

HOUSE BILL No. 1281

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-6-2-13; IC 33-39; IC 34-24-1.

Synopsis: Civil forfeiture. Requires the Indiana prosecuting attorneys council to establish and maintain a case tracking system and searchable public Internet web site that includes certain civil forfeiture data, and requires each prosecuting attorney to upload civil forfeiture data to the web site. Establishes the civil forfeiture data fund to be used to defray expenses incurred in complying with civil forfeiture reporting requirements. Provides that, after deducting certain expenses, the greater of: (1) \$250; or (2) 1% of a civil forfeiture judgment; shall be deposited in the civil forfeiture data fund. Authorizes the attorney general to assess a civil penalty against a prosecuting attorney who fails to report civil forfeiture data without good cause and specifies that the civil penalty shall be deposited in the civil forfeiture data fund.

Effective: July 1, 2022.

Nisly, Jacob

January 10, 2022, read first time and referred to Committee on Judiciary.



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. 1281

A BILL FOR AN ACT to amend the Indiana Code concerning state offices and administration.

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

- 1 SECTION 1. IC 4-6-2-13 IS ADDED TO THE INDIANA CODE
- 2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 3 1, 2022]: **Sec. 13. The attorney general may assess a civil penalty**
- 4 **against a prosecuting attorney who fails, without good cause, to**
- 5 **report civil forfeiture data as required by IC 34-24-1-4.5.**
- 6 SECTION 2. IC 33-39-8-5, AS AMENDED BY P.L.237-2015,
- 7 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 8 JULY 1, 2022]: Sec. 5. The council shall do the following:
- 9 (1) Assist in the coordination of the duties of the prosecuting
- 10 attorneys of the state and their staffs.
- 11 (2) Prepare manuals of procedure.
- 12 (3) Give assistance in preparation of the trial briefs, forms, and
- 13 instructions.
- 14 (4) Conduct research and studies that would be of interest and
- 15 value to all prosecuting attorneys and their staffs.
- 16 (5) Maintain liaison contact with study commissions and agencies
- 17 of all branches of local, state, and federal government that will be



1 of benefit to law enforcement and the fair administration of
2 justice in Indiana.

3 (6) Adopt guidelines for the expenditure of funds derived from a
4 deferral program or a pretrial diversion program.

5 (7) The council shall:

6 (A) ~~compile~~ **establish and maintain a case tracking system**
7 **and searchable public Internet web site that includes**
8 forfeiture data received under IC 34-24-1-4.5; and

9 (B) annually submit a report to the legislative council
10 containing the compiled data.

11 The council shall submit the report to the legislative council
12 before July 15 of every year. The report must be in an electronic
13 format under IC 5-14-6. The council may adopt rules under
14 IC 4-22-2 to implement this subdivision.

15 SECTION 3. IC 33-39-8-8 IS ADDED TO THE INDIANA CODE
16 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
17 1, 2022]: **Sec. 8. (a) The civil forfeiture data fund is established. The**
18 **council shall administer the fund.**

19 **(b) The fund consists of:**

20 **(1) civil penalties collected by the attorney general for a**
21 **violation of IC 34-24-1-4.5 (civil forfeiture reporting**
22 **requirements);**

23 **(2) the portion of the proceeds from a civil forfeiture action**
24 **transferred to the fund under IC 34-24-1-4; and**

25 **(3) appropriations from the general assembly.**

26 **(c) The council may use money from the fund to offset expenses**
27 **incurred in complying with the civil forfeiture reporting**
28 **requirements described in IC 34-24-1-4.5.**

29 **(d) The treasurer of state shall invest the money in the fund not**
30 **currently needed to meet the obligations of the fund in the same**
31 **manner as other public funds may be invested.**

32 **(e) Money in the fund at the end of a fiscal year does not revert**
33 **to the state general fund.**

34 SECTION 4. IC 33-39-9-1 IS AMENDED TO READ AS
35 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 1. **(a)** This chapter does
36 not apply to a threatened, pending, or completed action or a proceeding
37 that:

38 (1) results in the criminal conviction of; or

39 (2) is a disciplinary action or proceeding against;

40 a prosecuting attorney.

41 **(b) This chapter does not apply to a proceeding brought by the**
42 **attorney general to enforce the civil forfeiture reporting**



1 **requirements described in IC 34-24-1-4.5.**

2 SECTION 5. IC 34-24-1-4, AS AMENDED BY P.L.66-2019,
3 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2022]: Sec. 4. (a) At the hearing, the prosecuting attorney
5 must show by a preponderance of the evidence that the property was
6 within the definition of property subject to seizure under section 1 of
7 this chapter. If the property seized was a vehicle, the prosecuting
8 attorney must also show by a preponderance of the evidence that a
9 person who has an ownership interest of record in the bureau of motor
10 vehicles knew or had reason to know that the vehicle was being used
11 in the commission of the offense.

12 (b) If the prosecuting attorney fails to meet the burden of proof, the
13 court shall order the property released to the owner, unless the owner's
14 possession of the property is illegal. If property is released to the owner
15 under this subsection, the owner is not subject to or responsible for any
16 charges for storage of the property or other expenses incurred in the
17 preservation of the property.

18 (c) If the court enters judgment in favor of the state, the court,
19 subject to section 5 of this chapter, shall order distribution of the
20 property in accordance with subsection (d). The court's order may
21 permit the law enforcement agency to use the property for a period not
22 to exceed three (3) years. However, the order must require that, after
23 the period specified by the court, the law enforcement agency shall
24 deliver the property to the county sheriff for public sale.

25 (d) If the court enters judgment in favor of the state, the court shall,
26 subject to section 5 of this chapter order that:

27 (1) the property, if it is not money or real property, be sold under
28 section 6 of this chapter, by the sheriff of the county in which the
29 property was seized, and if the property is a vehicle, this sale must
30 occur after any period of use specified in subsection (c);

31 (2) the property, if it is real property, be sold in the same manner
32 as real property is sold on execution under IC 34-55-6; and

33 (3) the proceeds of the sale or the money be distributed as
34 follows:

35 (A) To pay attorney's fees, if outside counsel is employed
36 under section 8 of this chapter.

37 (B) After payment of attorney's fees under clause (A), one
38 third (1/3) of the remaining amount shall be deposited into the
39 forfeiture fund established by the prosecuting attorney to offset
40 expenses incurred in connection with the investigation and
41 prosecution of the action.

42 **(C) After distribution of the proceeds described in clauses**



1 **(A) and (B), if applicable, the greater of:**

2 **(i) two hundred fifty dollars (\$250); or**

3 **(ii) one percent (1%) of the remaining amount;**

4 **shall be transferred to the treasurer of state for deposit in**
 5 **the civil forfeiture data fund (IC 33-39-8-8).**

6 ~~(D)~~ **(E)** Except as provided in clause ~~(D)~~; **(E)**, after
 7 distribution of the proceeds described in clauses (A), ~~and (B)~~,
 8 **and (C), if applicable**, eighty-five percent (85%) of the
 9 remaining proceeds shall be deposited in the:

10 (i) general fund of the state;

11 (ii) general fund of the unit that employed the law
 12 enforcement officers that seized the property; or

13 (iii) county law enforcement fund established for the support
 14 of the drug task force;

15 as determined by the court, to offset expenses incurred in the
 16 investigation of the acts giving rise to the action.

17 ~~(D)~~ **(E)** After distribution of the proceeds described in clauses
 18 (A), ~~and (B)~~, **and (C)**, if applicable, eighty-five percent (85%)
 19 of the remaining proceeds shall be deposited in the general
 20 fund of a unit if the property was seized by a local law
 21 enforcement agency of the unit for an offense, an attempted
 22 offense, or a conspiracy to commit a felony terrorist offense
 23 (as defined in IC 35-50-2-18) or an offense under IC 35-47 as
 24 part of or in furtherance of an act of terrorism.

25 The court shall order that the proceeds remaining after the distribution
 26 of funds to offset expenses described in subdivision (3) be forfeited and
 27 transferred to the treasurer of state for deposit in the common school
 28 fund.

29 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
 30 before its repeal) is transferred:

31 (1) after its seizure, but before an action is filed under section 3
 32 of this chapter (or IC 34-4-30.1-3 before its repeal); or

33 (2) when an action filed under section 3 of this chapter (or
 34 IC 34-4-30.1-3 before its repeal) is pending;

35 the person to whom the property is transferred must establish an
 36 ownership interest of record as a bona fide purchaser for value. A
 37 person is a bona fide purchaser for value under this section if the
 38 person, at the time of the transfer, did not have reasonable cause to
 39 believe that the property was subject to forfeiture under this chapter.

40 (f) If the property seized was an unlawful telecommunications
 41 device (as defined in IC 35-45-13-6) or plans, instructions, or
 42 publications used to commit an offense under IC 35-45-13, the court



1 may order the sheriff of the county in which the person was convicted
 2 of an offense under IC 35-45-13 to destroy as contraband or to
 3 otherwise lawfully dispose of the property.

4 SECTION 6. IC 34-24-1-4.5, AS AMENDED BY P.L.47-2018,
 5 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2022]: Sec. 4.5. (a) After a prosecuting attorney files a
 7 forfeiture action, the prosecuting attorney shall report the following to
 8 the Indiana prosecuting attorneys council **for each seizure and**
 9 **forfeiture conducted in the prosecuting attorney's jurisdiction:**

10 (1) **The name of the law enforcement agency that seized the**
 11 **property or, if seized by a joint, federal, or multijurisdictional**
 12 **task force, the name of the lead agency.**

13 ~~(+)~~ (2) The date the property was seized.

14 ~~(=)~~ (3) **The type of property seized, including** whether the
 15 property seized was cash, a vehicle, real property, or other
 16 personal property. **If the property was not currency, a**
 17 **description of the seized property, including, if applicable and**
 18 **available, the make, model, and year of a vehicle.**

19 (4) **The location of the seizure, including whether it occurred**
 20 **at a home, at a business, or as part of a traffic stop. If the**
 21 **seizure was performed during a traffic stop conducted on an**
 22 **interstate or state highway, a description of the direction in**
 23 **which the vehicle was traveling, such as "northbound",**
 24 **"southbound", "eastbound", or "westbound".**

25 (5) **The estimated value of the seized property, excluding the**
 26 **value of contraband.**

27 (6) **The criminal offense alleged that led to the seizure,**
 28 **including whether the offense was a crime under state or**
 29 **federal law.**

30 (7) **The offense with which the suspect was charged, including**
 31 **whether the suspect was charged under state or federal law.**

32 (8) **The criminal case number and the court in which the**
 33 **charge was filed.**

34 (9) **The disposition of the criminal case or charges, including:**

35 (A) **no charges filed;**

36 (B) **charges filed and dismissed;**

37 (C) **plea agreement;**

38 (D) **conviction following jury trial; or**

39 (E) **acquittal.**

40 ~~(=)~~ (10) **Whether the forfeiture was filed in state court, or through**
 41 **federal adoptive seizure, or through a joint, federal, or**
 42 **multijurisdictional task force.**



1 **(11) If forfeiture was sought under federal law, the reason for**
 2 **the federal transfer or assumption of jurisdiction.**

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

5 (b) After a court enters a judgment in favor of the state or a unit
 6 under section 4 of this chapter, the prosecuting attorney shall report the
 7 following to the Indiana prosecuting attorneys council **for each seizure**
 8 **and forfeiture conducted in the prosecuting attorney's jurisdiction:**

9 (1) ~~The amount of money or property that is the subject of the~~
 10 ~~judgment. The forfeiture case number and the court in which~~
 11 **the case was filed.**

12 (2) The law enforcement agency to which the money or property
 13 is ordered to be transferred.

14 (3) Whether the forfeiture was contested **by the suspect, and**
 15 **whether the suspect answered the complaint of the**
 16 **prosecuting attorney, filed a complaint, or filed a**
 17 **counterclaim.**

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

19 (5) **Whether the final forfeiture proceeding was criminal, civil**
 20 **judicial, or civil administrative.**

21 (6) **Whether or not there was a forfeiture settlement**
 22 **agreement.**

23 (7) **The date of the forfeiture order.**

24 ~~(5)~~ (8) Whether the final disposition of the property resulted in
 25 the property being returned, destroyed, forfeited, retained, or
 26 distributed by settlement.

27 (9) **If any property was retained by a law enforcement agency,**
 28 **the purpose for which the property was or is used.**

29 ~~(6)~~ (10) The date of the final property disposition.

30 (11) **The value of the forfeited property, excluding the value**
 31 **of contraband.**

32 (12) **An estimate of the total costs incurred by an agency to:**

33 (A) **store the property in an impound lot, in an evidence**
 34 **room, or elsewhere;**

35 (B) **pay for the time and expenses of law enforcement**
 36 **personnel and any prosecuting attorneys to litigate**
 37 **forfeiture cases; and**

38 (C) **sell or otherwise dispose of forfeited property.**

39 (13) **The amount of attorney's fees awarded to a property**
 40 **owner.**

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



1 (c) After a court, upon motion of the prosecuting attorney under
 2 IC 35-33-5-5(j), orders property transferred to a federal authority for
 3 disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
 4 881(e), and any related regulations adopted by the United States
 5 Department of Justice, the prosecuting attorney shall report to the
 6 Indiana prosecuting attorneys council the amount of money or property
 7 transferred **and the amount of proceeds received from the federal**
 8 **government upon completion of the federal forfeiture.** This
 9 subsection applies even if the prosecuting attorney has retained an
 10 attorney to bring an action under this chapter.

11 (d) **Before September 1, 2023, and before September 1 of each**
 12 **year thereafter, each prosecuting attorney shall report to the**
 13 **Indiana prosecuting attorneys council in the manner prescribed by**
 14 **subsection (e) the total amount of funding derived from forfeited**
 15 **property that was expended in the previous state fiscal year and**
 16 **the amount expended as a percentage of the prosecuting attorney's**
 17 **total budget for the state fiscal year. In addition, each prosecuting**
 18 **attorney shall report the total amount of unexpended funds derived**
 19 **from a seizure or forfeiture.**

20 (d) (e) A report made to the Indiana prosecuting attorneys council
 21 under this section must be in a **machine readable** format ~~approved by~~
 22 ~~the prosecuting attorneys council.~~ **and directly uploaded or posted to**
 23 **the Internet web site of the Indiana prosecuting attorneys council.**
 24 A prosecuting attorney with no forfeitures to report shall file a report
 25 with the Indiana prosecuting attorneys council.

26 (f) **If a prosecuting attorney, without good cause as determined**
 27 **by the attorney general, fails to file a report required under this**
 28 **section before October 1 of the year in which the report is due, the**
 29 **attorney general shall assess a civil penalty against the prosecuting**
 30 **attorney in an amount that is the greater of:**

- 31 (1) **five hundred dollars (\$500); or**
 32 (2) **twenty-five percent (25%) of the value of all proceeds**
 33 **obtained by forfeiture in the prosecuting attorney's**
 34 **jurisdiction during the previous fiscal year.**

35 **The attorney general shall semiannually transfer civil penalties**
 36 **collected under this subsection to the auditor of state for deposit in**
 37 **the civil forfeiture data fund (IC 33-39-8-8).**

38 (g) **Upon the request of a member of the general assembly or the**
 39 **attorney general, the state board of accounts may audit the**
 40 **accounts of a prosecuting attorney that relate to forfeited and**
 41 **seized property. The audit shall include an examination of:**

- 42 (1) **the inventory of seized and forfeited property;**



- 1 **(2) the sale of forfeited property;**
- 2 **(3) expenditures made from the proceeds of seized and**
- 3 **forfeited property;**
- 4 **(4) law enforcement and collection expenses incurred that are**
- 5 **directly related to the seizure and forfeiture of property; and**
- 6 **(5) any other matter connected to the seizure or forfeiture of**
- 7 **property which, in the opinion of the state board of accounts,**
- 8 **is relevant in preparing a complete and comprehensive audit.**
- 9 **The completed audit shall be submitted to the Indiana prosecuting**
- 10 **attorneys council and the requestor not later than ninety (90) days**
- 11 **following the end of the fiscal year. The completed audit is a public**
- 12 **document.**
- 13 **(h) The Indiana prosecuting attorneys council, the attorney**
- 14 **general, and the state board of accounts may adopt rules under**
- 15 **IC 4-22-2 to implement this section.**
- 16 **(i) Data collected and compiled under this section is a public**
- 17 **record.**

