

SENATE BILL No. 123

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1.

Synopsis: Seizure and forfeiture of property used in crimes. Provides that when property is seized under the law concerning forfeiture of property used in violation of certain criminal statutes, the state or local law enforcement agency making the seizure shall: (1) identify the owner of the property; and (2) provide the owner with notice of the intent of the state or local unit of government to seek forfeiture of the property. Requires a prosecuting attorney to show by clear and convincing evidence that the owner of the property was: (1) convicted of; or (2) entered a plea of guilty or nolo contendere to; the offense that gave rise to the forfeiture before the property may be forfeited. Allows the owner of, or another putative interest holder in, property seized to file a motion for the hardship release of the property at any time after the property is seized. Requires the court to order the release of the seized property if the owner or putative interest holder establishes certain criteria by a preponderance of the evidence. Requires a court to determine whether the forfeiture of the property would be disproportional to the offense that gave rise to the forfeiture. Provides that the prosecuting attorney has the burden of establishing proportionality by clear and convincing evidence. Requires the court to dismiss a forfeiture action if the court determines the forfeiture of the property is disproportional to the offense.

Effective: July 1, 2016.

Randolph Lonnie M

January 5, 2016, read first time and referred to Committee on Judiciary.



Second Regular Session 119th General Assembly (2016)

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 2015 Regular Session of the General Assembly.

SENATE BILL No. 123

A BILL FOR AN ACT to amend the Indiana Code concerning civil procedure.

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

- 1 SECTION 1. IC 34-24-1-2 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 2. (a) Property may be
3 seized under this chapter by a law enforcement officer only if:
4 (1) the seizure is incident to a lawful:
5 (A) arrest;
6 (B) search; or
7 (C) administrative inspection;
8 (2) the property has been the subject of a prior judgment in favor
9 of the state or unit in a proceeding under this chapter (or
10 IC 34-4-30.1 before its repeal); or
11 (3) a court, after making an ex parte determination that there is
12 probable cause to believe the property is subject to seizure under
13 this chapter, issues an order for seizure.
14 (b) When property is seized under subsection (a), the law
15 enforcement agency making the seizure:
16 (1) may, pending final disposition:
17 (†) (A) place the property under seal;



- 1 ~~(2)~~ **(B)** remove the property to a place designated by the court;
 2 or
 3 ~~(3)~~ **(C)** require another agency authorized by law to take
 4 custody of the property and remove it to an appropriate
 5 location; **and**
 6 **(2) shall:**
 7 **(A) take reasonable steps to identify the owner of the seized**
 8 **property; and**
 9 **(B) provide the owner with notice of the intent of the state**
 10 **and a unit (if appropriate) to seek forfeiture of the**
 11 **property as provided in subsection (c).**
 12 **(c) The notice described in subsection (b)(2) must:**
 13 **(1) be in writing;**
 14 **(2) be provided to the owner:**
 15 **(A) in person; or**
 16 **(B) by certified or registered mail;**
 17 **(3) be sent or otherwise provided to the owner not more than**
 18 **ten (10) days after the date the property is seized;**
 19 **(4) identify the property seized; and**
 20 **(5) include contact information for the law enforcement**
 21 **agency the owner may contact concerning the property.**
 22 ~~(e)~~ **(d)** Property that is seized under subsection (a) (or
 23 IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is
 24 considered to be in the custody of the law enforcement agency making
 25 the seizure.
 26 SECTION 2. IC 34-24-1-3, AS AMENDED BY P.L.201-2011,
 27 SECTION 108, IS AMENDED TO READ AS FOLLOWS
 28 [EFFECTIVE JULY 1, 2016]: Sec. 3. (a) The prosecuting attorney for
 29 the county in which the seizure occurs ~~may; within~~ **shall, not more**
 30 **than** ninety (90) days after receiving written notice from the owner
 31 demanding return of the seized property or within one hundred eighty
 32 (180) days after the property is seized, whichever occurs first, **the**
 33 **earliest of the following**, cause an action for reimbursement of law
 34 enforcement costs ~~and concerning the possible~~ **forfeiture of the seized**
 35 **property** to be brought by filing a complaint in the circuit or superior
 36 court in the jurisdiction where the seizure occurred:
 37 **(1) The prosecuting attorney determines criminal charges will**
 38 **not be filed against the owner concerning the offense listed in**
 39 **section 1 of this chapter related to the property subject to**
 40 **seizure under section 1 of this chapter.**
 41 **(2) The owner:**
 42 **(A) is convicted of;**



1 **(B) enters a plea of guilty or nolo contendere to;**
 2 **(C) is found not guilty of; or**
 3 **(D) has all charges dismissed concerning;**
 4 **the offense listed in section 1 of this chapter related to the**
 5 **property subject to seizure under section 1 of this chapter.**

6 The action must be brought

7 (†) in the name of the state or the state and the unit that employed
 8 the law enforcement officers who made the seizure if the state
 9 was not the employer. ~~and~~

10 (2) ~~within the period that a prosecution may be commenced under~~
 11 ~~IC 35-41-4-2 for the offense that is the basis for the seizure.~~

12 (b) If the property seized was a vehicle or real property, the
 13 prosecuting attorney shall serve, under the Indiana Rules of Trial
 14 Procedure, a copy of the complaint upon each person whose right, title,
 15 or interest is of record in the bureau of motor vehicles, in the county
 16 recorder's office, or other office authorized to receive or record vehicle
 17 or real property ownership interests.

18 (c) The owner of the seized property, or any person whose right,
 19 title, or interest is of record may, within twenty (20) days after service
 20 of the complaint under the Indiana Rules of Trial Procedure, file an
 21 answer to the complaint and may appear at the hearing on the action.

22 (d) ~~If, at the end of the time allotted for an answer, there is no~~
 23 ~~answer on file, the court, upon motion, shall enter judgment in favor of~~
 24 ~~the state and the unit (if appropriate) for reimbursement of law~~
 25 ~~enforcement costs and shall order the property disposed of in~~
 26 ~~accordance with section 4 of this chapter.~~

27 SECTION 3. IC 34-24-1-4 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2016]: Sec. 4. (a) At the hearing,
 29 ~~the for a prosecuting attorney must show to obtain a judgment in~~
 30 ~~favor of the state, or the state and a unit (if appropriate), both of~~
 31 ~~the following apply:~~

32 **(1) The prosecuting attorney must show** by a preponderance of
 33 the evidence that the property was within the definition of
 34 property subject to seizure under section 1 of this chapter.

35 **(2) If the property seized was a vehicle,** The prosecuting attorney
 36 must also show by a preponderance of the **clear and convincing**
 37 evidence that a person who has an ownership interest of record in
 38 the bureau of motor vehicles knew or had reason to know that the
 39 vehicle was being used in the commission of the offense: **the**
 40 **owner of the property:**

41 **(A) was convicted of; or**

42 **(B) entered a plea of guilty or nolo contendere to;**



1 **the offense that gave rise to the seizure and possible forfeiture**
 2 **of the property.**

3 (b) If:

4 (1) the prosecuting attorney:

5 (A) **determines criminal charges will not be filed against**
 6 **the owner; or**

7 (B) fails to meet ~~the~~ **a burden of proof under subsection (a);**
 8 **or**

9 (2) **the owner of the property has:**

10 (A) **been found not guilty of; or**

11 (B) **had all charges dismissed concerning;**

12 **the offense that gave rise to the seizure and possible forfeiture**
 13 **of the property;**

14 the court shall order the property released to the owner.

15 (c) If the court enters judgment in favor of the state, or the state and
 16 a unit (if appropriate), the court, subject to section 5 of this chapter,
 17 shall order delivery to the law enforcement agency that seized the
 18 property. The court's order may permit the agency to use the property
 19 for a period not to exceed three (3) years. However, the order must
 20 require that, after the period specified by the court, the law
 21 enforcement agency shall deliver the property to the county sheriff for
 22 public sale.

23 (d) If the court enters judgment in favor of the state, or the state and
 24 a unit (if appropriate), the court shall, subject to section 5 of this
 25 chapter:

26 (1) determine the amount of law enforcement costs; and

27 (2) order that:

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

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

35 (C) the proceeds of the sale or the money be:

36 (i) deposited in the general fund of the state, or the unit that
 37 employed the law enforcement officers that seized the
 38 property; or

39 (ii) deposited in the general fund of a unit if the property
 40 was seized by a local law enforcement agency of the unit for
 41 an offense, an attempted offense, or a conspiracy to commit
 42 an offense under IC 35-47 as part of or in furtherance of an



- 1 act of terrorism; and
 2 (D) any excess in value of the proceeds or the money over the
 3 law enforcement costs be forfeited and transferred to the
 4 treasurer of state for deposit in the common school fund.
- 5 (e) If property that is seized under this chapter (or IC 34-4-30.1-4
 6 before its repeal) is transferred:
- 7 (1) after its seizure, but before an action is filed under section 3
 8 of this chapter (or IC 34-4-30.1-3 before its repeal); or
 9 (2) when an action filed under section 3 of this chapter (or
 10 IC 34-4-30.1-3 before its repeal) is pending;
- 11 the person to whom the property is transferred must establish an
 12 ownership interest of record as a bona fide purchaser for value. A
 13 person is a bona fide purchaser for value under this section if the
 14 person, at the time of the transfer, did not have reasonable cause to
 15 believe that the property was subject to forfeiture under this chapter.
- 16 (f) If the property seized was an unlawful telecommunications
 17 device (as defined in IC 35-45-13-6) or plans, instructions, or
 18 publications used to commit an offense under IC 35-45-13, the court
 19 may order the sheriff of the county in which the person was convicted
 20 of an offense under IC 35-45-13 to destroy as contraband or to
 21 otherwise lawfully dispose of the property.
- 22 SECTION 4. IC 34-24-1-4.1 IS ADDED TO THE INDIANA CODE
 23 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 24 1, 2016]: **Sec. 4.1. (a) The owner of, or another putative interest
 25 holder in, property seized under section 1 of this chapter may file
 26 a motion for the hardship release of the property:**
- 27 (1) at any time after the property is seized; and
 28 (2) in the circuit or superior court in the jurisdiction where
 29 the seizure occurred.
- 30 **If a motion for hardship release of the property is filed, the court
 31 shall conduct a hearing not more than ten (10) days after the date
 32 the court receives the motion.**
- 33 (b) After the hearing, the court shall order the property released
 34 to the owner or putative interest holder, pending final disposition
 35 of the property, if the owner or putative interest holder establishes
 36 the following by a preponderance of the evidence:
- 37 (1) The owner or putative interest holder has a possessory
 38 interest in the property.
 39 (2) Continued possession by the law enforcement agency
 40 pending the final disposition of the forfeiture proceedings will
 41 cause a substantial hardship to the owner or putative interest
 42 holder, including the following:



- 1 (A) Preventing the functioning of a legitimate business.
 2 (B) Preventing an individual from working.
 3 (C) Preventing a child from attending school.
 4 (D) Preventing or hindering an individual from receiving
 5 necessary medical care.
 6 (E) Hindering the care of an elderly individual or a
 7 disabled dependent child or adult.
 8 (F) Leaving an individual homeless.
 9 (G) Any other condition presented to the court by the
 10 owner or putative interest holder that the court determines
 11 causes a substantial hardship.
 12 (3) The hardship from the continued possession of the
 13 property by the law enforcement agency that seized the
 14 property outweighs the risk that the property will be:
 15 (A) unlawfully used;
 16 (B) destroyed;
 17 (C) removed from the jurisdiction of the court; or
 18 (D) otherwise made unavailable for forfeiture;
 19 if the property is returned to the owner or putative interest
 20 holder during the pendency of the forfeiture determination.
 21 SECTION 5. IC 34-24-1-4.2 IS ADDED TO THE INDIANA CODE
 22 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 23 1, 2016]: Sec. 4.2. (a) Any time:
 24 (1) after a complaint is filed under section 3 of this chapter in
 25 the circuit or superior court in the jurisdiction where the
 26 seizure of property occurred; and
 27 (2) before the court enters a judgment concerning the
 28 forfeiture of the property under this chapter;
 29 the court shall determine whether the forfeiture of the property
 30 would be disproportional to the offense that gave rise to the
 31 forfeiture.
 32 (b) In determining whether the forfeiture of the property is
 33 disproportional to the offense:
 34 (1) the prosecuting attorney has the burden of establishing
 35 proportionality by clear and convincing evidence; and
 36 (2) the court shall consider all the following factors:
 37 (A) The gravity of the offense.
 38 (B) The fair market value of the property.
 39 (C) The importance of the property to the owner, including
 40 the role of the property in the life of the owner or members
 41 of the owner's family.
 42 (D) The degree to which the property was integral to the



- 1 **performance of the offense.**
- 2 **(E) The hardship caused by the forfeiture on the owner of**
- 3 **the property.**
- 4 **(F) Any other criminal or civil penalties imposed on the**
- 5 **owner of the property for the same offense.**
- 6 **(c) If the court determines the forfeiture of the property is**
- 7 **disproportional to the offense that gave rise to a forfeiture under**
- 8 **this chapter, the court:**
- 9 **(1) shall dismiss the forfeiture complaint; or**
- 10 **(2) in the case of seized currency, shall dismiss the forfeiture**
- 11 **complaint:**
- 12 **(A) in total; or**
- 13 **(B) in the amount the court determines to be**
- 14 **disproportional to the offense.**

