

SENATE BILL No. 152

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1; IC 35-33-5-5.

Synopsis: Civil forfeiture. Directs certain civil forfeiture proceeds to the United Way organization in each county (or to a United Way organization that serves the county if the county lacks a United Way organization) to be used to provide grants to aid the community. Prohibits the use of certain other civil forfeiture proceeds to purchase or facilitate the acquisition of armored vehicles, military-style weapons, or surplus military equipment. Repeals a provision authorizing the transfer of seized property to the United States. Makes conforming amendments.

Effective: July 1, 2022.

Breaux

January 4, 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.

SENATE BILL No. 152

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



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).~~
- 17 ~~(k)~~ (j) The prosecuting attorney shall notify the owner of record of
 18 a 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)~~ (k) Property that is seized under subsection (a) (or
 22 IC 34-4-30.1-2(a) before its repeal) is not subject to replevin but is
 23 considered to be in the custody of the law enforcement agency making
 24 the seizure.
- 25 SECTION 2. IC 34-24-1-4, AS AMENDED BY P.L.66-2019,
 26 SECTION 5, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2022]: Sec. 4. (a) At the hearing, the prosecuting attorney
 28 must show by a preponderance of the evidence that the property was
 29 within the definition of property subject to seizure under section 1 of
 30 this chapter. If the property seized was a vehicle, the prosecuting
 31 attorney must also show by a preponderance of the evidence that a
 32 person who has an ownership interest of record in the bureau of motor
 33 vehicles knew or had reason to know that the vehicle was being used
 34 in the commission of the offense.
- 35 (b) If the prosecuting attorney fails to meet the burden of proof, the
 36 court shall order the property released to the owner, unless the owner's
 37 possession of the property is illegal. If property is released to the owner
 38 under this subsection, the owner is not subject to or responsible for any
 39 charges for storage of the property or other expenses incurred in the
 40 preservation of the property.
- 41 (c) If the court enters judgment in favor of the state, the court,
 42 subject to section 5 of this chapter, shall order distribution of the



1 property in accordance with subsection (d). The court's order may
 2 permit the law enforcement agency to use the property for a period not
 3 to exceed three (3) years. However, the order must require that, after
 4 the period specified by the court, the law enforcement agency shall
 5 deliver the property to the county sheriff for public sale.

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

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

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

14 (3) the proceeds of the sale or the money be distributed as
 15 follows:

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

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

23 (C) Except as provided in clause (D) after distribution of the
 24 proceeds described in clauses (A) and (B), if applicable,
 25 ~~eighty-five percent (85%)~~ **forty-two and one-half percent**
 26 **(42.5%)** of the remaining proceeds shall be deposited in the:

27 (i) general fund of the state;

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

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

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

34 (D) After distribution of the proceeds described in clauses (A)
 35 and (B), if applicable, ~~eighty-five percent (85%)~~ **forty-two**
 36 **and one-half percent (42.5%)** of the remaining proceeds
 37 shall be deposited in the general fund of a unit if the property
 38 was seized by a local law enforcement agency of the unit for
 39 an offense, an attempted offense, or a conspiracy to commit a
 40 felony terrorist offense (as defined in IC 35-50-2-18) or an
 41 offense under IC 35-47 as part of or in furtherance of an act of
 42 terrorism.



1 **(E) After distribution of the proceeds as described in**
 2 **clause (C) or (D), forty-two and one-half percent (42.5%)**
 3 **of the remaining proceeds shall be transferred to the**
 4 **United Way organization in the county. The United Way**
 5 **organization shall use the proceeds to provide grants to**
 6 **charitable organizations that are exempt from federal**
 7 **income taxation under Internal Revenue Code Section**
 8 **501(c)(3) to aid the community. If a county has more than**
 9 **one (1) United Way organization, the court shall distribute**
 10 **the proceeds among the United Way organizations in**
 11 **proportion to the population each United Way**
 12 **organization serves. If a county does not have a United**
 13 **Way organization, the court shall distribute the proceeds**
 14 **to a regional United Way organization that serves the**
 15 **county. The regional United Way organization must use**
 16 **the proceeds as described in this clause within the county.**

17 **Proceeds described in this subdivision may not be used in any**
 18 **way to purchase or facilitate the acquisition of armored**
 19 **vehicles, military-style weapons, or surplus military**
 20 **equipment. The court shall order that the proceeds remaining**
 21 **after the distribution of funds to offset expenses described in**
 22 **subdivision (3) be forfeited and transferred to the treasurer of**
 23 **state for deposit in the common school fund.**

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

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

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

30 the person to whom the property is transferred must establish a
 31 ownership interest of record as a bona fide purchaser for value. A
 32 person is a bona fide purchaser for value under this section if the
 33 person, at the time of the transfer, did not have reasonable cause to
 34 believe that the property was subject to forfeiture under this chapter.

35 (f) If the property seized was an unlawful telecommunications
 36 device (as defined in IC 35-45-13-6) or plans, instructions, or
 37 publications used to commit an offense under IC 35-45-13, the court
 38 may order the sheriff of the county in which the person was convicted
 39 of an offense under IC 35-45-13 to destroy as contraband or to
 40 otherwise lawfully dispose of the property.

41 SECTION 3. IC 34-24-1-4.5, AS AMENDED BY P.L.47-2018,
 42 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2022]: Sec. 4.5. (a) After a prosecuting attorney files a
 2 forfeiture action, the prosecuting attorney shall report the following to
 3 the Indiana prosecuting attorneys council:

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

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

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

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

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

26 ~~(c) After a court, upon motion of the prosecuting attorney under~~
 27 ~~IC 35-33-5-5(j), orders property transferred to a federal authority for~~
 28 ~~disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.~~
 29 ~~881(e), and any related regulations adopted by the United States~~
 30 ~~Department of Justice, the prosecuting attorney shall report to the~~
 31 ~~Indiana prosecuting attorneys council the amount of money or property~~
 32 ~~transferred. This subsection applies even if the prosecuting attorney has~~
 33 ~~retained an attorney to bring an action under this chapter.~~

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

38 SECTION 4. IC 34-24-1-9 IS REPEALED [EFFECTIVE JULY 1,
 39 2022]. Sec. 9: (a) Upon motion of a prosecuting attorney under
 40 ~~IC 35-33-5-5(j), property seized under this chapter must be transferred,~~
 41 ~~subject to the perfected liens or other security interests of any person~~
 42 ~~in the property, to the appropriate federal authority for disposition~~



1 under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any
2 related regulations adopted by the United States Department of Justice:

3 (b) Money received by a law enforcement agency as a result of a
4 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
5 881(e) and any related regulations adopted by the United States
6 Department of Justice must be deposited into a nonreverting fund and
7 may be expended only with the approval of:

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

10 (2) the governor, if the money is received by a law enforcement
11 agency in the executive branch:

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

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

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

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

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

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

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

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

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



1 cause.

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

5 (d) If any property described in subsection (c) was admitted into
6 evidence in the cause, the property shall be disposed of in accordance
7 with an order of the court trying the cause.

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

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

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

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

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

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

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

42 (h) This section does not affect the procedure for the disposition of



1 firearms seized by a law enforcement agency.
2 (i) A law enforcement agency that disposes of property by auction
3 under this section shall permanently stamp or otherwise permanently
4 identify the property as property sold by the law enforcement agency.
5 (j) Upon motion of the prosecuting attorney, the court shall order
6 property seized under IC 34-24-1 transferred; subject to the perfected
7 liens or other security interests of any person in the property; to the
8 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19
9 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted
10 by the United States Department of Justice.

