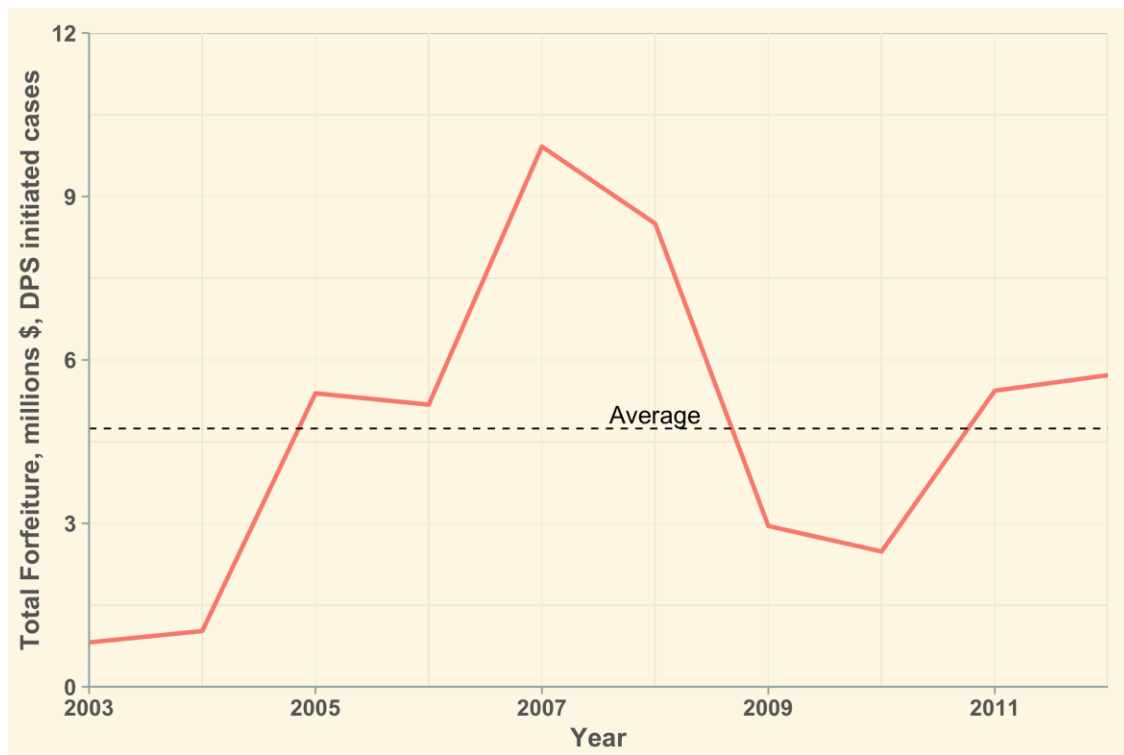


Figure 3.2: Total forfeiture \$ in all 20 sampled counties, by year, adjusted for inflation.



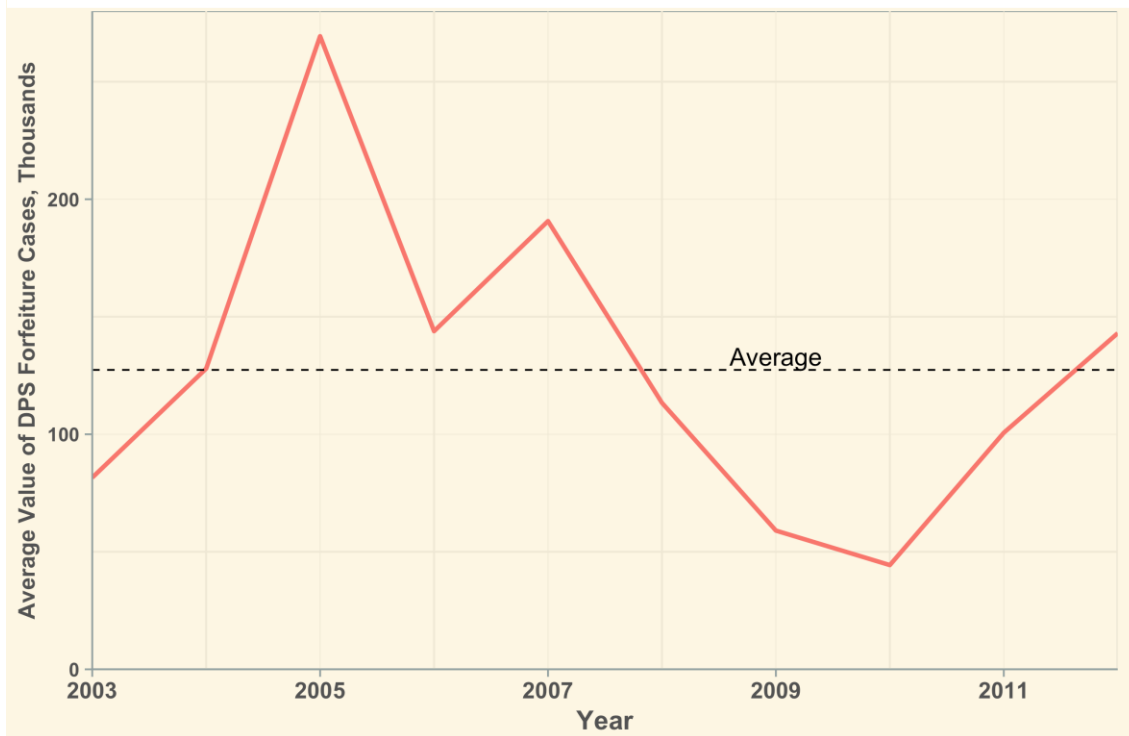


## Review of Past DPS-initiated Forfeitures Cases

Figure 3.1 shows the number of DPS-initiated forfeiture cases by year in the 20 sampled counties. The trend over time strongly suggests that DPS pursued an intentional policy of increasing civil asset seizures from 2004 to 2008, as cases increased sharply during that interval. Since 2008, however, the number of cases has trended downward. DPS officials could not cite specific reasons for the decrease except to say that enforcement follows patterns of crime.<sup>12</sup>

Figure 3.2 shows the value of forfeited assets by year in DPS-initiated seizures in the 20 sampled counties. Mirroring Figure 3.1, asset value increased from 2003 until 2007.<sup>13</sup> Then, in 2008 a downward trend began, with valuations declining from the \$10 million peak to about \$2.5 million in 2010. However, it is too soon to say that DPS interdiction is on a downward trajectory. Figure 3.1 shows the number of seizures remained above average in 2010 and 2011 (the 2<sup>nd</sup> and 3<sup>rd</sup> highest years out of the decade, respectively).

Figure 3.3: Average value of DPS forfeiture cases in all 20 sampled counties, by year.



<sup>12</sup> One official mentioned a change in leadership in the Criminal Investigations Division of DPS in 2009 as a possible explanation. It is also possible that *Morrow v. Tenaha*, a lawsuit filed in 2008 to challenge improper stops and seizures, prompted Highway Patrol to be more cautious making stops. DAs interviewed for this report perceive that Highway Patrol officers are less assertive and less skilled in interdiction today than in previous years.

<sup>13</sup> The peak in values in 2007 is attributable in part to the average value of seizures in 2007 being the second highest in the data set. See Figure 3.3.

Figure 3.3 illustrates the influence of chance. In 2005, the average value of a single forfeiture was \$270,000, whereas it bottomed out at just \$44,000 per case in 2010. The net worth of seized assets that year fell below average even as the number of cases brought remained above average (Figure 3.1). Thus, in addition to some reductions in enforcement, declines in total forfeiture proceeds are also linked to smaller seizures.

More recently, the value of total asset seizures has rebounded and is presently above average (the dotted red line) for the ten years shown. Total amounts in 2012 were about \$5.7 million, up from about \$2.5 million just two years prior, but still well below the peak of nearly \$10 million in 2007 (See Figure 3.2).

## **DPS PARTNERSHIPS WITH STATE AND FEDERAL AGENCIES**

When a seizure is made, DPS may choose to refer cases for prosecution of seized assets and suspected criminals in one of two ways. First, DPS can refer the charge to the district attorney in the county where the seizure was made. In these cases, the proceeds of a successful forfeiture will be shared between the DA, DPS, and the State of Texas's general revenue fund.

Second, DPS can opt to work with federal agents, most commonly at the U.S. Department of Justice or the U.S. Department of Commerce. In these cases, federal attorneys will prosecute the criminal and civil case and any assets that result from a forfeiture will be retained federally.

If the DA or a local law enforcement unit believes they should receive some of the money, they can file a federal Equitable Sharing Request Form.<sup>14</sup> Whether any state government unit (including DPS), or local law enforcement agency receives money and how much money is entirely at the federal agency's discretion. The decision is based upon the federal agency's assessment of the relative amount of effort each local agency contributed to the case.

DPS's decision to work with federal partners therefore has a significant fiscal impact on counties. They stand to receive substantial revenue if a state DA is involved in the case, and little-to-no revenue if federal agents are involved in the case. This section examines trends in state and federal collaboration over the last ten years.

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<sup>14</sup> These are generally referred to by the name of the form used in the Justice Department, DAG-71.

## Findings

- During the period under review, DPS has partnered with state DAs to prosecute the majority of forfeitures. In 2012, just 17% of cases were federally prosecuted.
- However, during the same timeframe, DPS has favored federal partners in cases involving high-value assets. More than half of DPS-initiated forfeiture funds are prosecuted federally (75% in 2012).

## Frequency of Federal Prosecution

DPS works with state prosecutors to resolve the vast majority of forfeiture cases. The frequency with which DPS pursues federal prosecution has declined over the past decade. Figure 3.4 shows that in the 20 sampled counties, federal involvement in DPS-initiated forfeitures went from a high of 50% of cases in 2003-2004 to a low in 2012 of 17%. The decline has been steady, with nearly every year seeing a decrease in the percent of federally prosecuted cases compared to the previous year.

Figure 3.4: Percent of cases prosecuted federally, by year.

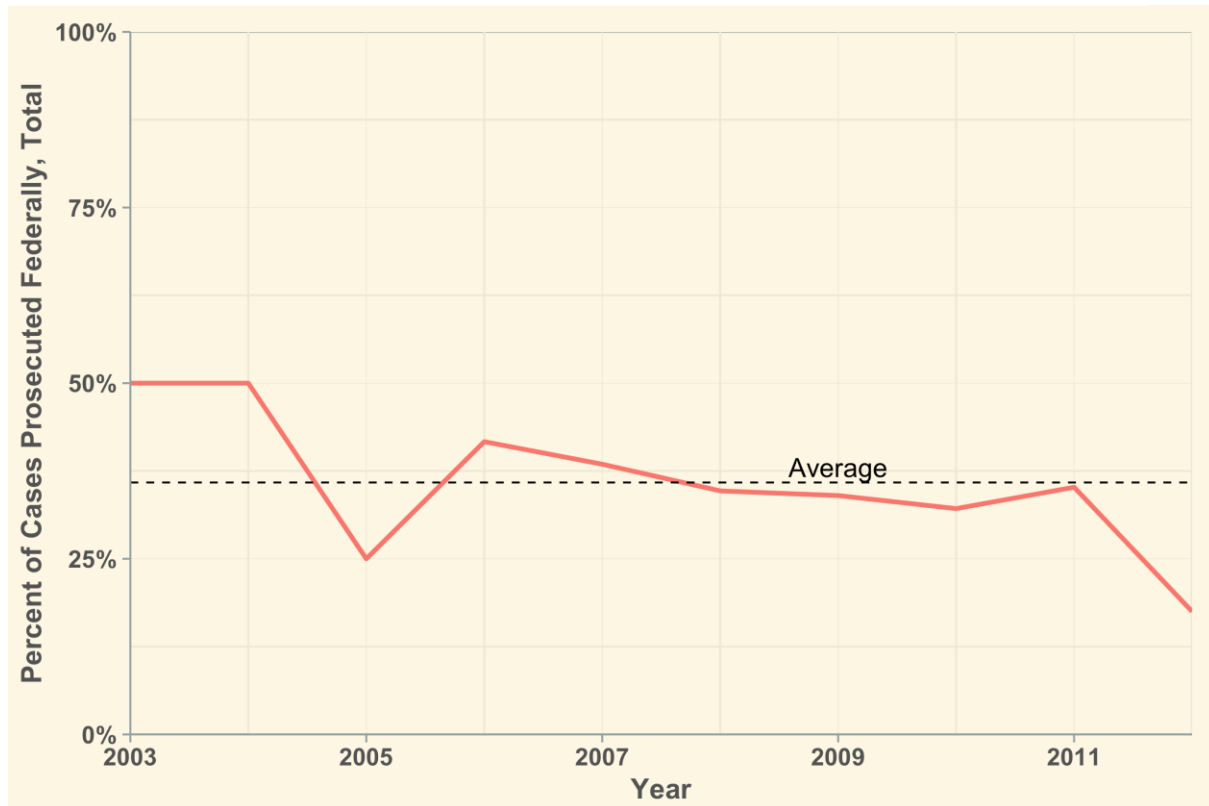
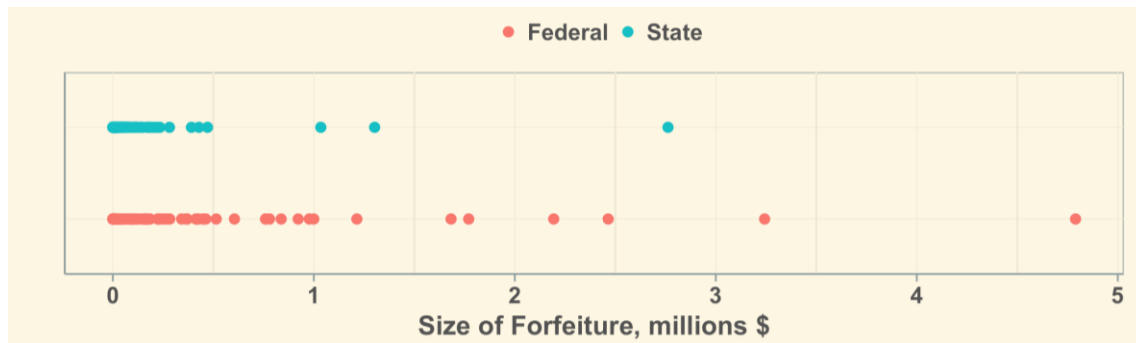


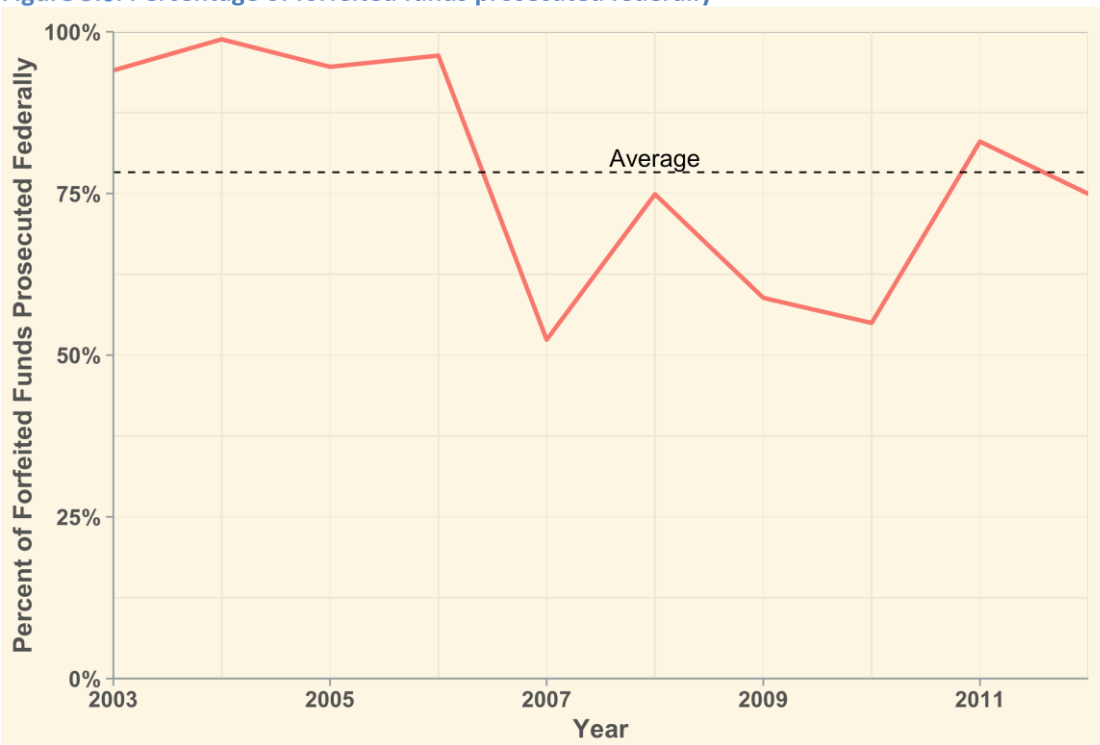
Figure 3.5: Size of federal and state forfeiture awards, all years



### Asset Values in Cases with Federal Involvement

While DPS prosecutes the majority of forfeitures at the state level, the agency has consistently favored federal prosecution where high-value assets are involved. The data provided by DPS in Figure 3.5 shows that for the 20 sampled counties, DPS almost always pursues federal prosecution for seizures with assets valued at \$500,000 or more. As a consequence, the majority of the money seized by DPS is prosecuted federally, even though only a small number of cases are prosecuted federally. Figure 3.6 shows the percent of funds prosecuted federally has declined from highs in 2003 to 2006, but it has never fallen below 50%. In recent years it has ticked upward, and now stands at about 75%.

Figure 3.6: Percentage of forfeited funds prosecuted federally



This trend is largely driven by a small number of high dollar value cases. For example, in 2012 just 7 of 40 cases were prosecuted federally, and 5 of these involved dollar amounts less than \$40,000. However, one was a \$3.2 million case, larger than all state forfeiture in the 20 counties for 2012 combined. Another was worth \$900,000. Without these two cases, the federal share of funds would have been just 4% of the total.

## **BENEFITS OF COOPERATION WITH FEDERAL OR STATE AGENCIES**

There are at least two reasons DPS might choose to partner with a federal agency when large seizures are in play. The first is better criminal outcomes and the second is an incentive for financial gain. The following paragraphs examine the evidence regarding the influence of these factors in DPS’s determination of how to proceed with a case.

### **Findings**

- Federal prosecution offers important advantages in the prosecution of a criminal case. These include jurisdictional authority needed for interstate “controlled delivery” operations and resources needed to successfully prosecute large, complex cases.
- DPS appears to have little financial incentive to pursue federal prosecution because they receive a larger and more predictable portion of forfeited funds in state cases.

### **DPS Law Enforcement Incentives**

There are good reasons to believe federal agency partners can produce better criminal outcomes in large seizure cases. They enjoy greater jurisdictional and financial resources than Texas counties to mobilize against major criminal operations linked to high-value assets.

First, federal agents have the jurisdictional authority to assist DPS in making “controlled deliveries.” In a controlled delivery, the money courier is promised favorable treatment in return for completing the delivery as scheduled and leading law enforcement to more important members of a criminal organization.<sup>15</sup> These cases typically cross state borders so can only be done with federal jurisdictional authority.

Second, federal prosecutors may be more successful than state DAs in prosecuting more complex criminal cases emanating from large asset seizures. Data presented in Chapter 4

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<sup>15</sup> DPS was unable to provide data on how frequently controlled delivery operations are conducted, but stated that these operations are rare.

indicates that Texas DAs filed criminal charges in about two-thirds of the forfeiture cases on record in the 20 study counties.<sup>16</sup>

Data was unavailable to directly assess whether federal prosecution is more frequent. However, interviews with DAs reveal that there are conditions under which they may be reluctant to file criminal charges. For example, cases where the only seized asset is cash are potentially problematic. In the absence of drugs or other obvious criminal implements, the most likely charge, money laundering, is extremely difficult to prove. This explains why in the study sample just 43% of cash seizures lead to criminal prosecution compared to 81% of cases where drugs were present.<sup>17</sup>

Given that a conviction may be hard to obtain, some DAs simply don't believe these cases are worth the effort. One gave the following rationale: "Prosecuting the mule is a total waste of time. The people who hired the mule don't care about the mule, all they care about is the product and the money... We don't spend time on the mule because it has no impact on the problem." Other DAs insisted that they do prosecute money-laundering cases, depending on the circumstances and the strength of the evidence.

Some DAs say they might also decline to prosecute large high-value cases because federal prosecutors have more experience and resources. For instance, some of the cases have tax implications that federal prosecutors are better equipped to address. Due to data limitations, it could not be determined if the frequency of prosecution by DAs has increased or decreased over time,<sup>18</sup> but two DAs speculated that DPS may be more willing to work with state prosecutors now because they are increasing rates of criminal prosecution in forfeiture cases.

### **DPS Financial Incentives**

While there appear to be robust law enforcement incentives for federal collaboration, there is less evidence that financial gain is a consideration. When DPS partners with local prosecutors, their portion of the proceeds is prescribed by statute.<sup>19</sup> If a default judgment occurs – meaning no one claims ownership of the asset – DPS receives 40% of the total asset

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<sup>16</sup> See Chapter 4: "DA Costs: Prosecution of the Criminal and Civil Forfeiture Cases."

<sup>17</sup> Ibid.

<sup>18</sup> In Chapter 4, the research team finds the overall frequency with which local prosecutors pursue the criminal case. This estimate is based on a subset of all cases due to data limitations, and is not large enough to reliably determine trend.

<sup>19</sup> Texas Code of Criminal Procedure 59.06.

value. According to DAs interviewed, this is by far the most frequent outcome, although if the asset owner does not default, DPS will receive nothing.<sup>20</sup>

At the federal level, DPS's portion of the proceeds is less predictable. If an Equitable Sharing Request form is filed, DPS can request the percentage of the funds they believe is appropriate, although they must provide a justification. It is therefore possible that in a federal case, DPS could receive more than the state's 40% split. However, the federal agency makes the final determination, and it is under no obligation to share anything.

Financial incentives for DPS to partner federally can be assessed based on the average percentage of all forfeiture proceeds gained through federally prosecuted cases. In 129 cases federally prosecuted in the sampled counties between 2003 and 2012, nearly \$36 million was forfeited by asset owners. DPS received \$9.7 million of the total, or approximately 27%. Had all 129 of these cases been prosecuted in Texas counties, DPS would have netted over \$14 million.

DPS received 40% or more of the forfeiture, thereby beating the state split, in just 43 federal cases or one-third of the total. The amount DPS received in federally prosecuted cases also varies immensely by case. In 31 forfeitures (24%), DPS received more than 70% of the money, but in 48 cases (37%) they received nothing at all. These data demonstrate that, on average, the federal division is inferior to the 40% split DPS will receive in virtually all state prosecuted cases.<sup>21</sup> DPS therefore appears to have little if any financial incentive to prosecute cases federally.

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<sup>20</sup> This is true regardless of the outcome of the civil forfeiture hearing.

<sup>21</sup> The exact percentage received by DPS in locally prosecuted cases will depend on how many of these cases end in default by the asset owner. This could not be determined for most cases in the data but as noted in the preceding discussion, both DAs and DPS state that default is the norm. One DA estimated that 2 in 100 cases will not end in default. If this estimate is roughly correct, DPS will still receive better than 39% of all forfeitures at the state level.





## **4: FINANCIAL IMPACT OF DPS FORFEITURE OPERATIONS ON LOCAL GOVERNMENTS**

Civil asset forfeitures offer Texas DAs a potential source of revenue, but there are also accompanying responsibilities. When individuals are charged criminally, expenses include not only the costs of prosecution, but also of detention, court processing, and indigent defense. This chapter estimates the net financial impact on local governments of DPS-initiated forfeiture operations.

Although the DA's office is most directly involved in prosecuting the case, and the DA's office is the only county government unit to receive a portion of the seized assets, costs may also be incurred by other county offices. The first section of this chapter tabulates the costs and benefits to DA offices. The second section summarizes costs that may be incurred outside the DA office.

This chapter addresses the following text in the legislative rider: “[D]etermine the financial impact on local governments of statewide sting operations conducted by the Department of Public Safety (DPS), in particular the costs of the prosecution and defense of court cases resulting from these sting operations in small or exurban communities and counties near urban areas.”

### **DISTRIBUTION OF ASSETS TO DISTRICT ATTORNEYS**

Memoranda of Understanding (MOUs) govern how forfeited funds and property are divided between DAs and the state. Article 59.06 of the Texas Criminal Code specifically tasks DAs with responsibility for developing agreements with DPS and other law enforcement agencies to govern the disposition of forfeited property. In the past, these MOUs varied from county to county, as DPS negotiated individual agreements. More recently, DPS has encouraged the use of a standardized MOU that was designed with the input of DAs. As of November 2013, 163 counties had signed this new MOU (which can be viewed in full in Appendix B).

Figure 4.1 summarizes the distribution of assets under the new MOU. The agreement awards DAs 30% of funds when no answer is filed for a forfeiture hearing and the verdict is a default in favor of the state. As previously noted, DPS retains 40% in these cases and the remaining 30% is deposited into the state's general revenue fund.

In the event that the defendant does claim the asset, the MOU awards 40% of forfeited funds to the DA. This is intended to compensate the office for the increased burden of handling a case where there is no default. If the case actually goes to trial, the DA will be awarded 50% of the funds if the state wins. Everything that is not awarded to the DA in these cases is deposited into the state's general revenue fund.<sup>22</sup>

This agreement represents a slightly better deal for most DAs than those available under the agreements in place in the past. Previous MOUs often offered the same 30% split for defaults but many did not have clauses escalating the DA's percentage in the event of a trial. The new MOU also specifies that the DA always receives 100% of forfeitures with a value less than \$5,000.

## COUNTY COSTS AND BENEFITS

Offsetting any potential income from civil asset forfeitures are costs to DAs and other county offices associated with processing criminal forfeiture cases. This section of the report estimates the average value of assets received by DAs in these operations relative to costs of processing criminal charges. The calculations are summarized in Table 4.1.

### Findings

- The costs incurred by DAs in DPS-initiated forfeitures are small compared to returns. DAs' share is about \$15,182 per case, and the costs of prosecution are just \$702 per case, on average.
- Costs incurred by other county government units are not reimbursed by statute. Jail costs are estimated at \$1,980 per case, indigent defense costs are estimated at about \$614 per case, and district clerk costs are estimated at \$430 per case, on average.
- After accounting for all forfeiture-related costs and revenue, benefits generated by forfeitures (\$15,182) exceed costs to the county (\$5,298) by a margin of \$9,884 per case, on average.

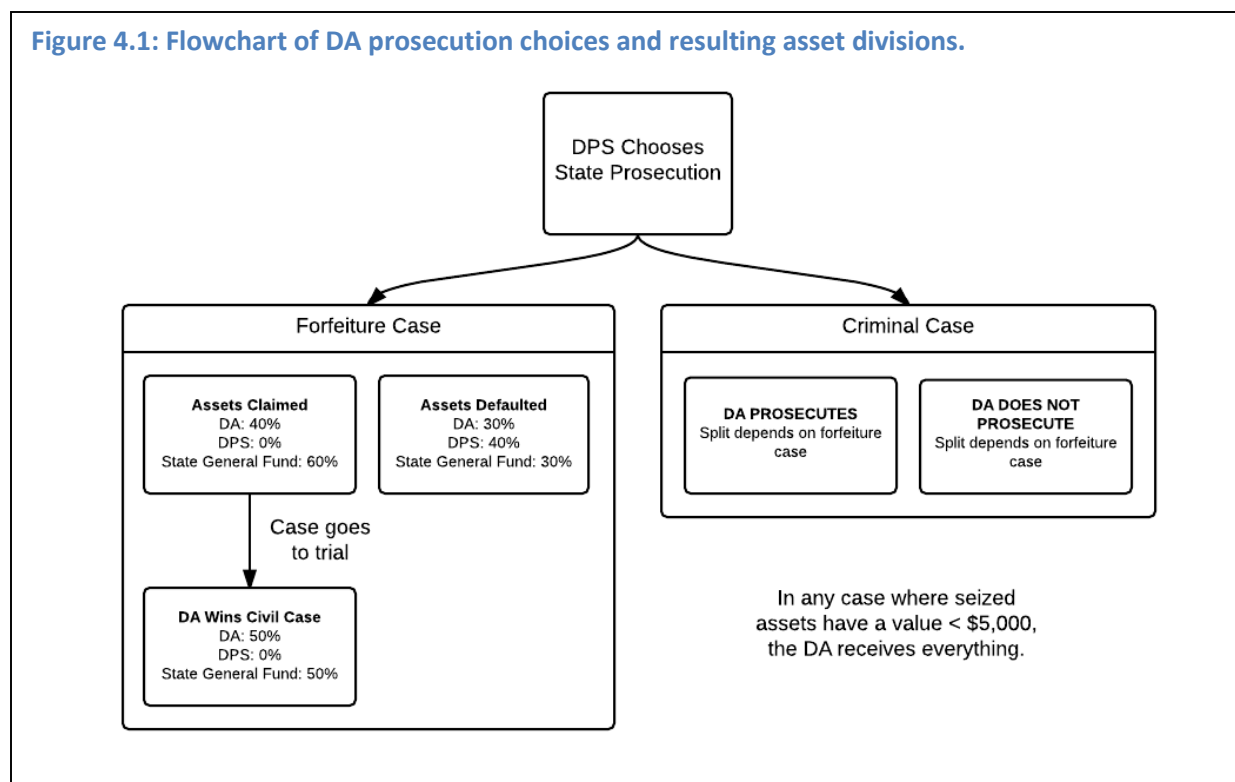
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<sup>22</sup> There is one other possibility for the division of assets. If a default judgment is awarded in favor of the state and the forfeiture case does not involve controlled substances, the DA will receive 30% of the forfeited funds, as they would in any other default judgment, but DPS will receive nothing, and the entire balance of the funds (70%) will be deposited in the Texas General Revenue Fund. DPS stated that this happens rarely in practice, as most forfeiture cases are related to drugs. This is verified by the cases in the study sample. Although it is not always possible to tell what crime was committed in the short case summaries DPS provided, virtually every case where an offense can be identified is a controlled substances case.

## DA Revenues: Average Share of Forfeitures

The amount of money retained by DAs in DPS-initiated forfeitures is not a straightforward calculation. DPS does not record the percentage of funds that are awarded to a DA, but rather the percentage of funds that DPS keeps.<sup>23</sup> This percentage can be imprecise, as records do not always specify the amount of DPS-retained funds shared with the state’s general revenue fund.<sup>24</sup> Furthermore, DPS records do not indicate whether there was a default judgment,<sup>25</sup> information needed to precisely determine the DA’s portion of the asset (see Figure 4.1).

**Figure 4.1: Flowchart of DA prosecution choices and resulting asset divisions.**



To address these data limitations, the revenue estimates depicted in Table 4.1 assume that when a case is prosecuted by the state, the DA receives 30% of forfeited funds. This is a conservative estimate, because the DA will almost always receive at least this much,<sup>26</sup> and

<sup>23</sup> There is no single case ID that can link cases from the DPS database to cases in the county, so this information cannot easily be obtained from anyone in the county without fuller case data than the researchers had access to.

<sup>24</sup> There is a field to record this information but it is often left blank.

<sup>25</sup> This information also cannot be determined by looking at defendants’ criminal records, since the forfeiture case is unrelated to the criminal case.

<sup>26</sup> There have been MOUs in the past that have provided the DA with a 20% split instead of 30%. While the research team did not review all prior MOUs, conversations with DPS and with DAs indicate that this kind of MOU was rare and does not exist today.

could receive more under the new MOU.<sup>27</sup> As noted above, awards less than \$5,000 are retained entirely by the DA.

DAs' costs for prosecution were estimated based on a previous study evaluating the criminal case processing expenditures in Wichita County, Texas.<sup>28</sup> As part of a cost-benefit calculation, the study quantified jail, court, prosecution, and defense costs for misdemeanors and felonies. Although the study is specific to a single county, it offers the most reasonable available estimate of prosecution costs in counties similar to those considered here.<sup>29</sup>

In 2012, the actual cost per case to prosecute a felony in Wichita County was \$724. To allow for the highest possible estimation of DA cost burden, this figure was assigned to all forfeiture cases in the sample, ignoring the possibility of lower cost misdemeanor charges.

To determine the number of criminal cases prosecuted, DPS's Crime Records Service was used to link DPS forfeitures and criminal cases in the 20 sampled counties. Of the 206 people mentioned in DPS forfeiture case summaries between 2003 and 2012, 94 (46%) could be matched to a criminal record.<sup>30</sup> Cases with no matching criminal record (and therefore excluded from analysis) were on average higher asset value cases (mean = \$72,324) than those where a match could be made (mean = \$56,347).

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<sup>27</sup> It is possible that if other law enforcement agencies are involved, the forfeiture could be governed by a multi-agency agreement, or could be negotiated for the case. For simplicity, and because the data does not indicate when this might be the case, this possibility is ignored.

<sup>28</sup> Carmichael, Dottie and Marchbanks III, Miner. (October 2012). *Wichita County Public Defender Office: An Evaluation of Case Processing, Client Outcomes, and Costs* (pg. 88). Public Policy Research Institute, Texas A&M University.

<sup>29</sup> Although imposing Wichita County's costs on the counties in the sample is not perfect, Wichita County is relatively similar to the 44 candidate counties that the sample was selected from. The average population of counties in this sample is 141,287, whereas the population of Wichita County is 132,047. Moreover, the volume of cases handled by Wichita County's court system is similar to that of the candidate counties. Wichita County disposed 3,073 misdemeanors in FY2013, compared to an average of 3,129 in the candidate counties, and 1,322 felonies, compared to an average of 1,661 in the candidate counties.

<sup>30</sup> The Criminal Records Service (CRS) is a DPS-maintained database of arrest and trial records that is available to the public to perform background checks or similar tasks. CRS is not a law enforcement resource and could be missing records for a number of reasons. If someone has had their criminal record expunged or a non-disclosure order placed on their criminal record, then that person's record will not be in CRS. Cases may also be missing if no arrest was made and no charges filed or if the county did not enter all data required for the record. Finally, DPS case summaries often do not clearly distinguish criminal defendants from people who were present during the seizure but were not of criminal interest. A number of cases in which forfeiture occurred, but there is no record of arrest are also excluded. This likely means the probability of criminal prosecution and accompanying costs to prosecutors is being overestimated.

<b>Table 4.1: Costs and benefits to county government units from DPS-initiated forfeiture cases</b>		
<b>Forfeiture Revenues</b>		
<b>Average DA Share of Forfeiture:</b>		<b>\$15,182/Forfeiture Case</b>
<i>Total Value of DPS Forfeitures (2003-2012)</i>	<i>\$14 million</i>	
<i>DA Share: (100% of cases &lt; \$5,000; 30% of others)</i>	<i>\$4.36 million</i>	
<i># DA Case Records on File In DPS Crime Record Service</i>	<i>287</i>	
<b>Prosecution Costs</b>		
<b>DA Case Processing Costs</b>		<b>\$702/Forfeiture Case</b>
<i>% of Cases with Criminal Charges Filed</i>	<i>64%</i>	
<i>Average Cost of a Felony Prosecution</i>	<i>\$742/case</i>	
<i>Average Cost of Forfeiture Only</i>	<i>Negligible</i>	
<i>Average Defendants per Forfeiture Case</i>	<i>1.52</i>	
<b>Other County Costs</b>		
<b>Costs to Other County Departments</b>		<b>\$4,596/Forfeiture Case</b>
<i>District Clerk Costs</i>	<i>\$430/case</i>	
<i>Jail Costs</i>	<i>\$1,980/case</i>	
<i>Indigent Defense Costs</i>	<i>\$614/case</i>	
<i>Average Defendants per Forfeiture Case</i>	<i>1.52</i>	
<b>NET BENEFIT TO COUNTIES</b>		<b>\$9,884/Case</b>

Of the 94 people who were matched to a prosecutor’s record, drugs were found at the time of arrest about half the time (52 cases). When drugs were present the arrested person was prosecuted 81% of the time. For the remaining 42 people who were arrested but were not found with drugs, prosecution was pursued just 43% of the time. Altogether, charges were brought against 64% of the 94 people arrested who could be matched to a county prosecutor’s record. With the average cost of a single prosecution estimated at \$724, if charges are filed

against just 64% of arrested suspects, the average cost of prosecution in any given case is \$462 (i.e., 64% of individuals at \$724/individual = \$462/individual average).<sup>31</sup> The average forfeiture case in the data had 1.52 suspects, so the average cost to a prosecutor of the entire case is \$702 (i.e., \$462/defendant at 1.52 defendants/forfeiture case = \$702 per forfeiture case).

The data shows prosecutors' revenue more than offsets the costs of processing civil asset forfeitures. The direct costs of prosecution (\$702) are just 4.6% of the DA's portion of an average DPS-initiated forfeiture case (\$15,182). These results likely explain the general satisfaction with the current asset allocation formulas expressed by most DAs interviewed.

### **Other County Government Costs**

DAs are not the only county unit that incurs costs due to DPS-initiated forfeiture cases. District clerks are legally entitled to recover court costs from forfeited assets. Compensation for two other significant cost centers, indigent defense and county jail costs, is not addressed in Chapter 59 of the Texas Criminal Code. For a full accounting of forfeiture-related costs and benefits, it is necessary to factor in these considerations.

Statutorily required reimbursements to district clerks for costs processing forfeiture cases were recorded in some of the CRS records provided by DPS. When shown, the amounts typically ranged between \$200 and \$400. A slightly more conservative estimate of district clerk costs – \$430 per felony case – was also available from the Wichita County study cited above.<sup>32</sup> In the interest of ensuring that county costs were fully accounted for, the higher estimate was accepted.

To estimate jail costs associated with criminal processing of arrested individuals in forfeiture cases, two assumptions were made. First, the Texas Commission on Jail Standards estimates the average cost of county detention in Texas at \$45/day.<sup>33</sup> Second, data from Wichita County suggests that in a county similar to those in the current study<sup>34</sup> the median length of detention for felony defendants is 44 days on average. Multiplying these estimates

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<sup>31</sup> The cost of the civil forfeiture case is not estimated here because the vast majority end in default of the assets by owners. DAs interviewed for this report indicated that the only costs in these instances are small, and are related to required paperwork for the court.

<sup>32</sup> *Supra*, note 28, District court clerk costs were not explicitly documented in the final report, but are available upon request from the authors.

<sup>33</sup> See Ana Yanez-Correa and Molly Totman, *Costly Confinement and Sensible Solutions: Jail Overcrowding in Texas* (Austin, TX: Texas Criminal Justice Coalition, 2010, pg. 6). According to these authors, the Texas Commission on Jail Standards estimates the average cost of detaining an inmate in a county jail at \$45 per day.

<sup>34</sup> *Supra* note 28.

gives an average of \$1,980 in jail costs per arrested individual in a forfeiture case. Seized assets may be used to cover some of these costs through local arrangements. For instance, DAs report buying equipment or training for local law enforcement agencies, but there is no legal provision requiring these expenditures to be reimbursed from forfeited funds.<sup>35</sup>

Indigent defense is another area where counties may incur significant costs in forfeiture cases. The means and amount of compensation for assigned counsel varies. However, a review of 2013 county indigent defense plans<sup>36</sup> shows that many of the 20 counties in the sample specify payments in the range of \$400 to \$600 for felonies that are settled by a plea. Others pay attorneys at a rate, typically between \$60 and \$70 an hour.

A recent study of indigent defense case processing found that in Texas, court-appointed attorneys currently spend an average of 13.7 hours to dispose of a felony case.<sup>37</sup> After applying a rate of \$70/hour, an average felony, if it is not pled, might cost the county \$959. If 64% of forfeitures involve a criminal charge (as assumed above), and none of them are pled, then average indigent defense costs would be \$614 per defendant.

### **Net Forfeiture Benefit to Counties**

Table 4.1 illustrates that the net impact of civil asset forfeitures on counties in the study is a benefit of \$9,884 per forfeiture case, on average. Using the previously calculated valuations, the county's costs are \$1,980 for jail time, \$614 for indigent defense, \$430 for the district clerk, and \$462 for DA prosecution. For each person involved in the forfeiture case, the total of these costs is \$3,486. The average DPS-initiated forfeiture case in the 20 county sample dataset had 1.52 defendants. The average cost per forfeiture case then, is \$5,298 (i.e., \$3,486 per court case at 1.52 individuals per forfeiture case = \$4,596 per forfeiture case). This is 35% of the revenue brought in by the average forfeiture case (\$15,182).

The research team intentionally erred on the side of over-representing county costs in this estimation. The estimates assume that an arrest is made, the criminal case is not pled, and the criminal charge is a felony. Gaps in the CRS data prevent an exact accounting of each of these circumstances. However, recent data from the Office of Court Administration shows that

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<sup>35</sup> Court fees owed to the district clerk are specifically subtracted from forfeited funds, per provisions in Article 59.05(f) of the code of criminal procedure.

<sup>36</sup> Available at <http://tidc.tamu.edu/public.net/Reports/IDPlanNarrative.aspx>.

<sup>37</sup> Carmichael, Dottie, Austin Clemens, Trey Marchbanks, Heather Caspers, and Steve Wood. (2015). *Texas Indigent Defense Weighted Caseload Study*. Public Policy Research Institute, Texas A&M University.

97% of felonies end in a plea.<sup>38</sup> The cost for indigent defense in a case settled by a plea could be half the cost of a case that goes to trial. This chapter’s estimate of costs is therefore a highly conservative “worst case scenario” for the county.

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<sup>38</sup> Office of Court Administration Annual Statistical Reports for FY 2014, available at: <http://www.txcourts.gov/statistics/annual-statistical-reports/2013.aspx>. See Activity Detail from September 1, 2013 to August 31, 2014 for District Courts (pg. 1).



## 5: USE OF FORFEITURE FUNDS

Uses of forfeited funds by DPS and DAs is governed by statute. In addition to reviewing the guidelines for allowable and unallowable expenditures, this section of the report considers the amount of forfeiture proceeds available to prosecutors and to DPS, as well as how those funds are actually being used. This chapter addresses the following legislative rider text: “and the purposes for which (forfeited funds) are used.”

### STATUTORY GUIDANCE ON EXPENDITURES

#### Findings

- Chapter 59 requires each county to report to the Office of the Attorney General each year the funds and property seized and funds expended.
- Broad reporting categories have made it difficult to identify questionable uses of funds.

#### Appropriate Prosecutor Expenditures

Chapter 59 of the Texas Code of Criminal Procedure specifies the ways in which prosecutors can use funds generated by asset seizures.<sup>39</sup> They must be expended for an official purpose of an attorney office related to, “the preservation, enforcement, or administration of the laws of this state.” Purposes specifically named in the statute include equipment, supplies, travel, conference or training fees, investigative costs, crime prevention or treatment programs, facility costs, legal fees, or bar association dues. Salaries are also legitimate use of the funds if the assets were prosecuted in a state jurisdiction, and if that use is approved by the commissioners’ court.<sup>40</sup>

Funds resulting from federally-prosecuted cases are subject to similar expenditure rules,<sup>41</sup> but salary expenditures are disallowed unless they fit into a few permitted categories. As a practical matter, DPS agents and DAs interviewed said they never use federal funds for salary support.

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<sup>39</sup> See Article 59.06(d-4) of the Texas Code of Criminal Procedure.

<sup>40</sup> See Article 59.06(d-1)(7) of the Texas Code of Criminal Procedure.

<sup>41</sup> U.S. Department of Justice. April 2009. “Guide to Equitable Sharing for State and Local Law Enforcement Agencies.”

## Disallowed Prosecutor Expenditures

Chapter 59 also includes provisions to prevent misuse of funds. Just as allocations to DAs can be used “solely for the official purposes of his office,” assets directed toward law enforcement agencies can be used “solely for law enforcement purposes.” Even so, ethical concerns have been raised on a number of occasions. One Texas county famously used forfeiture funds to purchase a margarita machine.<sup>42</sup> In other examples, the asset fund was used to purchase commercials for a DA’s re-election campaign,<sup>43</sup> and to distribute \$1.1 million to favored employees over a three-year period.<sup>44</sup>

A DA indicted for misapplication of fiduciary property defended his use of the forfeiture account, saying, “I send the attorney general a list of expenditures and what they were for and how much we get every year.”<sup>45</sup> Chapter 59 does in fact require annual reports to the state attorney general providing a full accounting of funds and property seized and funds expended. However, information is reported in ten broad categories (see Appendix C). Although the use of subcategories offers some useful detail, it remains relatively easy to obscure questionable uses of the money and as a result it is difficult to prevent abuse.

## AMOUNT AND USES OF FORFEITURE RESOURCES

### Amount of Forfeiture-Generated Revenue for Prosecutors

#### Findings

- In the majority of sampled counties, forfeiture is a relatively small portion of the DA’s overall resources, equal to less than 10% of the office budget.
- In a few counties, however, DAs receive significant income from asset seizures. In three of the 20 study jurisdictions, forfeiture revenue exceeds the amount budgeted by the county.

<sup>42</sup> Lee, Renee C. (March 18, 2008). Montgomery DA says funds used for liquor at cook-off. *Houston Chronicle*. Last accessed October 21<sup>st</sup>, 2014. <http://bit.ly/1zjObc3>.

<sup>43</sup> National Public Radio: Dirty money: Asset seizures and forfeitures. Retrieved December 22, 2014 from <http://www.npr.org/series/91856663/dirty-money-asset-seizures-and-forfeitures>.

<sup>44</sup> Cuellar, Jr., M. J. (2009, July 14). State asks for audit of DA’s forfeiture fund; Saenz details ‘the scheme’ to commissioners. *Alice Echo-News Journal*;

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*; Powell, J., & Malan, D.

- Counties are prohibited from replacing local funding with forfeiture proceeds. Nonetheless, a number of DAs say budget growth is suppressed in anticipation of future asset revenue.

While DPS-initiated seizures generate resources for DA's, other local law enforcement agencies may contribute to DA offices as well. The exact amount contributed by non-DPS enforcement agencies is not known because annual reporting data submitted by DAs to the Office of the Attorney General does not differentiate the source of funds. However, an independent 2010 report indicates prosecutors generally acquire about 27% of all forfeiture resources brought into the county.<sup>46</sup> This is because DAs often replicate the terms of their DPS agreement, allowing for 30% of default judgments in MOUs with other law enforcement agencies.

There are substantial differences in the total amount of forfeited assets available to prosecutors in the study. Forfeiture makes up a relatively small amount of the office's overall 2012 budget in most of the 20 counties sampled.<sup>47</sup> In two-thirds (13 counties, 65%), forfeiture revenue was less than 10% of the size of the appropriated budget. In three counties (15%) DA forfeiture revenue ranged between 12% and 32% of the prosecutor's total budget.

A few offices, however, appear to be more dependent on seizures to cover operational costs. Seized assets comprised 150% of the prosecutor's 2012 budget in Medina County, 205% in Hill County, and 1,507% in Reeves County.<sup>48</sup> While Hill County had an unusually large pool of forfeited funds that year, the DA's office also received nearly 100% of the budgeted amount in seized assets the year prior.<sup>49</sup> Similarly, the Reeves County Sheriff seized an average of \$1.5 million per year over the three years ending in 2012, possibly because of their location at the West Texas intersection of US 20 and I-10.

Counties are expressly prohibited from using forfeiture assets as a replacement for local funding. From CCP Article 59.06(d): "A commissioners' court or governing body of a

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<sup>46</sup> William, Marian R., Holcomb, Jefferson E., and Kovandzic, Tomislav V. (March 2010.) "Policing for Profit: The Abuse of Civil Asset Forfeiture." Institute for Justice.

<sup>47</sup> The calculation used to evaluate forfeiture income as a percentage of total DA budget was "Forfeiture Revenue/DA's Budget."

<sup>48</sup> Hopkins, Live Oak, Medina, Mitchell, and Reeves Counties are all part of separate multi-county prosecutorial districts. In these instances, prosecutors' costs and forfeiture revenues were aggregated for all three counties in each district.

<sup>49</sup> In 2011, the Hill County prosecutor received \$180,000 from the county, and an additional \$174,000 in forfeited funds.

municipality may not use the existence of an award to offset or decrease total salaries, expenses, and allowances that the agency or the attorney receives from the commissioners' court or governing body at or after the time the proceeds are awarded."

However, the language does not specifically preclude suppression of an agency's budgets in anticipation of future forfeitures. Several of the interviewed DAs conceded that forfeiture funds can complicate negotiations with their commissioners' court. These DAs believe their budgets are reduced or kept low with the expectation that the office's operations will be sustained going forward by forfeiture proceeds.

### Prosecutors' Use of Forfeiture Funds

#### Findings

- In 2012, 83% of prosecution jurisdictions spent forfeiture funds and the average expenditure was \$133,427.
- Half of DAs use forfeiture money for office salary support. The significant and widespread use of funds for this purpose affirms that forfeiture accounts are viewed as a means to offset operational costs for counties.
- The largest forfeiture expenditure category on average is sharing with cooperating agencies, though less than one-third of counties spend money in this area. This implies a small number of relatively large awards by DAs to partnering agencies.

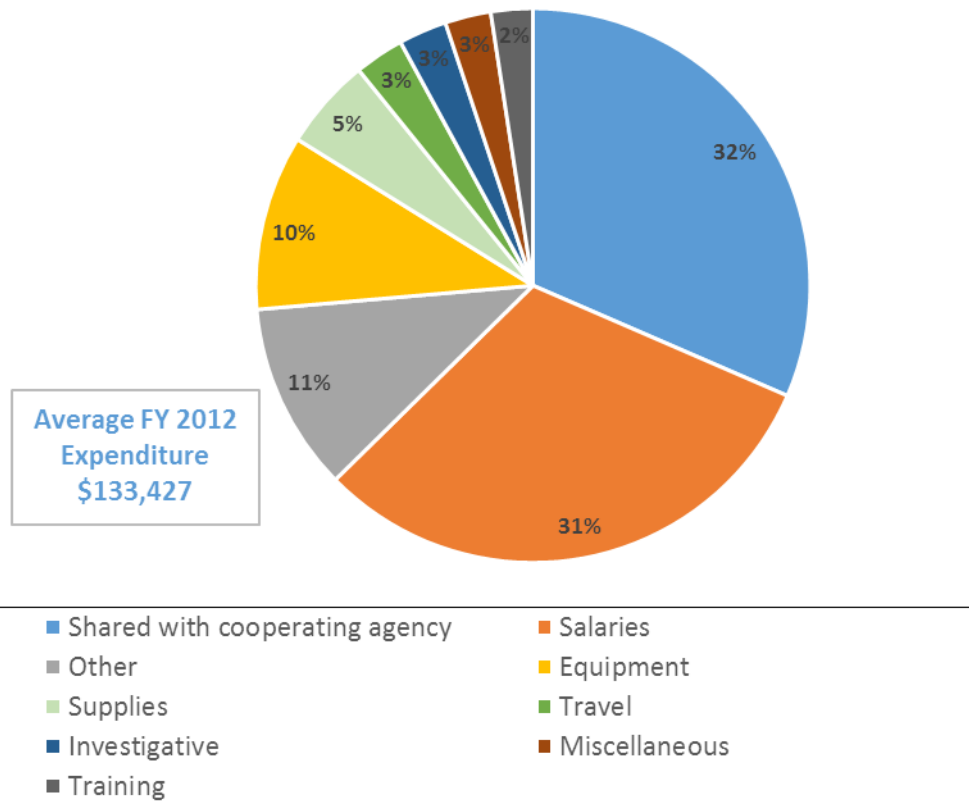
The majority of the state's 161 prosecution jurisdictions<sup>50</sup> (133 jurisdictions, 83%) receive at least some income from civil asset forfeitures. On average, counties with access to forfeiture proceeds expended \$133,427 during FY 2012. Figures 5.1 and 5.2 provide an overview of how these funds were used by prosecutors statewide. The data is taken from annual forfeiture reports submitted by DAs to the Office of the Attorney General. (Additional detail is available in Appendix C.)

Figure 5.1 shows prosecutors' two largest expenditure categories are sharing with cooperating agencies (32%) and salaries (31%). However, as shown in Figure 5.2, more agencies used funds for salaries (50%) than to share with law enforcement partners (29%). There are two implications of this finding. First, the largest individual expenditures went to

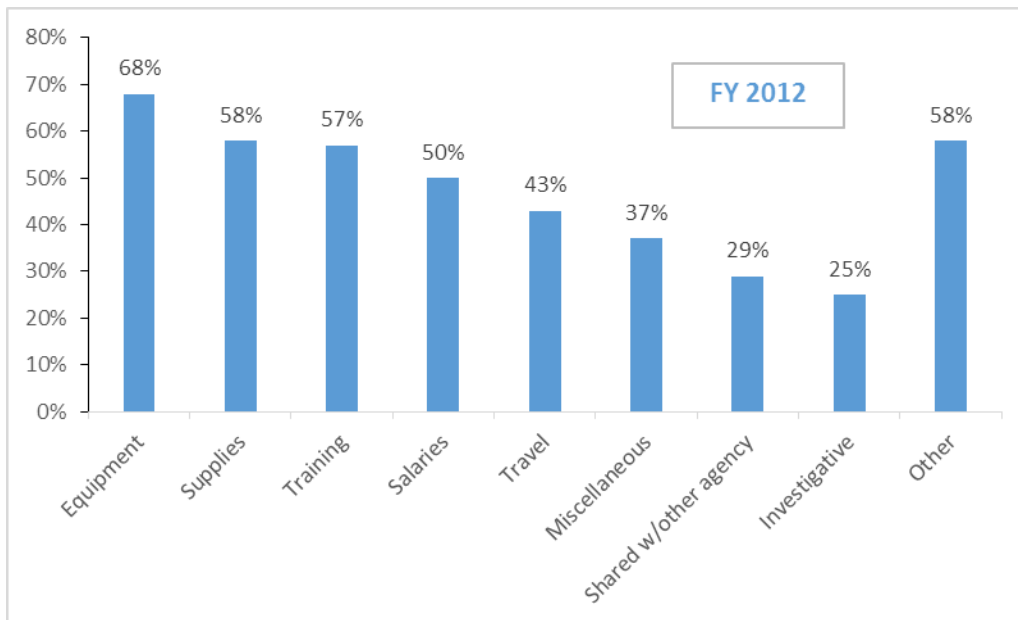
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<sup>50</sup> There are 47 multi-jurisdictional DA offices in Texas that serve 140 counties. The remaining 114 counties in Texas have their own dedicated prosecutor.

**Figure 5.1: Percent of DA expenditures by category in all Texas counties or prosecution districts (n=161)**



**Figure 5.2: Percent of counties expending any funds in each category (n=161)**



resource-sharing; this category involved the most money but was paid relatively infrequently. Second, the significant and widespread use of seized assets to fund prosecutors' office salaries suggests that forfeitures are viewed by local policymakers as a means to offset operational costs to counties.

Local DAs interviewed for this report affirm this perception. One said the county rarely provides budget increases for staff raises. "That money is our lifeblood when it comes to even just maintaining our staff... you have someone for two years and if you're not able to increase their pay with their ability, all they do is go to a bigger jurisdiction... and the citizens of [county] are punished because every two years I have to retrain my assistants rather than being able to concentrate on the cases we're prosecuting."

Equipment (10% of expenditures) is the next most prevalent expenditure category, and it is used in the largest number of jurisdictions (68%). Vehicles is the largest equipment subcategory, with an average expenditure of \$3,239. Many of the DAs interviewed for this report indicated that they used their forfeiture account to buy or maintain vehicles for their own office or for local law enforcement agencies. Several of the interviewed DAs also report making large one-time equipment purchases, like fiber optic systems to look into car gas tanks, which one DA indicated cost around \$15,000 for a single unit.

The "other" grouping, representing 11% of average forfeiture expenditures, is comprised of an amalgam of smaller categories. These include overtime pay, facility costs, and a single prevention/treatment/financial assistance category accounting for less than 2% of forfeiture expenditures each. The remainder of this category falls under a non-specific "other" designation. Over half of counties with seized assets reported using funds for at least one of these purposes.

### **Amount and Use of Forfeiture-Generated Revenue for DPS**

#### **Findings**

- In FY 2014, DPS expended \$11 million in seized assets, a 130% increase from FY 2013.
- DPS primarily expends forfeiture funds on equipment for law enforcement purposes.

At DPS, seized assets are aggregated, and their use is determined by central administrators. The funds are used almost entirely to buy law enforcement equipment. An itemized list of expenditures in FY 2013 and FY 2014 included in Appendix D.

The FY 2014 forfeiture budget was \$11 million, up from \$4.8 million in FY 2013. FY 2014 expenditures were significantly higher in part because of expenditures set aside for purchase of an aircraft (\$4 million budgeted). Continuing expenditures were also made for handheld radios for a similar amount of money. Significant line items in FY 2013 included \$2.6 million for new handheld radios and \$700,000 for tactical vests. Other line items were as diverse as laser scanners, hazmat clean-up materials, border security vehicles, lab equipment, SWAT armor, and a SWAT trailer.





## 6: CONCLUSION

Texas' Department of Public Safety plays a significant role in interdiction activities along Texas' drug trafficking corridors. In order to process civil asset seizures and related criminal charges, collaboration with a prosecuting authority is required. If assets are prosecuted in the county where the seizure occurred, standardized MOUs with DPS generally prescribe DAs will receive 30% of the asset value in a default, or 40% if the asset is claimed (Figure 4.1). The agency's decision to work with state or federal partners can therefore significantly impact the fiscal fortunes of district attorney offices. In accordance with the requirements of a legislative rider attached to SB1 of the 83<sup>rd</sup> Texas Legislature, this report examines the financial impact of DPS interdiction on local governments. It should be noted that forfeitures by other law enforcement agencies are beyond the scope of this study. Major conclusions are presented below.

### HISTORY OF DPS ENFORCEMENT

**Proceeds resulting from DPS-initiated forfeitures are influenced by interdiction success and luck apprehending high-value targets.**

DPS-initiated asset seizures and related revenue rose steadily during the period from 2003 to 2007. The data suggests increasingly assertive law enforcement during this period, and prosecutors became accustomed to a growing, if unpredictable, revenue stream. Beginning in 2008, however, the value of asset seizures began to fall (Figure 3.2). DPS states the decline in successful interdictions (Figure 3.1) is unrelated to a change in enforcement practices. Contributing factors could include an overall decline in contraband trafficking, a change in DPS leadership, and a 2008 lawsuit claiming illegal search and seizure which may have had a chilling effect on enforcement. The decline in forfeiture proceeds was also impacted by lower average valuation of assets per stop (Figure 3.3). In recent years, asset valuation has rebounded slightly and now stands above the ten-year average.

### PARTNERSHIP INCENTIVES

**DPS almost always collaborates with state DAs when prosecuting forfeitures. An exception is cases involving high-value asset seizures where greater federal resources can help achieve better law enforcement outcomes.**

Over the decade beginning in 2003, DPS partnered with state DAs in about two-thirds of cases, on average (Figure 3.4). In fact, just 17% of forfeiture cases were federally prosecuted in 2012. However, the small number of cases that do involve federal collaboration are generally also the largest (Figure 3.5). Virtually every case valued at \$500,000 or above has been prosecuted at the federal level, and in some years, more than 90% of total forfeiture values were prosecuted federally.

According to DPS, federal prosecution offers better law enforcement outcomes in complex cases, and many DAs agree that federal attorneys are better equipped to handle certain kinds of cases such as those involving money laundering or tax matters. Moreover, there is no evidence that DPS pursues federal prosecution for financial reasons. In fact, DPS will usually receive a higher proportion of the assets in a state case, suggesting that law enforcement concerns are the primary motivator for federal involvement.

## **FINANCIAL IMPACT ON LOCAL GOVERNMENTS**

**After covering all DA and non-DA costs associated with criminal and civil case processing, counties retain about two-thirds of the value of forfeited assets, a net benefit of about \$10,000 per case on average.**

An estimation of the costs borne by DAs indicates that forfeiture cases can be hugely profitable (Table 4.1). The cost of criminal prosecution in an average case is about \$702, while average DA revenues exceed \$15,000, leaving prosecutors in a position to make a significant profit.

DAs interviewed for the study believe they receive a fair split of forfeited funds. However, other county units may also incur costs that are not necessarily reimbursed under the statutory language governing forfeitures. District clerks are entitled by statute to recover costs from a forfeiture case, but DAs have sole discretion whether to share resources with other cooperating entities. Jail and indigent defense costs are not provided for.

Nearly one-third of DAs in counties with forfeiture revenue report sharing proceeds with other departments (Figure 5.2). After accounting for all costs, including those of DAs and other departments, counties are left with an excess of revenues over expenditures of nearly \$10,000 per forfeiture case on average.

## USE OF FORFEITURE FUNDS

**Statutory guidelines govern how forfeiture funds can be expended. However, the highly aggregated format for reporting uses of the money makes it difficult to detect misappropriation.**

Chapter 59 of the Code of Criminal Procedures delineates acceptable as well as unacceptable uses of seized assets. For the most part, DAs are expected to use the funds only for official purposes, and an accounting of forfeiture receipts and expenditures must be submitted to the Office of the Attorney General annually. Nonetheless, there remains considerable potential for abuse, in part because the ten broad reporting categories are not sufficiently detailed to detect questionable expenditures worthy of scrutiny. High profile abuses in the past emphasize that this is an important area of forfeiture law.

**For most DAs, civil asset forfeitures are a small part of the total budget. However, there are a few offices for which forfeiture revenue equals or exceeds the budgeted appropriation.**

In two-thirds of the sampled counties, forfeiture revenue is less than 10% of prosecutors' appropriated budgets. At the same time, about 15% of counties in the study reported forfeiture proceeds exceeding 100% of their local budget. The annual Attorney General's report is a useful resource for assessing how these funds are being expended in the 133 prosecutorial jurisdictions that have asset revenue.

**One of the two largest forfeiture expenditure categories involves revenue-sharing between DAs and cooperating agencies. Salaries are another common use of forfeiture proceeds, though there is clear statutory guidance that asset revenue must not be used to supplant local funds.**

In 2012, 32% of prosecutors choose to share funds with other departments, yet revenue-sharing was still the largest expenditure category. Therefore, while sharing is infrequent, amounts are large when it does occur. DAs share money with local law enforcement, both directly and by purchasing equipment and training for officers.

About 50% of all DA offices also use forfeiture money to pay salaries, the second largest expenditure category. While Chapter 54 specifies that assets cannot replace local funding, their common use to cover DA payrolls indicates that they are nonetheless being used to support

department operations. The most frequently used expenditure categories are equipment, supplies, and training all of which are used by over half of DA offices receiving asset revenue.

DPS uses forfeiture funds almost exclusively to buy law enforcement equipment.

## **CONCLUSION**

This study offers context to policymakers and other stakeholders regarding the ways in which DPS and district attorneys collaborate and share resources related to civil asset forfeitures. The findings indicate that while the frequency of contraband seizures and the value of the forfeited assets has increased and decreased over time, DPS has been a reliable partner for Texas DAs. They utilize federal partnerships over state prosecution primarily in order to improve criminal case outcomes. DAs' costs to prosecute civil forfeiture cases and the costs of other involved county departments, are more than offset by the proceeds. As a result, DPS-initiated forfeitures are a net cost benefit to counties where they occur.

## APPENDIX A: METHODOLOGY

### SELECTION OF SAMPLE COUNTIES

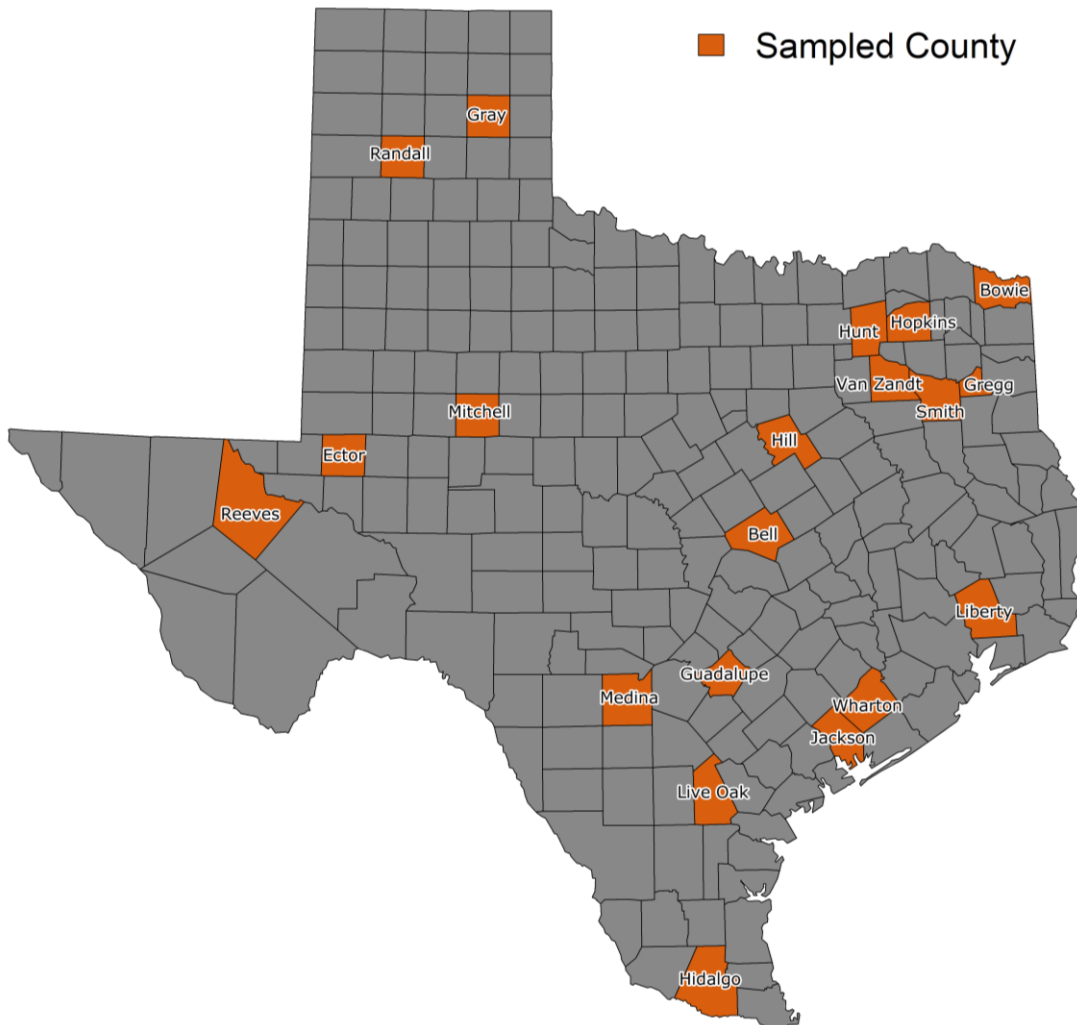
Taking a sampling of counties allowed PPRI to focus the scope of the study and allow for a more manageable number of jurisdictions. Many of the data sources used for the report had to be manually assembled. For example, DPS manually attached case summaries to cases in their forfeiture database for the research team. The research team manually searched and attached information about criminal prosecution to each case and valued each car seized by DPS to get a dollar value for these non-monetary assets. It was not feasible to perform this work for every county in Texas, so PPRI selected 20 counties for in-depth data collection. The sampled counties were selected randomly from a pool of 44 candidate counties. These candidate counties were selected through a 3-step selection process.

First, counties were included if they lie on a major contraband corridor. Eight such corridors were identified by DPS officials: I-40, I-30, I-20, I-10, US-59, I-35, Lubbock and Hidalgo counties. In addition to Lubbock and Hidalgo counties and the counties containing the major interstates/highway, the counties bordering these counties were included as well.

With 70 possible counties, the next step was to center upon the counties that match the legislative rider's call to focus on "small or exurban communities and counties near urban areas." To accomplish this PPRI used the National Center for Health Statistic's six-level urbanization classification scheme and eliminated all counties in the top category, "Large central metropolitan." This step eliminated five counties from the sample.

Finally, after looking at the Attorney General's database of forfeited assets by county, counties were eliminated if the total value of asset forfeitures in the county between 2002 and 2012 were lower than the median number for all counties in the state over that same period. This eliminated a number of counties where very few forfeitures are made and left 44 candidate counties. This step ensured that counties that are slightly affected by the asset forfeiture process do not heavily influence the findings.

Figure A.1: Location of the 20 sampled counties.



A random number generator was used to select 20 counties from among the 44 candidates. The selected counties are: Bell, Bowie, Ector, Gray, Gregg, Guadalupe, Hidalgo, Hill, Hopkins, Hunt, Jackson, Liberty, Live Oak, Medina, Mitchell, Randall, Reeves, Smith, Van Zandt, and Wharton. Although no effort was made to ensure that all eight identified corridors were represented, 7 of the 8 are included in the sample at least once. Lubbock is the only region that was left out. Figure A.1 shows the location of the 20 counties that were sampled.

In addition to being a good mix of geographical areas, the sampled counties represent a significant amount of variation in forfeiture activity. Amongst sampled counties, the largest amount of forfeiture brought in by local law enforcement in 2012 was in Reeves County in West Texas at the junction of I-10 and I-20, where DPS seized just over \$1 million in assets. By

contrast, DPS in Randall County, just south of I-40, seized just \$650 in 2012 (Randall has enjoyed much higher forfeiture totals in past years). The average amount of forfeiture for DPS in the 20 sampled counties for 2012 is \$165,700.

## **QUANTITATIVE DATA SOURCES**

PPRI worked closely with DPS to assemble the necessary data for a comprehensive evaluation of DPS-led forfeiture cases. DPS provided PPRI with records of forfeiture cases initiated by the agency in each sampled county over a 10 year period. DPS provided 439 records, including information on the type and amount of contraband seized in each case.

DPS also provided PPRI with a companion database containing short summaries of each case. Unfortunately some case IDs did not match up to case files between the databases, leaving 359 cases with full case descriptions. Where possible the report uses the full sample of 439 cases. Even if cases were not matched to case summaries, they still contain information on seized assets. Where more information about the case was necessary, however, the smaller set of 359 cases is used. Chapter 3, which charts trends in enforcement is based on all 439 cases, whereas Chapter 4, where costs are estimated, is based on 359 cases.

DPS also provided access to their Criminal Records database. Using the case descriptions, PPRI matched cases to the criminal records of suspects in each case. This allowed PPRI to ascertain whether an arrest was made and whether prosecution was pursued against the person or persons involved. PPRI was unable to follow cases that were prosecuted federally, which eliminated 113 records, leaving 246 cases to match to criminal records. Of these 246, a criminal record could be associated with only 94. CRS is not a law enforcement resource and could be missing records for a number of reasons. If someone has had their criminal record expunged or a non-disclosure order placed on their criminal record, then that person's record will not be in CRS. Cases may also be missing because the county did not enter all data required for the record. Records could also be missing if no arrest was made and no charges filed. This data is used to establish prosecution rates in Section 4.

The Texas Attorney General's Office also supplied PPRI with annual forfeiture disclosure records for all counties in the state. These records are kept as a requirement of Chapter 59 of the Code of Criminal Procedure and provide data on both how much money is seized by each law enforcement agency, ultimately forfeited and how that money is spent by each agency. This data is used heavily in Chapter 5 to describe how DAs spend forfeited funds.

All quantitative data was collected for the period between 2003 and 2012. The research team's discussions with DPS indicated that more than a year of lag time is necessary for seizure cases to formally close out and be fully reflected in the various databases the report uses.

## **QUALITATIVE DATA**

In addition to the quantitative data collection, PPRI reached out to the DA's office in each of the 20 sampled counties and requested an interview to learn of their experiences with DPS, knowledge of DPS policy, and get their expert opinions on the state of asset forfeiture in Texas. All 20 counties were contacted and 9 provided an interview with either the DA or an assistant DA.

Every interview began with some basic questions but DAs were encouraged to expand on their answers and bring up topics that the initial questions did not specifically address. For this reason, many DAs mentioned topics that others did not.

All interviewees were promised anonymity.<sup>51</sup> Information obtained from these interviews is used primarily to provide context for the data and qualitative insight into the research questions.

Officials at DPS were also consulted for the report. DPS was instrumental in providing much of the data for the report, and conversations with DPS officials helped the research team piece together background information and better understand forfeiture law in Texas. While they are not quoted, information obtained in these interviews is frequently cited throughout the report.

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<sup>51</sup> One DA (Ross Kurtz of Wharton County) declined this protection and asked to be identified by name.



## APPENDIX B: NEW DA/DPS MOU

### Asset Forfeiture Local Agreement

STATE OF TEXAS

COUNTY OF \_\_\_\_\_

Pursuant to the provisions of Chapter 59 of the Texas Code of Criminal Procedure, which regulates the disposition of property forfeited to the State of Texas as contraband, the Texas Department of Public Safety (DPS) and the District Attorney's Office of the \_\_\_\_\_ Judicial District (referred to herein as "the Attorney Representing the State") enter into this agreement ("Agreement") regarding the disposition of said property or the proceeds from the sale thereof. DPS and the Attorney Representing the State are collectively referred to in this Agreement as the "Parties."

#### **I. Forfeited Property - Default Judgment of the Texas Controlled Substances Act**

With respect to forfeited property seized in connection with a violation of Chapter 481, Health and Safety Code ("the Texas Controlled Substances Act"), seized by DPS and forfeited in a proceeding under Article 59.05 in which a default judgment is rendered in favor of the State, the Attorney Representing the State shall either:

- A. Transfer the forfeited property to DPS to maintain, repair, use, and operate for official purposes; or
- B. Allocate proceeds from the sale of forfeited property after the deduction of court costs in the following proportions: (i) 40% to a special fund held by DPS to be used solely for law enforcement purposes; (ii) 30% to a special fund in the county treasury for the benefit of the office of the Attorney Representing the State, to be used by the Attorney solely for the official purposes of the Attorney's office; and (iii) 30% to the State of Texas general revenue fund.

#### **II. Forfeited Property - All Other Circumstances**

With respect to all other forfeited property seized by DPS, in consideration of the services rendered by the Parties to this Agreement for the seizure and forfeiture of the said contraband, DPS and the Attorney Representing the State agree as follows, after the deduction of applicable court costs:

- A. No Answer Filed. DPS shall retain 70%, to be deposited in the State of Texas general revenue fund, and the Attorney Representing the State shall retain 30%, to be used for the official purposes of the Attorney's office, of all forfeited property and the proceeds from the sale thereof, in circumstances where no answer is filed for a forfeiture hearing and a default judgment is rendered in favor of the State. This section is applicable to default judgments which do not involve a violation of the Texas Controlled Substances Act;
- B. Answer Filed. DPS shall retain 60%, to be deposited in the State of Texas general revenue fund, and the Attorney Representing the State shall retain 40%, to be used for the official purposes of the Attorney's office, of all forfeited property and the proceeds from the sale thereof, in circumstances where an answer is filed for a forfeiture hearing. This section is applicable to violations of the Texas Controlled Substances Act and any other pertinent statute; or
- C. Trial Commences. DPS shall retain 50%, to be deposited in the State of Texas general revenue fund, and the Attorney Representing the State shall retain 50%, to be used for the official purposes of the Attorney's office, of all forfeited property and the proceeds from the sale thereof, in circumstances where a trial on the forfeiture hearing commences. This section is applicable to violations of the Texas Controlled Substances Act and any other pertinent statute.

### **III. General Forfeiture Terms**

- A. The Attorney Representing the State may transfer forfeited property, such as vehicles or other conveyances, to DPS to maintain, repair, use, and operate for official business. The Parties may agree in writing to allocate such forfeited property in a manner that best serves the operational interests of the Parties.
- B. This Agreement shall apply to all contraband forfeited pursuant to Chapter 59 of the Texas Code of Criminal Procedure, from and after the effective date of this Agreement. In the absence of an individual written agreement for a specific seizure, the distribution of forfeited property, or the proceeds from the sale thereof, shall be in accordance with this Agreement.
- C. The Parties agree that special circumstances may dictate that the proceeds of forfeited property be shared with other law enforcement agencies. In those special circumstances, the Attorney Representing the State, DPS, and the other law enforcement agency(s) may agree to allocate property or proceeds in accordance with a written agreement among the

Attorney Representing the State, DPS, and the other law enforcement agency(s), to be negotiated on a case-by-case basis.

- D. If money is seized, the Attorney Representing the State shall, before disposition in accord with this Agreement, handle such funds in accordance with applicable statutes.
- E. It is specifically agreed by DPS and the Attorney Representing the State that money forfeited in amounts of less than \$5,000.00, when no default judgment is rendered, may be retained by the Attorney Representing the State to be used for the official purposes of its office.
- F. All disbursement of forfeited funds shall be made upon execution of a final judgment that has been duly served, and after the deduction of all reasonable costs associated with the maintenance of said forfeited property. Property shall be forfeited to the State when the forfeiture judgment is final and no motion for new trial or appeal has been filed.
- G. The Parties and the subject matter of this Agreement, including the percentage allocations identified herein, are subject to legislative or regulatory changes.

#### **IV. General Terms and Conditions**

- A. This Agreement shall become effective on the date it is signed by the last of the two Parties to this Agreement. This Agreement shall remain in effect until terminated.
- B. The Parties shall comply with all local, state, and federal laws and regulations applicable to the subject matter of this Agreement, including but not limited to, Chapter 59 of the Texas Code of Criminal Procedure.
- C. Either party may terminate this Agreement, at any time and for any reason, by giving the other party thirty (30) calendar days written notice. Property that is the subject of any forfeiture proceeding that commences prior to the termination date of this Agreement shall be disposed of pursuant to this Agreement. Either party may terminate this Agreement for cause with written notice to the other party which will become effective immediately upon the other party's receipt of the notice.
- D. Except as otherwise provided by Chapter 2260 of the Texas Government Code, should a dispute arise between the Parties to this Agreement, venue for any litigation shall be Travis County, Texas.
- E. The Attorney Representing the State shall use the dispute resolution process provided for in Chapter 2260 of the Texas Government Code and the applicable DPS administrative rules to attempt to resolve all disputes or contract claims arising under this Agreement.

- F. No modification or amendment to this Agreement shall become valid unless in writing and signed by both Parties.
- G. Any failure of DPS, at any time, to enforce or require the strict keeping of any provision of this Agreement will not constitute a waiver of such provision, and will not affect or impair same or the right of DPS at any time to avail itself of same.
- H. This Agreement constitutes the entire agreement between the Parties with regard to the matters made the subject of this Agreement. There are no verbal representations, inducements, or other agreements between the Parties.
- I. The Attorney Representing the State is subject to audit and inspection, at any time during normal business hours and at a mutually agreed upon location, by the State Auditor, DPS, and any other department or agency responsible for determining that the Parties have complied with applicable law. The Attorney Representing the State shall provide all reasonable facilities and assistance for the safe and convenient performance of any audit or inspection. The Attorney Representing the State shall keep all records and documents regarding this Agreement for the term of this Agreement and for four (4) years after the termination of this Agreement.
- J. Any notice required or permitted under this Agreement shall be directed to the Parties at the addresses shown below and shall be deemed received: (1) when delivered in hand and a receipt granted; (2) three calendar days after it is deposited in the United States mail; or (3) when received if sent by confirmed facsimile or confirmed email.

\_\_\_\_\_  
 Regional Commander  
 Texas Department of Public Safety  
 Address: \_\_\_\_\_  
 \_\_\_\_\_, TX \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Email: \_\_\_\_\_

\_\_\_\_\_  
 District Attorney  
 \_\_\_\_\_ Judicial District  
 Address: \_\_\_\_\_  
 \_\_\_\_\_, TX \_\_\_\_\_  
 Facsimile: \_\_\_\_\_  
 Email: \_\_\_\_\_

- K. The signatory for the Attorney Representing the State hereby represents and warrants that it has full and complete authority to execute this Agreement.

**Texas Department of Public Safety:**

**Attorney Representing the State:**

\_\_\_\_\_  
Director or his Designee  
Texas Department of Public Safety

\_\_\_\_\_  
\_\_\_\_\_ District Attorney  
\_\_\_\_\_ Judicial District

**Date:** \_\_\_\_\_

**Date:** \_\_\_\_\_



## APPENDIX C: DA FORFEITURE EXPENDITURES

Table 5.1: Expenditures made out of forfeited funds by DAs in 2012.

	2012	
	DA Average	DAs reporting some expenditures (out of 133 offices reporting any expenditure)
<b>SALARIES</b>	<b>\$41,406</b>	<b>80</b>
Salary Support	\$18,935	50
Salary solely from forfeiture	\$23,546	47
<b>OVERTIME</b>	<b>\$363</b>	<b>8</b>
Budgeted employees	\$397	7
Employees budgeted solely from forfeiture	\$31	2
<b>EQUIPMENT</b>	<b>\$13,596</b>	<b>110</b>
Vehicles	\$3,239	29
Computers	\$2,736	63
Firearms, vests, and personal equipment	\$1,343	40
Furniture	\$1,509	35
Maintenance Costs	\$1,368	41
Uniforms	\$188	21
K9 Related	\$265	11
Other Equipment	\$2,232	45
<b>SUPPLIES</b>	<b>\$7,097</b>	<b>93</b>
Office Supplies	\$3,499	14
Cellular Air Time	\$1,868	35
Internet	\$633	23
Other Supplies	\$1,108	31

Table 5.1: Expenditures made out of forfeited funds by DAs in 2012.

	2012	
	DA Average	DAs reporting some expenditures (out of 133 offices reporting any expenditure)
<b>TRAVEL</b>	<b>\$3,845</b>	<b>69</b>
Transportation	\$1,143	39
Meals and Lodging	\$1,855	67
Mileage	\$477	37
Incidental Expenses	\$259	21
<b>TRAINING</b>	<b>\$3,247</b>	<b>92</b>
Training Fees	\$2,223	78
Training Materials	\$467	34
Other Training	\$542	24
<b>INVESTIGATIVE COSTS</b>	<b>\$3,738</b>	<b>41</b>
Informant Costs	\$71	3
Buy Money	\$311	12
Lab Expenses	\$196	12
Other Investigative	\$3,176	26
<b>PREVENTION, TREATMENT &amp; FINANCIAL ASSISTANCE</b>	<b>\$2,637</b>	<b>25</b>
Prevention/Treatment Programs	\$1,902	18
Financial Assistance	\$753	8
<b>FACILITY COSTS</b>	<b>\$897</b>	<b>26</b>
Building Purchase	\$100	1
Lease Payments	\$142	6
Remodeling	\$326	6
Maintenance Costs	\$80	11



**Table 5.1: Expenditures made out of forfeited funds by DAs in 2012.**

	2012	
	DA Average	DAs reporting some expenditures (out of 133 offices reporting any expenditure)
Utilities	\$77	9
Other Facilities	\$104	8
<b>MISCELLANEOUS FEES</b>	<b>\$3,559</b>	<b>60</b>
Court Costs	\$1,159	32
Filing Fees	\$55	15
Insurance	\$383	13
Witness Fees	\$730	32
Audit Costs and Fees	\$98	4
Other Miscellaneous Fees	\$3,559	60
<b>PAID TO OR SHARED WITH COOPERATING AGENCY</b>	<b>\$41,909</b>	<b>47</b>
<b>OTHER</b>	<b>\$10,714</b>	<b>34</b>
<b>TOTAL EXPENDITURES</b>	<b>\$133,427</b>	<b>144</b>



## APPENDIX D: DPS FORFEITURE EXPENDITURES

	Adjusted Budget	Expenditures	Encumbrances	Pre-Encumbrances	Remaining Budget
<b>AY13</b>					
67034 REPLACEMENT HANDHELD RADIOS					
5000- CAPITAL EXPENDITURE	2,596,624.00	2,596,623.37	0.00	0.00	0.63
67034 REPLACEMENT HANDHELD RADIOS- Subtotal	2,596,624.00	2,596,623.37	0.00	0.00	0.63
67044 TECH UNIT INTERCEPT SYSTEM					
5000- CAPITAL EXPENDITURE	79,786.00	79,786.00	0.00	0.00	0.00
67044 TECH UNIT INTERCEPT SYSTEM-Subtotal	79,786.00	79,786.00	0.00	0.00	0.00
67064 00.405.006 LASER SCANNER PROJECT					
2009- OTHER OPERATING EXP	0.00	256,120.36	0.00	0.00	(256,120.36)
5000- CAPITAL EXPENDITURE	605,313.00	349,191.67	0.00	0.00	256,121.33
67064 00.405.006 LASER SCANNER PROJECT-Subtotal	605,313.00	605,312.03	0.00	0.00	0.97
67074 00.405.006 TMU VIDEO CAMERA PROJECT					
5000- CAPITAL EXPENDITURE	119,511.00	119,511.00	0.00	0.00	0.00
67074 00.405.006 TMU VIDEO CAMERA PROJECT-Subtotal	119,511.00	119,511.00	0.00	0.00	0.00
67084 00.405.006 CID CAPITAL EQUIPMENT					
2009- OTHER OPERATING EXP	0.00	87,876.10	0.00	0.00	(87,876.10)
5000- CAPITAL EXPENDITURE	414,893.00	327,016.00	0.00	0.00	87,877.00
67084 00.405.006 CID CAPITAL EQUIPMENT-Subtotal	414,893.00	414,892.10	0.00	0.00	0.90
90001 00.405.006 NT'L ASST SEIZ	1,933.20	1,933.20	0.00	0.00	0.00
2009- OTHER OPERATING EXP	1,933.20	1,933.20	0.00	0.00	0.00
90001 00.405.006 NT'L ASST SEIZ-Subtotal	1,933.20	1,933.20	0.00	0.00	0.00
90006 00.45.006 HAZMAT CLEAN-UP					
2009- OTHER OPERATING EXP	52,181.84	3,652.84	0.00	0.00	48,529.00
5000- CAPITAL EXPENDITURE	0.00	48,529.00	0.00	0.00	(48,529.00)
90006 00.45.006 HAZMAT CLEAN-UP-Subtotal	52,181.84	52,181.84	0.00	0.00	0.00
90572 NAT'S ASSET SEIZURE-REPLACEMENT VESTS					
2009- OTHER OPERATING EXP	702,247.00	674,074.53	28,172.33	0.00	0.14

	Adjusted Budget	Expenditures	Encumbrances	Pre-Encumbrances	Remaining Budget
90572 NAT'S ASSET SEIZURE-REPLACEMENT VESTS-Subtotal	702,247.00	674,074.53	28,172.33	0.00	0.14
900611 NAT'L ASSET SEIZURE- INVESTMENT EXPENSE					
2009- OTHER OPERATING EXP	1,172.00	1,172.00	0.00	0.00	0.00
900611 NAT'L ASSET SEIZURE- INVESTMENT EXPENSE-Subtotal	1,172.00	1,172.00	0.00	0.00	0.00
90612 NAT'L ASSET SEIZURE- RSD VESTS					
2009- OTHER OPERATING EXP	19,870.76	19,870.76	0.00	0.00	0.00
90612 NAT'L ASSET SEIZURE- RSD VESTS-Subtotal	19,870.76	19,870.76	0.00	0.00	0.00
<b>AY13 Total</b>	<b>4,593,531.80</b>	<b>4,565,356.83</b>	<b>28,172.33</b>	<b>0.00</b>	<b>2.64</b>
<b>AY14</b>					
65574 BORDER SEC VEHICLES-THP-B-01-01					
2009- OTHER OPERATING EXP	987,531.00	0.00	0.00	0.00	987,531.00
5000- CAPITAL EXPENDITURE	0.00	0.00	949,131.95		(949,131.95)
65574 BORDER SEC VEHICLES-THP-B-01-01-Subtotal	987,531.00	0.00	949,131.95	0.00	38,399.05
67024 AIRPLANE					
2009- OTHER OPERATING EXP	119,266.98	0.00	0.00	0.00	119,266.98
5000- CAPITAL EXPENDITURE	3,900,000.00	2,054,400.00	1,964,866.98	0.00	(119,266.98)
67024 AIRPLANE-Subtotal	4,019,266.98	2,054,400.00	1,964,866.98	0.00	0.00
67034 REPLACEMENT HANDHELD RADIOS					
5000- CAPITAL EXPENDITURE	2,596,008.00	2,596,008.00	0.00	0.00	0.00
67034 REPLACEMENT HANDHELD RADIOS-Subtotal	2,596,008.00	2,596,008.00	0.00	0.00	0.00
67044 TECH UNIT INTERCEPT SYSTEM					
5000- CAPITAL EXPENDITURE	450,000.00	234,635.47	130,207.84	0.00	85,156.69
67044 TECH UNIT INTERCEPT SYSTEM-Subtotal	450,000.00	234,635.47	130,207.84	0.00	85,156.69
67064 00.405.006 TXR LASER SCANNER PROJECT					
2009- OTHER OPERATING EXP	472,629.00	472,628.68	0.00	0.00	0.32
5000- CAPITAL EXPENDITURE	131,302.00	0.00	0.00	0.00	131,302.00
67064 00.405.006 TXR LASER SCANNER PROJECT-Subtotal	603,931.00	472,628.68	0.00	0.00	131,302.32
67094 00.405.006 THP VOICE CAD MICROPHONE					

	Adjusted Budget	Expenditures	Encumbrances	Pre-Encumbrances	Remaining Budget
2009- OTHER OPERATING EXP	364,619.00	0.00	0.00	0.00	364,619.00
67094 00.405.006 THP VOICE CAD MICROPHONE-Subtotal	364,619.00	0.00	0.00	0.00	364,619.00
67104 00.405.006 THP TABLET INFRASTRUCTURE					
2001- PROFESSIONAL FEES A	20,000.00	0.00	19,250.00	0.00	750.00
2009- OTHER OPERATING EXP	270,000.00	0.00	0.00	0.00	270,000.00
5000- CAPITAL EXPENDITURE	360,000.00	121,805.16	19,250.00	0.00	238,194.84
67104 00.405.006 THP TABLET INFRASTRUCTURE-Subtotal	650,000.00	121,805.16	19,250.00	0.00	508,944.84
90003 00.405.006 TXR EQUIPMENT					
2003-CONSUMABLE SUPPLIES	0.00	25,946.35	0.00	0.00	(25,946.35)
2004-UTILITIES	0.00	0.00	0.00	0.00	0.00
2009- OTHER OPERATING EXP	1,600.00	208,019.78	103,363.97	0.00	(309,783.75)
5000- CAPITAL EXPENDITURE	448,400.00	19,500.00	4,950.00	0.00	423,950.00
90003 00.405.006 TXR EQUIPMENT-Subtotal	450,000.00	253,466.13	108,313.97	0.00	88,219.90
90006 00.45.006 HAZMAT CLEAN-UP					
2001- PROFESSIONAL FEES A	0.00	1,288.70	0.00	0.00	(1,288.70)
2004-UTILITIES	0.00	0.00	42,000.00	0.00	(42,000.00)
2009- OTHER OPERATING EXP	300,000.00	403.56	117,700.00	0.00	181,896.44
90006 00.45.006 HAZMAT CLEAN-UP-Subtotal	300,000.00	1,692.26	159,700.00	0.00	138,607.74
90566 00.405.006 AIRCRAFT BUDGET					
2009- OTHER OPERATING EXP	180,733.02	0.00	0.00	0.00	180,733.02
90566 00.405.006 AIRCRAFT BUDGET-Subtotal	180,733.02	0.00	0.00	0.00	180,733.02
90567 00.405.006 THP IN CAR BUDGET					
2009- OTHER OPERATING EXP	0.00	0.00	0.00	0.00	0.00
90567 00.405.006 THP IN CAR BUDGET- Subtotal	0.00	0.00	0.00	0.00	0.00
90572 NAT'S ASSET SEIZURE-REPLACEMENT VESTS					
2009- OTHER OPERATING EXP	0.00	0.00	0.00	0.00	0.00
90572 NAT'S ASSET SEIZURE-REPLACEMENT VESTS-Subtotal	0.00	0.00	0.00	0.00	0.00
900611 NAT'L ASSET SEIZURE- INVESTMENT EXPENSE					
2009- OTHER OPERATING EXP	47,500.00	1,478.50	0.00	0.00	46,021.50
900611 NAT'L ASSET SEIZURE- INVESTMENT EXPENSE-Subtotal	47,500.00	1,478.50	0.00	0.00	46,021.50

	Adjusted Budget	Expenditures	Encumbrances	Pre-Encumbrances	Remaining Budget
90625 00.405.006 SWAT LOW BOY TRAILER					
2009- OTHER OPERATING EXP	85,000.00	0.00	0.00	0.00	85,000.00
5000- CAPITAL EXPENDITURE	0.00	0.00	44,168.00	0.00	(44,168.00)
90625 00.405.006 SWAT LOW BOY TRAILER-Subtotal	85,000.00	0.00	44,168.00	0.00	40,832.00
90627 00.405.006 EL PASO BATIC LAB PROJECT					
2009- OTHER OPERATING EXP	225,000.00	74,918.00	35,105.00	0.00	114,977.00
5000- CAPITAL EXPENDITURE	0.00	0.00	30,878.46	0.00	(30,878.46)
90627 00.405.006 EL PASO BATIC LAB PROJECT-Subtotal	225,000.00	74,918.00	65,983.46	0.00	84,098.54
90658 00.405.006 CID SZD FND DATABASE					
2009- OTHER OPERATING EXP	50,000.00	0.00	0.00	0.00	50,000.00
90658 00.405.006 CID SZD FND DATABASE-Subtotal	50,000.00	0.00	0.00	0.00	50,000.00
90659 00.405.006 TXR SWAT BODY ARMOR					
2009- OTHER OPERATING EXP	15,000.00	14,861.22	0.00	0.00	138.78
90659 00.405.006 TXR SWAT BODY ARMOR-Subtotal	15,000.00	14,861.22	0.00	0.00	138.78
90745 00.405.006 ADM SEC FENCE BUDGET					
2009- OTHER OPERATING EXP	0.00	0.00	0.00	0.00	0.00
90745 00.405.006 ADM SEC FENCE BUDGET-Subtotal	0.00	0.00	0.00	0.00	0.00
90826 FED SEIZED CID LASER SCANNER					
2009- OTHER OPERATING EXP	603,931.00	0.00	0.00	0.00	603,931.00
5000- CAPITAL EXPENDITURE	(603,931.00)	0.00	0.00	0.00	(603,931.00)
90826 FED SEIZED CID LASER SCANNER-Subtotal	0.00	0.00	0.00	0.00	0.00
90827 00.405.006 THP TMU CAMERA					
2009- OTHER OPERATING EXP	0.00	0.00	0.00	0.00	0.00
90827 00.405.006 THP TMU CAMERA-Subtotal	0.00	0.00	0.00	0.00	0.00
<b>AY14 Total</b>	<b>11,024,589.00</b>	<b>5,825,893.42</b>	<b>3,441,622.20</b>	<b>0.00</b>	<b>1,757,073.38</b>
<b>GRAND TOTAL</b>	<b>15,618,120.80</b>	<b>10,391,250.25</b>	<b>3,469,794.53</b>	<b>0.00</b>	<b>1,757,076.02</b>