



January 13, 2022

HOUSE BILL No. 1144

DIGEST OF HB 1144 (Updated January 12, 2022 2:57 pm - DI 131)

Citations Affected: IC 35-33; IC 35-38.

Synopsis: Evidence preservation requirements. Establishes additional requirements for the disposition of property held as evidence that may contain biological evidence related to an offense, including matters involving postconviction DNA testing and analysis.

Effective: July 1, 2022.

Steuerwald

January 6, 2022, read first time and referred to Committee on Courts and Criminal Code.
January 13, 2022, amended, reported — Do Pass.

HB 1144—LS 6975/DI 131



January 13, 2022

Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

HOUSE BILL No. 1144

A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,
2 SECTION 225, IS AMENDED TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2022]: Sec. 5. (a) All items of property seized
4 by any law enforcement agency as a result of an arrest, search warrant,
5 or warrantless search, shall be securely held by the law enforcement
6 agency under the order of the court trying the cause, except as provided
7 in this section.
8 (b) Evidence that consists of property obtained unlawfully from its
9 owner may be returned by the law enforcement agency to the owner
10 before trial, in accordance with IC 35-43-4-4(h).
11 (c) Following the final disposition of the cause at trial level or any
12 other final disposition the following shall be done:
13 (1) Property which may be lawfully possessed shall be returned
14 to its rightful owner, if known. If ownership is unknown, a
15 reasonable attempt shall be made by the law enforcement agency
16 holding the property to ascertain ownership of the property. After
17 ninety (90) days from the time:

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- 1 (A) the rightful owner has been notified to take possession of
2 the property; or
3 (B) a reasonable effort has been made to ascertain ownership
4 of the property;
5 the law enforcement agency holding the property shall, at a
6 convenient time, dispose of this property at a public auction. The
7 proceeds of this property shall be paid into the county general
8 fund.
9 (2) Except as provided in subsection (e), property, the possession
10 of which is unlawful, shall be destroyed by the law enforcement
11 agency holding it sixty (60) days after final disposition of the
12 cause.
13 (3) A firearm that has been seized from a person who is
14 dangerous (as defined in IC 35-47-14-1) shall be retained,
15 returned, or disposed of in accordance with IC 35-47-14.
16 (d) **Except as provided in subsection (g)**, if any property described
17 in subsection (c) was admitted into evidence in the cause, the property
18 shall be disposed of in accordance with an order of the court trying the
19 cause.
20 (e) A law enforcement agency may destroy or cause to be destroyed
21 chemicals, controlled substances, or chemically contaminated
22 equipment (including drug paraphernalia as described in
23 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or
24 controlled substances without a court order if all the following
25 conditions are met:
26 (1) The law enforcement agency collects and preserves a
27 sufficient quantity of the chemicals, controlled substances, or
28 chemically contaminated equipment to demonstrate that the
29 chemicals, controlled substances, or chemically contaminated
30 equipment was associated with the illegal manufacture of drugs
31 or controlled substances.
32 (2) The law enforcement agency takes photographs of the illegal
33 drug manufacturing site that accurately depict the presence and
34 quantity of chemicals, controlled substances, and chemically
35 contaminated equipment.
36 (3) The law enforcement agency completes a chemical inventory
37 report that describes the type and quantities of chemicals,
38 controlled substances, and chemically contaminated equipment
39 present at the illegal manufacturing site.
40 The photographs and description of the property shall be admissible
41 into evidence in place of the actual physical evidence.
42 (f) For purposes of preserving the record of any conviction on



1 appeal, a photograph demonstrating the nature of the property, and an
 2 adequate description of the property must be obtained before the
 3 disposition of the property. In the event of a retrial, the photograph and
 4 description of the property shall be admissible into evidence in place
 5 of the actual physical evidence. All other rules of law governing the
 6 admissibility of evidence shall apply to the photographs.

7 **(g) All evidence for a violent offense (as defined in**
 8 **IC 11-12-3.7-6) in the law enforcement agency's possession or**
 9 **control that could be subjected to DNA testing and analysis shall**
 10 **be preserved by the law enforcement agency for twenty (20) years**
 11 **from the date the defendant's conviction becomes final. In cases**
 12 **where an investigation did not result in a conviction, the evidence**
 13 **shall be preserved until the expiration of the statute of limitations**
 14 **for the alleged offense. If the preservation of the evidence is**
 15 **impracticable, the law enforcement agency shall remove portions**
 16 **of the material evidence likely to contain biological evidence**
 17 **related to the offense, in a quantity sufficient to permit future DNA**
 18 **testing before returning or disposing of the physical evidence. At**
 19 **subsequent hearings or trials, all records, notes, identification**
 20 **numbers, photographs, and other documentation relating to the**
 21 **preservation of biological evidence shall be admissible into**
 22 **evidence.**

23 ~~(g)~~ **(h)** The law enforcement agency disposing of property in any
 24 manner provided in subsection (b), (c), ~~or~~ (e), ~~or~~ (g), shall maintain
 25 certified records of any disposition under subsection (b), (c), ~~or~~ (e), ~~or~~
 26 (g). Disposition by destruction of property shall be witnessed by two
 27 (2) persons who shall also attest to the destruction.

28 ~~(h)~~ **(i)** This section does not affect the procedure for the disposition
 29 of firearms seized by a law enforcement agency.

30 ~~(i)~~ **(j)** A law enforcement agency that disposes of property by
 31 auction under this section shall permanently stamp or otherwise
 32 permanently identify the property as property sold by the law
 33 enforcement agency.

34 ~~(j)~~ **(k)** Upon motion of the prosecuting attorney, the court shall order
 35 property seized under IC 34-24-1 transferred, subject to the perfected
 36 liens or other security interests of any person in the property, to the
 37 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19
 38 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted
 39 by the United States Department of Justice.

40 **(l) The law enforcement agency responsible for disposing of**
 41 **property under subsection (g), shall do the following:**

42 **(1) Maintain a record of the preserved evidence.**



1 **(2) Schedule a disposal date for the preserved evidence.**

2 **(3) Provide notice to the last known address of the defendant**
 3 **or the defendant's attorney when:**

4 **(A) the preserved evidence is removed from its secure**
 5 **location; or**

6 **(B) the date the preserved evidence has been marked for**
 7 **disposal.**

8 **The defendant or the defendant's attorney must provide the most**
 9 **current address of the defendant or the defendant's attorney to the**
 10 **law enforcement agency responsible for disposing of property in**
 11 **order to effectively receive proper notice. If the law enforcement**
 12 **agency responsible for disposing of property does not have the**
 13 **defendant's or the defendant's attorney's most current address on**
 14 **file, then the notice requirement is deemed waived.**

15 **(m) Failure of a law enforcement agency to follow the**
 16 **procedures described in this section may constitute contempt of**
 17 **court. However, failure to follow the procedures described in this**
 18 **section shall not be grounds for reversal of a conviction unless the**
 19 **defendant proves a violation of the defendant's due process rights.**

20 **(n) Nothing in subsection (g) shall preclude a law enforcement**
 21 **agency from submitting biological evidence to forensic DNA testing**
 22 **or analysis, at its own initiative or at the request of a prosecuting**
 23 **attorney, if such testing will not consume the remainder of the**
 24 **evidence. If such testing would consume the remainder of the**
 25 **evidence, the prosecuting attorney may seek a court order allowing**
 26 **such testing under IC 35-38-7-17.**

27 **SECTION 2. IC 35-38-7-14 IS AMENDED TO READ AS**
 28 **FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. (a) If a petition for**
 29 **DNA testing and analysis is filed under this chapter:**

30 **(1) except as provided in IC 35-33-5-5(g), the court shall order**
 31 **the state to preserve during the pendency of the proceeding all**
 32 **evidence in the state's possession or control that could be**
 33 **subjected to DNA testing and analysis for an additional twenty**
 34 **(20) years;**

35 **(2) the state shall:**

36 **(A) prepare an inventory of the evidence in the possession or**
 37 **control of the state that could be subjected to DNA testing and**
 38 **analysis; and**

39 **(B) submit a copy of the inventory to defense counsel and the**
 40 **court; and**

41 **(3) if evidence is intentionally destroyed after the court orders its**
 42 **preservation, the court may impose appropriate sanctions.**



1 **(b) In the event that DNA testing and analysis required under**
2 **this chapter results in a vacated conviction, all biological evidence**
3 **shall continue to be preserved in accordance with IC 35-33-5-5(g),**
4 **and for an additional twenty (20) years from the date a subsequent**
5 **conviction of any person becomes final, or if there is no subsequent**
6 **conviction, then for the remainder of the statute of limitations for**
7 **the offense.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1144, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 35-33-5-5, AS AMENDED BY P.L.1-2007, SECTION 225, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

(1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at a convenient time, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-14-1) shall be retained, returned, or disposed of in accordance with IC 35-47-14.

(d) **Except as provided in subsection (g)**, if any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the



cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals, controlled substances, or chemically contaminated equipment (including drug paraphernalia as described in IC 35-48-4-8.5) associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals, controlled substances, or chemically contaminated equipment to demonstrate that the chemicals, controlled substances, or chemically contaminated equipment was associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals, controlled substances, and chemically contaminated equipment.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals, controlled substances, and chemically contaminated equipment present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of the property. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) All evidence for a violent offense (as defined in IC 11-12-3.7-6) in the law enforcement agency's possession or control that could be subjected to DNA testing and analysis shall be preserved by the law enforcement agency for twenty (20) years from the date the defendant's conviction becomes final. In cases where an investigation did not result in a conviction, the evidence shall be preserved until the expiration of the statute of limitations for the alleged offense. If the preservation of the evidence is impracticable, the law enforcement agency shall remove portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence. At



subsequent hearings or trials, all records, notes, identification numbers, photographs, and other documentation relating to the preservation of biological evidence shall be admissible into evidence.

~~(g)~~ **(h)** The law enforcement agency disposing of property in any manner provided in subsection (b), (c), ~~or~~ (e), **or (g)**, shall maintain certified records of any disposition under subsection (b), (c), ~~or~~ (e), **or (g)**. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

~~(h)~~ **(i)** This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

~~(i)~~ **(j)** A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

~~(j)~~ **(k)** Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

(l) The law enforcement agency responsible for disposing of property under subsection (g), shall do the following:

- (1) Maintain a record of the preserved evidence.**
- (2) Schedule a disposal date for the preserved evidence.**
- (3) Provide notice to the last known address of the defendant or the defendant's attorney when:**
 - (A) the preserved evidence is removed from its secure location; or**
 - (B) the date the preserved evidence has been marked for disposal.**

The defendant or the defendant's attorney must provide the most current address of the defendant or the defendant's attorney to the law enforcement agency responsible for disposing of property in order to effectively receive proper notice. If the law enforcement agency responsible for disposing of property does not have the defendant's or the defendant's attorney's most current address on file, then the notice requirement is deemed waived.

(m) Failure of a law enforcement agency to follow the procedures described in this section may constitute contempt of court. However, failure to follow the procedures described in this section shall not be grounds for reversal of a conviction unless the



defendant proves a violation of the defendant's due process rights.

(n) Nothing in subsection (g) shall preclude a law enforcement agency from submitting biological evidence to forensic DNA testing or analysis, at its own initiative or at the request of a prosecuting attorney, if such testing will not consume the remainder of the evidence. If such testing would consume the remainder of the evidence, the prosecuting attorney may seek a court order allowing such testing under IC 35-38-7-17."

Delete pages 2 through 3.

Page 4, delete lines 1 through 23.

Page 4, line 27, delete "IC 35-33-5-5(f)," and insert "**IC 35-33-5-5(g)**,".

Page 4, delete lines 40 through 42, begin a new paragraph and insert:

"(b) In the event that DNA testing and analysis required under this chapter results in a vacated conviction, all biological evidence shall continue to be preserved in accordance with IC 35-33-5-5(g), and for an additional twenty (20) years from the date a subsequent conviction of any person becomes final, or if there is no subsequent conviction, then for the remainder of the statute of limitations for the offense."

Delete page 5.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1144 as introduced.)

MCNAMARA

Committee Vote: yeas 11, nays 0.

