

Taking Money: The Politics of Asset Forfeiture in the State of Minnesota

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Abstract

Is there a reason why a particular county might use asset forfeiture more than others? Asset forfeiture, in short, is law enforcement confiscating any items used in the act of committing a crime. As many governments face more budget crunches and deficits all means of revenue will become more vital to everyday operations. Everything gets reported back to the Minnesota State Auditor, where I was able to get complete data on every county. For variables such as education, race and others I drew from numerous government websites. I wanted to see if certain variables correlated with higher incidence of forfeiture. Preliminary analysis has shown that there seems to be no one reason for high incidence of forfeiture. Though at first no strong relations exist, three counties in particular stand out and I hope to explain why.

Introduction

The role of asset forfeiture and the politics surrounding it has been an issue of debate for quite some time. Is it a useful tool for law enforcement or does it give them too much power? On the positive side it gives law enforcement a powerful tool to deter crime and helps put money back into the law enforcement system to further combat crime and help the community. On the negative side with much power corruption can sometimes follow. We here in Minnesota have also recently felt this affect with the corruption of a Twin Cities police force. The Metro Gang Strike Force was found to be taking things that they had no right to. They also had very shoddy record keeping and missing evidence.

It occurred to me that it would be very helpful to know if there is a certain factor that leads to high numbers of forfeiture in some law enforcement jurisdictions compared to others. Most of the literature on the subject tends to evaluate whether on the basis that asset forfeiture is either wrong or right. Worrall(2001) found that many law enforcement agencies are dependent on civil asset forfeiture as a necessary budgetary complement. He believes that this represents a conflict of interest between effective crime control and fiscal management. Where as a study done by James C. Clingermayer, Jason Hecker, and Sue Madsen(2005) found that law enforcement agencies was able to use asset forfeiture without resulting in any kind of corruption.

Most literature involves research that leads to conclusions on whether asset forfeiture was either good for the area or bad for it. An important question that I think gets overlooked is why certain agencies do use it so much more than others. I have found through much research that asset forfeiture is a very powerful tool and can greatly affect the person that it is being used on since it gives law enforcement the ability to seize personal property. My goal is to find out if there is a certain set of variables that influences the amount of forfeitures a county will do. Using counties I think is the best way to go because each county has to go through the county attorney.

Literature Review

The Problem

With 82% of the forfeiture incidents involving criminal activity that involved a controlled substance this issue ties in with the war on drugs. The war on drugs was started to reduce the trafficking and sale of illegal drugs. This can be traced back to Richard Nixon in 1969 when the phrase war on drugs was first started. The problem with this (of course) is that some 40 years later we are still fighting this war with no end in sight. With billions of dollars being spent every year on this war the demand for more results are causing many to rethink how we fight the war on drugs and if it is possible to win this so called war. Since we pump so much money into this, it is and should be an issue that demands great scrutiny and debate. Especially in this day and age of economic recession all money that every level of government spends needs to be looked at and to see if that money is actually being spent in the best way possible.

In 2002 alone the Federal government spent 18 billion dollars on the drug war (Jensen, Gerber, and Mosher 2004). With all this spending comes more arrests which mean more people in jail, which in turns means we need an ever increasing number of jails. We hear this almost

every year that the prisons are too full and it just keeps getting harder and harder to find room to put all these prisoners in. According to the Department of Justice from 1980 to 2001 the number of people in state and federal prisons for drug offenses has increased 1,300%. This statistic alone should make you consider if our current drug war is working. With so many drug offenses some criminal courts have had to establish special drug courts to deal with the high volume of offenders. Within these drug offense laws you can see special circumstances that may be viewed as prejudice.

On the other hand though is it really feasible to give up the war on drugs? Some may think that the current drug war is not working, but does that mean we should give up? Many say that feeding the entire world so that no one goes hungry may be impossible, but that doesn't mean we should quit trying.

History

Asset Forfeiture has a long history and like many of our current laws dates back to British Common law. The British Navigation Acts of 1660 said that most commodities must be shipped in English vessels. If you were to violate this law the goods you were carrying as well as the vessel carrying them could be taken. Asset forfeiture as it used with illegal drugs began with the Comprehensive Drug Abuse and Control Act of 1970. "This legislation was enacted at a time when Congress was responding to the "crime wave" mentality of the late 1960s and early 1970s and in concert with the Nixon-era war on drugs." (Jensen and Gerber, 1996) Also put into law at the same time was the Organized Crime Control Act of 1970 known as the RICO statute that also contained civil forfeiture. The idea behind these laws was quite simple, if illegal drug trafficking

and organized crime were carried out by people because of the financial rewards, then we should make laws to take these rewards away.

Compared to now, these programs were not very widely used in their first ten years. This program was guided by section 881 of the Comprehensive Drug Abuse and Control Act that laid out what was forfeitable: all controlled substances, all raw materials and equipment used or intended for use in manufacturing illegal drugs, and all vehicles that are used or intended for use to distribute illicit drugs. (Jensen and Gerber 1996) In its first ten years less than 30 million in assets had been forfeited. When compared to 1985 when that much was forfeited in one year alone. Over time we would see new statutes put into place to make asset forfeiture more powerful. After changes in 1978 forfeiture increased by the DEA 20 times over the previous year. These changes said that all profits from drug trafficking and all assets that are purchased with these profits are now subject to forfeiture. It was further expanded with the addition of all monies or financial instruments intended to be used in exchange for illegal drugs. This provision allowed the forfeiture of property never actually involved with illegal activities. It was further amended in 1984.

So I will look at asset forfeiture from both the positive and negative sides. My own research will hopefully add something new to the conversation about asset forfeiture. I will put my focus on the state of Minnesota which coincidentally is also dealing with its own forfeiture and policing questions. The Metro Gang Strike Force in the Twin Cities has come under allegations of corruption. This has led many to again raise the debate over asset forfeiture and its possible risks. I was also able to have a conversation with the Sheriff of Beltrami County, Phil Hodapp. He was able to fill me in on some things that I hadn't thought about. The main

thing being that forfeiture activity has to go through the county attorney. My research will hopefully find why some agencies are more prone to use forfeiture than others.

Asset Forfeiture

Asset forfeiture is a powerful tool that can be wielded by law enforcement agencies (Worrall 2001). In the realm of drug enforcement this can be a very powerful and devastating to drug offenders. If the police make a drug arrest they can seize personal property that may have been used by the suspect to carry out their illegal activities. So any object that was gained through the proceeds of crime or the instrumentalities of crime can be seized by the state. This kind of law enforcement tactic saw implementation and great use throughout the 1980's and 1990's. This tactic became more popular in the Reagan era and afterwards as a result of Ronald Reagan's policies as president. This tactic was encouraged as federal laws were changed to encourage asset forfeiture policies by state, local and federal law enforcement agencies. New laws allowed the federal government to establish an equitable sharing provision so states and local agencies could request that the Department of Justice adopt and then share a drug related asset seizure. State and local agencies can request federal adoption if a federal agency was involved in the seizure or the seizure was made pursuant to the commission of a federal crime that provides for seizure, as is the case with any drug offense. So after the seizure is adopted by the DOJ, it can return up to 80% of the proceeds back to the seizing agency. This was a way to bring in more money without having to raise taxes on people. As this tactic became more common controversy also started to grow. The main point of controversy was that on some occasion's officers confiscated assets of people who turned out to be innocent. The main thing here is that officers could confiscate the suspects' assets with the burden of proving themselves innocent resting on the suspect. So basically it was a case of guilty until proven innocent. This

is the exact opposite of the way it is supposed to be in our justice system. So in some instances suspects would lose the title to their property even though they were never found guilty, and sometimes were never indicted for any crime connected to the forfeited property (Worrall 2001). With the value of assets being potentially very high and because the procedural protections for suspects and property owners are sometimes weak, this potentially gives officers a very big incentive to seize assets.

A more philosophical problem is that asset forfeiture policies can incentivize officers to focus on those crimes which involve seizable assets, this then leads to neglect in other important areas that need law enforcement. With certain crimes yielding possibly more money for your budget this can create a conflict on interest for officers. So even though certain areas of crime may need more attention they will be neglected in favor of more arrests in the more financially rewarding sector (Worrall 2001).

The Argument for Asset Forfeiture

First let's start with the Civil Asset Forfeiture Reform Act of 2000 (CAFRA) which was signed into law by President Clinton in 2000. Before this because the proceedings involved a civil not a criminal process, the standard of evidence needed to gain court approval for a forfeiture were much lower than in a criminal proceeding. Unanimous jury verdicts were not needed, and the right to court appointed counsel did not exist. This new legislation was a major victory for the critics of asset forfeiture. The new legislation shifts the burden of proof in federal forfeiture proceedings from the property owner to the state, eliminates the cost bond requirement, provides for reasonable attorney's fees for property owners who prevail in forfeiture proceedings, and creates a uniform innocent owner defense for all federal forfeiture proceedings.

This as you will notice is for the federal government and the individual states can simply decide not to follow the outlines.

A study by James C. Clingmayer, Jason Hecker, and Sue Madsen(2005) that aimed to shed a light on controversies of asset forfeiture within the greater Cincinnati area. They surveyed state and local government law enforcement agencies. The study looked at what kinds of assets are confiscated, what kind of authority is used in asset forfeiture and who is involved in the decisions to seize assets. It also examines the circumstances that are reported to affect the forfeiture decision.

The state of Ohio has very different rules compared to the federal practice of asset forfeiture. Ohio goes a step further in that under the state civil asset forfeiture statute, a criminal prosecution has to occur in order for assets to be confiscated. This fact alone helps to eliminate some of the controversies that have plagued fed asset forfeiture. These jurisdictions don't have to meet the heavier burden of proof to confiscate the asset that they have to meet to gain a conviction on the criminal charge that underlies the seizure, but they have to establish that the confiscated asset is either contraband or a proceed or a facilitator of criminal activity. Those assets that are forfeited by either a civil or criminal proceeding are kept by the jurisdiction if the investigation and the pursuit of the suspect was done by a single jurisdiction. If it was more than one jurisdiction then the proceeds from a sale of the assets are distributed proportionately among the participating jurisdictions based on the degree of involvement in the making of the case against the suspect. So these jurisdictions do have a lot of hurdles to jump through to seize something, but they know they will be rewarded because the benefits of forfeiture go to the seizing jurisdiction. In Kentucky the rules for asset forfeiture are not as kind to criminals as the

ones in Ohio. Jurisdictions seizing assets only need to prove by a preponderance of evidence that the seized assets are contraband, proceeds, or facilitators of criminal activity.

The conclusions the authors came up with show that asset forfeiture is not ridden with crime and corruption. With virtually all jurisdictions using asset forfeitures, they found that most agencies only receive a small part of their budgets from seizures. They found that the extent of forfeiture use did not vary much and that there is actually very little evidence to suggest that the use of asset forfeiture changes the way how law enforcement agencies carry out their policing. (Clingermayer, Hecker, and Madsen 2005) They also found that most jurisdictions don't use civil forfeiture, which doesn't have the procedural protections of a criminal proceeding. Instead they tend to use a criminal forfeiture statute as the legal authority for the seizure or they rely on a court-imposed settlement to then confiscate the assets. When they use the criminal court process jurisdictions are able to avoid sharing the value of the assets unless of course the court orders a division among the relevant law enforcement and prosecutorial agencies. In many of the jurisdictions the decision to seize assets is made by more than one person. In Kentucky, the arresting officer was said to make the seizure decision by 32% of the respondents, compared to only 13.3% of the Ohio respondents. In Ohio, the police chief was said to make the seizure decision in 37.8% of the surveys, a little more than in Kentucky. In about a quarter of the cases the prosecutor was to have made the decision. They found this to be significant because although prosecutors do have some incentive, their financial incentives are usually much smaller than the incentives for law enforcement. They found that although asset forfeiture has often been associated with corruption in this case, that doesn't seem to be the case; as evidenced by the lack of a strong relationship between the extent of asset forfeiture, on one hand, and police activities and priorities, on the other.

The Argument against Asset Forfeiture

Many arguments have been used against asset forfeiture. Katherine Baicker and Mireille Jacobson (2007) in the *Journal of Public Economics* show the negative side of asset forfeiture. Their analysis shows that the financial incentives changed the behavior of police and county governments. The local governments got a significant fraction of the seizures that police make, which then allowed them to reduce their budget for law enforcement, which is partly undermining the statutory incentive created by seizure laws. They found that governments are more likely to do this in times of financial hardships. When police are able to keep the proceeds from seized assets they in turn increase anti-drug policing. These findings suggest that federal and state laws can only go so far when local governments can divert funds to other uses. When there is the ability for governments to decrease police funding because they can offset the decrease with profits from seizures it is almost too tempting to ignore.

Worrall and Kovandzic (2008) found evidence that forfeiture activities affect policing of law enforcement agencies to maximize their potential for revenue generation. They found that significantly fewer equitable-sharing payments are collected in generous forfeiture states. So if an agency can receive 100% of forfeiture proceeds, why would it feel compelled to team up with federal officials to receive a only a maximum of 80%? They believe that police agencies rationally choose to pursue the most lucrative avenues for asset forfeiture, availing themselves of generous state laws. This gives strength to the critics because this is consistent with the policing-for-profit allegations that have been put forth. This lends to the idea that forfeiture activities may

be pursued independently of crime. J. Mitchell Miller and Lance H. Selva(1994) also found that the implementation of asset forfeiture changes the way police act. Instead of making the arrest of a person with the most drugs, they would go for the arrest that would get them the most cash. In their study the police would look at the possible targets and the weigh out which one would give them the most financial benefit even if that particular person isn't the biggest criminal. In other words, they would go with the option that would give them the most financial benefits and not necessarily the social benefits.

Marian Williams (2002) for the *Criminal Justice Review* came to similar negative conclusions. One of the selling points of asset forfeiture is that a large part of the profits will go back into the community. While it varies between state and federal law, law enforcement agencies receive the greatest slice of the revenue. When law enforcement agencies receive so much money from seized assets they can become addicted to this source of money. Williams theorized that one reason why the war on drugs has lasted so long could be because of the success of asset forfeiture. There must be a reason behind why an unsuccessful war has gone on for so long and this could be a major factor. She came to a conclusion that one possible justification could be the success of asset forfeiture, which allows supplements to law enforcement agencies during times of inadequate budgets and contributing to collaborative efforts between federal and state agencies. She thought where would these budgets and collaborative efforts be if they got rid of asset forfeiture.

Methods and Analysis

To find out why counties use asset forfeiture to varying degrees I had to build my own data set. The area that I decided to look at was my home state of Minnesota. Its' 87 counties are

a good way to breakdown the state by areas, because all asset forfeiture proceedings in Minnesota proceed through the County Attorney offices. Minnesota's counties vary from condense metro areas with classic urban issues to wide open rural areas. Minnesota has also had a major corruption incident that involves asset forfeiture making this research all the more timely. My data set includes the basic forfeiture information like the number of times it occurs within a county, sales value and net proceeds, which were obtained from the Minnesota State Auditor's website.

All of this information is available from the Minnesota State Auditor. For things like population, minority population and education levels gathered from the Minnesota Geospatial Information Office provided me all this data for every county. I was able to find the number police officers and the number of narcotic arrests in each county from the F.B.I. criminal statistic website. The number of forfeiture incidents is the dependent variable.

(Figure 1 about here)

For Figure I compared incidents per capita to the percentage of population living in poverty, as areas in poverty can also have high amounts of crime. The correlation is weak with a Pearson's Correlation of .156. This means poverty levels have little if anything to do with the levels of asset forfeiture. It also produces some outliers with Lincoln, Cottonwood and Wadena counties.

(Figure 2 about here)

Figure 2 looks at how the amount of police officers may affect the level of forfeiture. My thinking here is that the more officers you have the more asset forfeiture has a chance of being

used. There is almost no relationship with a Pearson's Correlation of $-.029$. Once again I have the three outlier counties from before.

(Figure 3 about here)

Figure 3 looks at how the minority levels affect the dollar amount of forfeiture. I wanted to see if maybe there was a racial component involved. The relationship is almost nonexistent. It has a Pearson's Correlation of only $-.072$. Minority levels do not have an effect on forfeiture levels.

(Figure 4 about here)

Figure 4 looks at the affect of education on forfeiture levels. I wanted to see if education played a part, if areas with low education levels were subject to more asset forfeiture. Once again the relationship is very weak with a Pearson's Correlation of $.071$. Unfortunately I was not able to find a variable that has a strong relationship with the amount of forfeiture.

(Figure 5 about here)

Figure 5 is a graphical representation of the incidents per capita for each county in Minnesota. The three highest counties shown in red are Lincoln, Cottonwood and Wadena counties. Crow Wing county is also very high at just under 30 per capita.

Conclusion

This turned out to be a very complicated issue to study. I was not able to find any strong relationships with the amount of forfeitures. I started out thinking that some social factor would have a link with how much a county uses asset forfeiture. It seems that I have treaded into new waters where everything is not clear cut or black and white. The politics that surround the issue

are very long and complicated. Even when talking to people who are familiar with the topic they too seem to acknowledge how complicated the issue is.

I would like to think that maybe I have researched something that will open the doors for other researchers to take the issue farther and analyze even more. This is a very complicated, but important issue for everyone. I was able to find a lot of data and compiled a pretty good data set, but it seems that I may still be missing something in the end. What I found out is that none of my variables seem to affect asset forfeiture. I would like to end this with a quote from a county attorney who works in a county with high rates of forfeiture, “Our basic approach is to follow the lead of the law enforcement agency handling the forfeiture. We pretty much always forfeit drug money. The reality with DUI cars is that they either have a bank lien on them or can’t be forfeited or they are crappy and we don't want them and will allow the owner to buy them back.”

Appendix

Figure 1: Incidents per Capita compared to Poverty

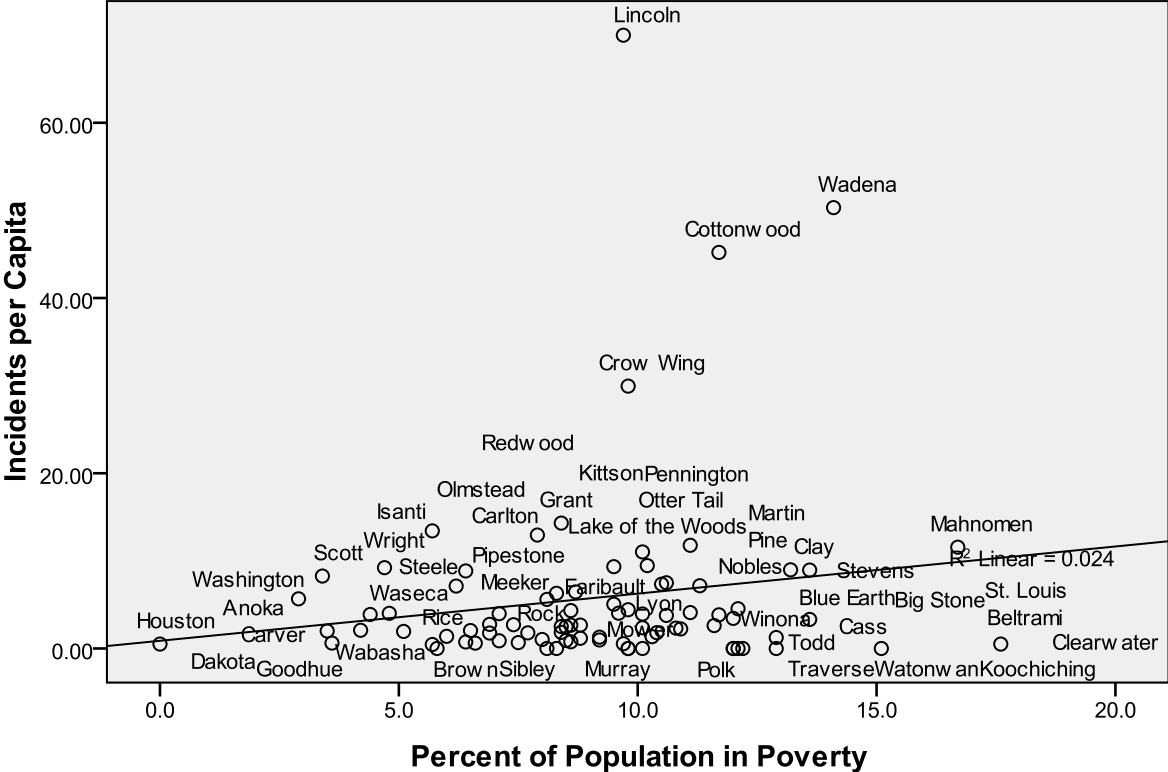


Figure 2: Incidents per Capita compared to Officers per Capita

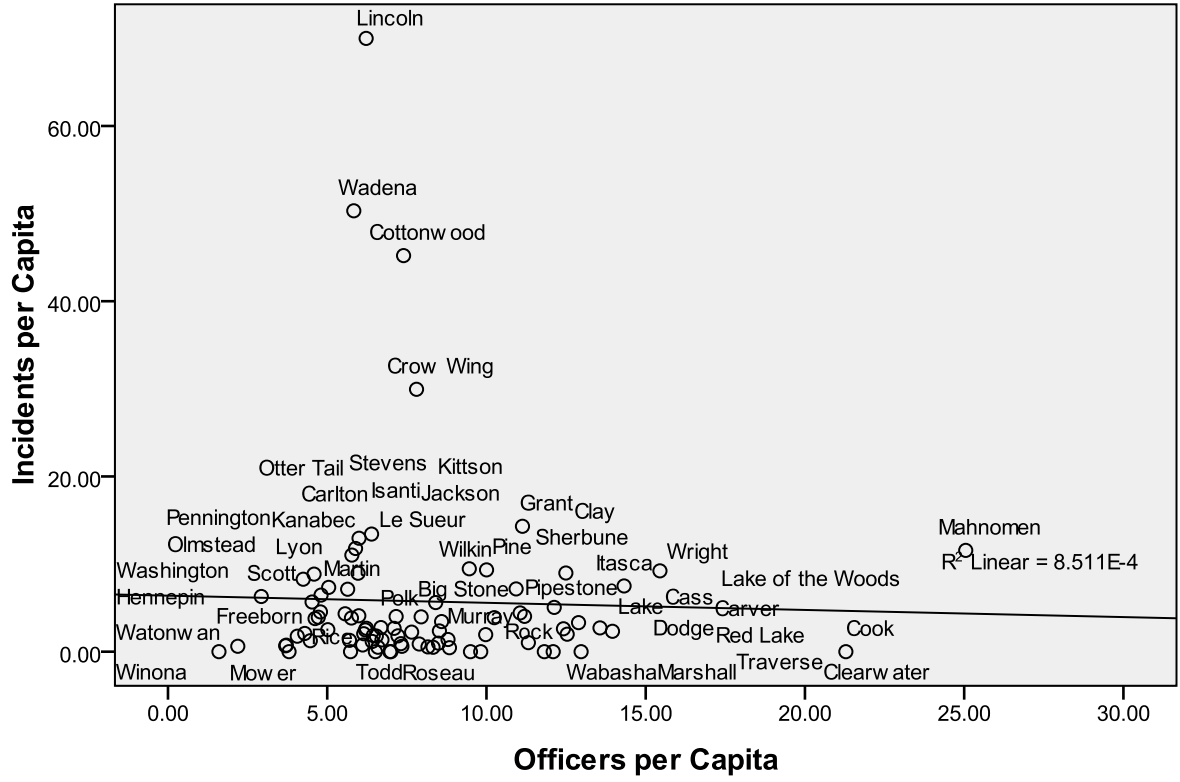


Figure 3: Incidents per Capita compared to Percent Minority

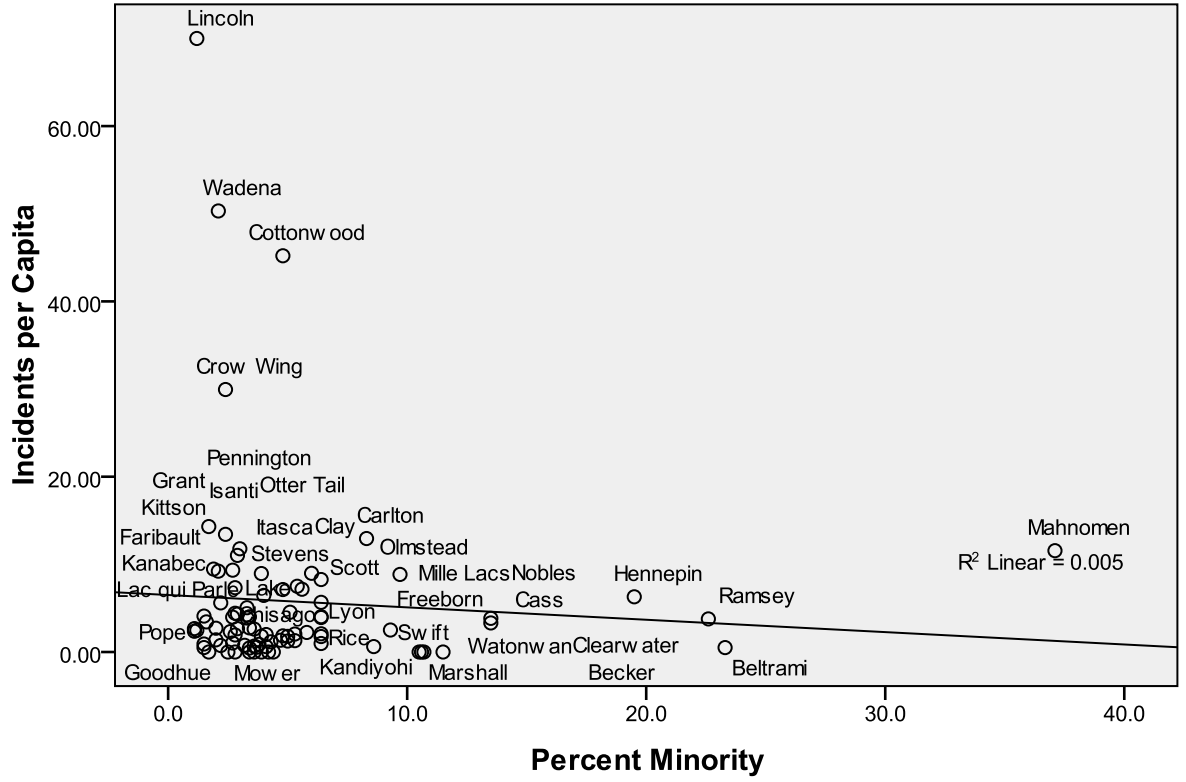


Figure 4: Incidents per Capita compared to Education Levels

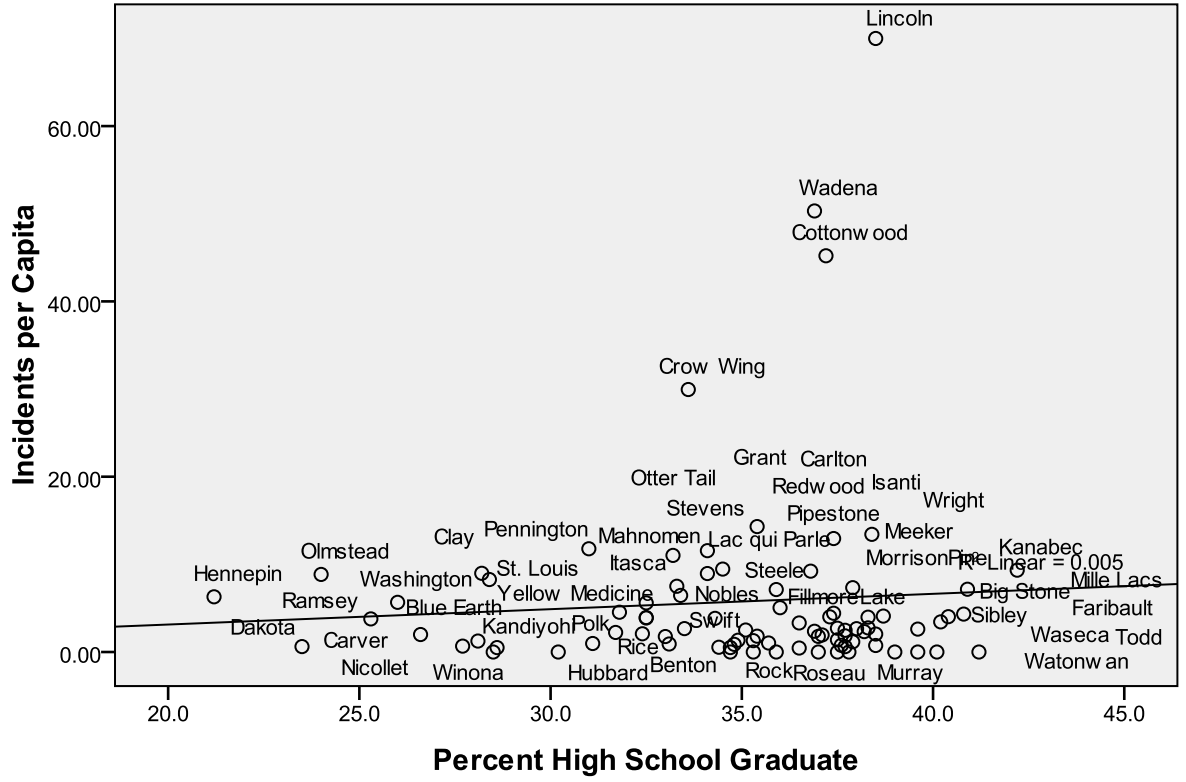
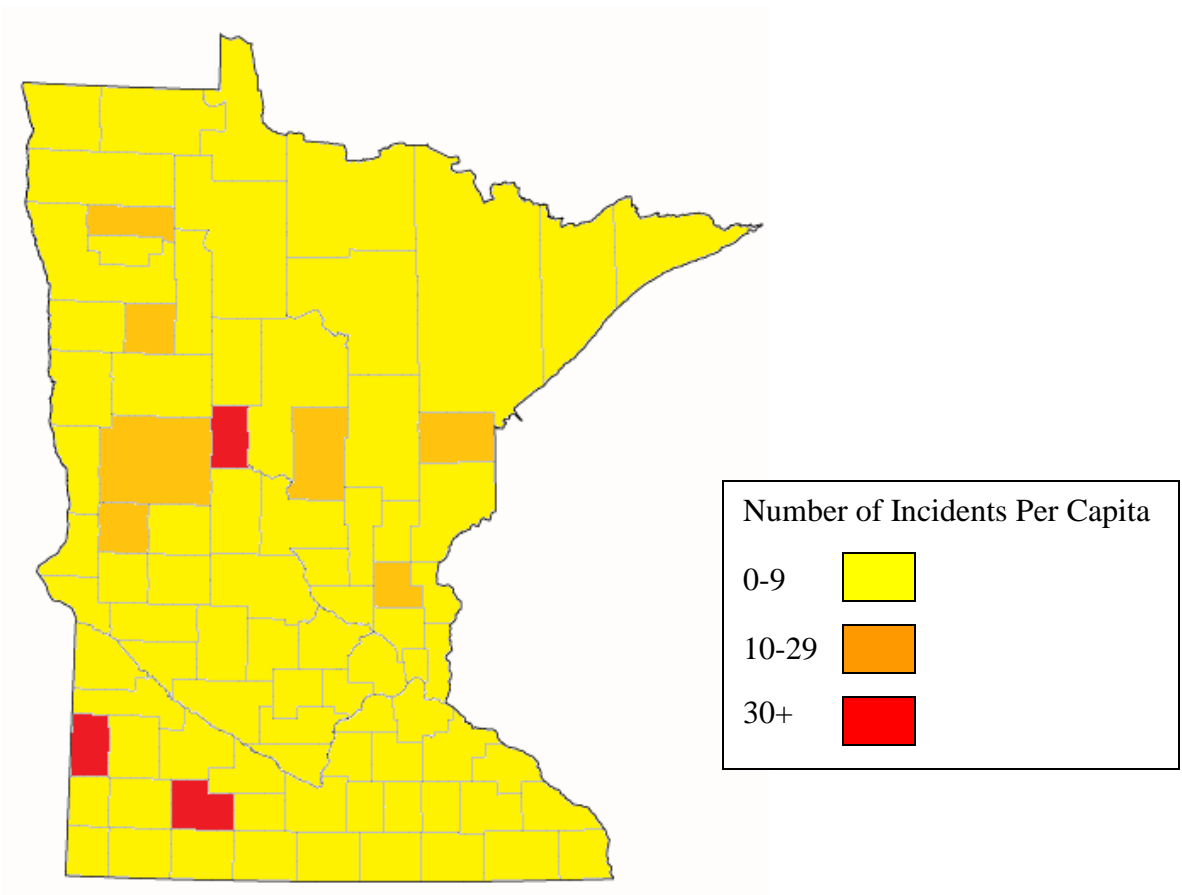


Figure 5: Number of Incidents Per Capita



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