



February 11, 2022

ENGROSSED HOUSE BILL No. 1144

DIGEST OF HB 1144 (Updated February 8, 2022 12:33 pm - DI 106)

Citations Affected: IC 34-24; 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, Young J, Pierce

(SENATE SPONSORS — YOUNG M, KOCH, CRIDER,
RANDOLPH LONNIE M)

January 6, 2022, read first time and referred to Committee on Courts and Criminal Code.
January 13, 2022, amended, reported — Do Pass.
January 18, 2022, read second time, ordered engrossed.
January 19, 2022, engrossed.
January 20, 2022, read third time, passed. Yeas 86, nays 0.

SENATE ACTION

February 1, 2022, read first time and referred to Committee on Corrections and Criminal Law.
February 10, 2022, amended, reported favorably — Do Pass.

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February 11, 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.

ENGROSSED 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 34-24-1-2, AS AMENDED BY P.L.47-2018,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 2. (a) Property may be seized under this chapter
4 by a law enforcement officer only if:
5 (1) the seizure is incident to a lawful:
6 (A) arrest;
7 (B) search; or
8 (C) administrative inspection;
9 (2) the property has been the subject of a prior judgment in favor
10 of the state or unit in a proceeding under this chapter (or
11 IC 34-4-30.1 before its repeal); or
12 (3) a court, after making an ex parte determination that there is
13 probable cause to believe the property is subject to seizure under
14 this chapter, issues an order for seizure.
15 (b) If property is seized under subsection (a)(1), the prosecuting
16 attorney shall file an affidavit of probable cause with a circuit or
17 superior court in the county in which the seizure occurred not later than

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1 seven (7) days after the date of the seizure. If the court does not find
2 probable cause to believe the property is subject to seizure under this
3 chapter, it shall order the property returned to the owner of record.

4 (c) When property is seized under subsection (a), the law
5 enforcement agency making the seizure may, pending final disposition:

- 6 (1) place the property under seal;
7 (2) remove the property to a place designated by the court; or
8 (3) require another agency authorized by law to take custody of
9 the property and remove it to an appropriate location.

10 (d) If property seized under subsection (a)(1) or (a)(3) is real
11 property or a vehicle operated or possessed at the time of its seizure by
12 a person who is not an owner of the real property or vehicle, the owner
13 of the real property or vehicle may file a verified petition for
14 provisional release pending final forfeiture determination, requesting
15 the court to grant the owner possession of the real property or vehicle
16 while the forfeiture action is pending.

17 (e) A petition for provisional release under this section must:

- 18 (1) be in writing;
19 (2) be verified by the petitioner;
20 (3) state the grounds for relief;
21 (4) be filed in a circuit or superior court in the county in which the
22 seizure occurred; and
23 (5) be served on the prosecuting attorney.

24 (f) At the hearing on the petition for provisional release under this
25 section, the petitioner must establish that the:

- 26 (1) petitioner is an owner of record;
27 (2) petitioner or the petitioner's family benefits from the use of the
28 vehicle or the real property;
29 (3) petitioner has insured the property against loss from accident
30 and casualty; and
31 (4) petitioner had no reason to believe that the vehicle or real
32 property would be used for illegal activity.

33 (g) At the hearing on the petition for provisional release under this
34 section, the prosecuting attorney may present evidence that returning
35 the property to the owner would likely result in:

- 36 (1) damage to the property or diminution of the value of the
37 property beyond ordinary wear and tear; or
38 (2) continued use of the property in connection with illegal
39 activity.

40 (h) If the court grants the petition for provisional release under this
41 section, the court shall require the owner to:

- 42 (1) maintain the property; and



- 1 (2) refrain from selling or otherwise conveying the property
 2 without the permission of the prosecuting attorney.
- 3 (i) If the court grants the petition for provisional release under this
 4 section, it may place reasonable restrictions on the use of the property,
 5 including one (1) or more of the following:
- 6 (1) Requiring the owner to post a cash bond.
 7 (2) Placing mileage limitations on the use of a vehicle.
 8 (3) Imposing reasonable limits on the use of the property.
 9 (4) Prohibiting certain persons from the possession, occupation,
 10 or use of the property.
 11 (5) Requiring payment of all taxes, registration, and other fees, if
 12 applicable.
 13 (6) Maintaining property, casualty, and accident insurance.
- 14 (j) A court may not grant a petition for provisional release under this
 15 section if the prosecuting attorney has filed a motion under section 9 of
 16 this chapter or ~~IC 35-33-5-5(j)~~. **IC 35-33-5-5(k)**.
- 17 (k) The prosecuting attorney shall notify the owner of record of a
 18 vehicle or real property of the right to file a petition for provisional
 19 release under this section not later than seven (7) days after probable
 20 cause has been determined under subsection (b).
- 21 (l) Property that is seized under subsection (a) (or IC 34-4-30.1-2(a)
 22 before its repeal) is not subject to replevin but is considered to be in the
 23 custody of the law enforcement agency making the seizure.
- 24 SECTION 2. IC 34-24-1-4.5, AS AMENDED BY P.L.47-2018,
 25 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 26 JULY 1, 2022]: Sec. 4.5. (a) After a prosecuting attorney files a
 27 forfeiture action, the prosecuting attorney shall report the following to
 28 the Indiana prosecuting attorneys council:
- 29 (1) The date the property was seized.
 30 (2) Whether the property seized was cash, a vehicle, real property,
 31 or other personal property.
 32 (3) Whether the forfeiture was filed in state court or through
 33 federal adoptive seizure.
- 34 This subsection applies even if the prosecuting attorney has retained an
 35 attorney to bring the forfeiture action.
- 36 (b) After a court enters a judgment in favor of the state or a unit
 37 under section 4 of this chapter, the prosecuting attorney shall report the
 38 following to the Indiana prosecuting attorneys council:
- 39 (1) The amount of money or property that is the subject of the
 40 judgment.
 41 (2) The law enforcement agency to which the money or property
 42 is ordered to be transferred.



1 (3) Whether the forfeiture was contested.

2 (4) Whether an innocent owner made a claim to the property.

3 (5) Whether the final disposition of the property resulted in the
4 property being returned, destroyed, forfeited, retained, or
5 distributed by settlement.

6 (6) The date of the final disposition.

7 This subsection applies even if the prosecuting attorney has retained an
8 attorney to bring an action under this chapter.

9 (c) After a court, upon motion of the prosecuting attorney under
10 ~~IC 35-33-5-5(j)~~, **IC 35-33-5-5(k)**, orders property transferred to a
11 federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C.
12 1616a, or 21 U.S.C. 881(e), and any related regulations adopted by the
13 United States Department of Justice, the prosecuting attorney shall
14 report to the Indiana prosecuting attorneys council the amount of
15 money or property transferred. This subsection applies even if the
16 prosecuting attorney has retained an attorney to bring an action under
17 this chapter.

18 (d) A report made to the Indiana prosecuting attorneys council under
19 this section must be in a format approved by the prosecuting attorneys
20 council. A prosecuting attorney with no forfeitures to report shall file
21 a report with the Indiana prosecuting attorneys council.

22 SECTION 3. IC 34-24-1-9 IS AMENDED TO READ AS
23 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 9. (a) Upon motion of
24 a prosecuting attorney under ~~IC 35-33-5-5(j)~~, **IC 35-33-5-5(k)**,
25 property seized under this chapter must be transferred, subject to the
26 perfected liens or other security interests of any person in the property,
27 to the appropriate federal authority for disposition under 18 U.S.C.
28 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related
29 regulations adopted by the United States Department of Justice.

30 (b) Money received by a law enforcement agency as a result of a
31 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
32 881(e) and any related regulations adopted by the United States
33 Department of Justice must be deposited into a nonreverting fund and
34 may be expended only with the approval of:

35 (1) the executive (as defined in IC 36-1-2-5), if the money is
36 received by a local law enforcement agency; or

37 (2) the governor, if the money is received by a law enforcement
38 agency in the executive branch.

39 The money received under this subsection must be used solely for the
40 benefit of any agency directly participating in the seizure or forfeiture
41 for purposes consistent with federal laws and regulations.

42 SECTION 4. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,



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

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

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

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

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

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

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

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

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

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

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

42 (1) The law enforcement agency collects and preserves a



1 sufficient quantity of the chemicals, controlled substances, or
2 chemically contaminated equipment to demonstrate that the
3 chemicals, controlled substances, or chemically contaminated
4 equipment was associated with the illegal manufacture of drugs
5 or controlled substances.

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

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

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

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

23 **(g) All evidence for a violent offense (as defined in**
24 **IC 11-12-3.7-6) in the law enforcement agency's possession or**
25 **control that could be subjected to DNA testing and analysis shall**
26 **be preserved by the law enforcement agency for the later of the**
27 **following:**

28 **(1) Twenty (20) years from the date the defendant's conviction**
29 **becomes final.**

30 **(2) The period of the defendant's incarceration.**

31 **In cases where an investigation did not result in a conviction, the**
32 **evidence shall be preserved until the expiration of the statute of**
33 **limitations for the alleged offense. If the preservation of the**
34 **evidence is impracticable, the law enforcement agency shall**
35 **remove portions of the material evidence likely to contain**
36 **biological evidence related to the offense, in a quantity sufficient to**
37 **permit future DNA testing before returning or disposing of the**
38 **physical evidence. At subsequent hearings or trials, all records,**
39 **notes, identification numbers, photographs, and other**
40 **documentation relating to the preservation of biological evidence**
41 **shall be admissible into evidence.**

42 ~~(g)~~ **(h)** The law enforcement agency disposing of property in any



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

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

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

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

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

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

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

21 **(3) Provide notice to the last known address of the defendant**
 22 **and the defendant's attorney:**

23 **(A) when the preserved evidence is removed from its**
 24 **secure location; or**

25 **(B) of the date the preserved evidence has been marked for**
 26 **disposal.**

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

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

39 **(n) Nothing in subsection (g) shall preclude a law enforcement**
 40 **agency from submitting biological evidence to forensic DNA testing**
 41 **or analysis, at its own initiative or at the request of a prosecuting**
 42 **attorney, if such testing will not consume the remainder of the**



1 **evidence. If such testing would consume the remainder of the**
 2 **evidence, the prosecuting attorney may seek a court order allowing**
 3 **such testing under IC 35-38-7-17.**

4 SECTION 5. IC 35-38-7-14 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. (a) If a petition for
 6 DNA testing and analysis is filed under this chapter:

7 (1) **except as provided in IC 35-33-5-5(g)**, the court shall order
 8 the state to preserve during the pendency of the proceeding all
 9 evidence in the state's possession or control that could be
 10 subjected to DNA testing and analysis **for the later of:**

11 (A) **twenty (20) years from the date of the defendant's**
 12 **conviction; or**

13 (B) **the period of the defendant's incarceration.**

14 (2) the state shall:

15 (A) prepare an inventory of the evidence in the possession or
 16 control of the state that could be subjected to DNA testing and
 17 analysis; and

18 (B) submit a copy of the inventory to defense counsel and the
 19 court; and

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

22 (b) **In the event that DNA testing and analysis required under**
 23 **this chapter results in a vacated conviction, all biological evidence**
 24 **shall continue to be preserved in accordance with IC 35-33-5-5(g),**
 25 **and for the latest of the following:**

26 (1) **Twenty (20) years from the date the conviction was**
 27 **vacated.**

28 (2) **The period of time the defendant is incarcerated for a**
 29 **subsequent conviction.**

30 (3) **The remainder of the statute of limitations for the offense.**

31 **However, the obligation to preserve biological evidence does not**
 32 **apply to a DNA sample taken from the defendant whose conviction**
 33 **was vacated.**



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.

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1144, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, between the enacting clause and line 1, begin a new paragraph and insert:

"SECTION 1. IC 34-24-1-2, AS AMENDED BY P.L.47-2018,

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SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. (a) Property may be seized under this chapter by a law enforcement officer only if:

- (1) the seizure is incident to a lawful:
 - (A) arrest;
 - (B) search; or
 - (C) administrative inspection;
- (2) the property has been the subject of a prior judgment in favor of the state or unit in a proceeding under this chapter (or IC 34-4-30.1 before its repeal); or
- (3) a court, after making an ex parte determination that there is probable cause to believe the property is subject to seizure under this chapter, issues an order for seizure.

(b) If property is seized under subsection (a)(1), the prosecuting attorney shall file an affidavit of probable cause with a circuit or superior court in the county in which the seizure occurred not later than seven (7) days after the date of the seizure. If the court does not find probable cause to believe the property is subject to seizure under this chapter, it shall order the property returned to the owner of record.

(c) When property is seized under subsection (a), the law enforcement agency making the seizure may, pending final disposition:

- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(d) If property seized under subsection (a)(1) or (a)(3) is real property or a vehicle operated or possessed at the time of its seizure by a person who is not an owner of the real property or vehicle, the owner of the real property or vehicle may file a verified petition for provisional release pending final forfeiture determination, requesting the court to grant the owner possession of the real property or vehicle while the forfeiture action is pending.

(e) A petition for provisional release under this section must:

- (1) be in writing;
- (2) be verified by the petitioner;
- (3) state the grounds for relief;
- (4) be filed in a circuit or superior court in the county in which the seizure occurred; and
- (5) be served on the prosecuting attorney.

(f) At the hearing on the petition for provisional release under this section, the petitioner must establish that the:

- (1) petitioner is an owner of record;

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- (2) petitioner or the petitioner's family benefits from the use of the vehicle or the real property;
- (3) petitioner has insured the property against loss from accident and casualty; and
- (4) petitioner had no reason to believe that the vehicle or real property would be used for illegal activity.

(g) At the hearing on the petition for provisional release under this section, the prosecuting attorney may present evidence that returning the property to the owner would likely result in:

- (1) damage to the property or diminution of the value of the property beyond ordinary wear and tear; or
- (2) continued use of the property in connection with illegal activity.

(h) If the court grants the petition for provisional release under this section, the court shall require the owner to:

- (1) maintain the property; and
- (2) refrain from selling or otherwise conveying the property without the permission of the prosecuting attorney.

(i) If the court grants the petition for provisional release under this section, it may place reasonable restrictions on the use of the property, including one (1) or more of the following:

- (1) Requiring the owner to post a cash bond.
- (2) Placing mileage limitations on the use of a vehicle.
- (3) Imposing reasonable limits on the use of the property.
- (4) Prohibiting certain persons from the possession, occupation, or use of the property.
- (5) Requiring payment of all taxes, registration, and other fees, if applicable.
- (6) Maintaining property, casualty, and accident insurance.

(j) A court may not grant a petition for provisional release under this section if the prosecuting attorney has filed a motion under section 9 of this chapter or ~~IC 35-33-5-5(j)~~. **IC 35-33-5-5(k)**.

(k) The prosecuting attorney shall notify the owner of record of a vehicle or real property of the right to file a petition for provisional release under this section not later than seven (7) days after probable cause has been determined under subsection (b).

(l) Property that is seized under subsection (a) (or IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is considered to be in the custody of the law enforcement agency making the seizure.

SECTION 2. IC 34-24-1-4.5, AS AMENDED BY P.L.47-2018, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 4.5. (a) After a prosecuting attorney files a



forfeiture action, the prosecuting attorney shall report the following to the Indiana prosecuting attorneys council:

- (1) The date the property was seized.
- (2) Whether the property seized was cash, a vehicle, real property, or other personal property.
- (3) Whether the forfeiture was filed in state court or through federal adoptive seizure.

This subsection applies even if the prosecuting attorney has retained an attorney to bring the forfeiture action.

(b) After a court enters a judgment in favor of the state or a unit under section 4 of this chapter, the prosecuting attorney shall report the following to the Indiana prosecuting attorneys council:

- (1) The amount of money or property that is the subject of the judgment.
- (2) The law enforcement agency to which the money or property is ordered to be transferred.
- (3) Whether the forfeiture was contested.
- (4) Whether an innocent owner made a claim to the property.
- (5) Whether the final disposition of the property resulted in the property being returned, destroyed, forfeited, retained, or distributed by settlement.
- (6) The date of the final disposition.

This subsection applies even if the prosecuting attorney has retained an attorney to bring an action under this chapter.

(c) After a court, upon motion of the prosecuting attorney under ~~IC 35-33-5-5(j)~~, **IC 35-33-5-5(k)**, orders property transferred to a 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, the prosecuting attorney shall report to the Indiana prosecuting attorneys council the amount of money or property transferred. This subsection applies even if the prosecuting attorney has retained an attorney to bring an action under this chapter.

(d) A report made to the Indiana prosecuting attorneys council under this section must be in a format approved by the prosecuting attorneys council. A prosecuting attorney with no forfeitures to report shall file a report with the Indiana prosecuting attorneys council.

SECTION 3. IC 34-24-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 9. (a) Upon motion of a prosecuting attorney under ~~IC 35-33-5-5(j)~~, **IC 35-33-5-5(k)**, property seized under this chapter must be 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.

(b) Money received by a law enforcement agency as a result of a forfeiture 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 must be deposited into a nonreverting fund and may be expended only with the approval of:

- (1) the executive (as defined in IC 36-1-2-5), if the money is received by a local law enforcement agency; or
- (2) the governor, if the money is received by a law enforcement agency in the executive branch.

The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations."

Page 3, delete lines 7 through 42 begin a new paragraph and insert:

"(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 the later of the following:

- (1) Twenty (20) years from the date the defendant's conviction becomes final.**
- (2) The period of the defendant's incarceration.**

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.



(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.

(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 and the defendant's attorney:**

(A) when the preserved evidence is removed from its secure location; or

(B) of 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.

SECTION 5. IC 35-38-7-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. (a) If a petition for DNA testing and analysis is filed under this chapter:



(1) **except as provided in IC 35-33-5-5(g)**, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis **for the later of:**

(A) twenty (20) years from the date of the defendant's conviction; or

(B) the period of the defendant's incarceration.

(2) the state shall:

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

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

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

(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 the latest of the following:

(1) Twenty (20) years from the date the conviction was vacated.

(2) The period of time the defendant is incarcerated for a subsequent conviction.

(3) The remainder of the statute of limitations for the offense.

However, the obligation to preserve biological evidence does not apply to a DNA sample taken from the defendant whose conviction was vacated."

Delete pages 4 and 5.

Re-number all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1144 as printed January 13, 2022.)

YOUNG M, Chairperson

Committee Vote: Yeas 9, Nays 0.

