



February 12, 2021

SENATE BILL No. 198

DIGEST OF SB 198 (Updated February 11, 2021 3:22 pm - DI 140)

Citations Affected: IC 4-6; IC 10-14; IC 34-13; IC 34-24; IC 35-31.5; IC 35-33; IC 35-41; IC 35-44.1; IC 35-45.

Synopsis: Rioting. Grants the attorney general concurrent jurisdiction with the prosecuting attorney to prosecute an action in which a person is accused of committing a criminal offense while a member of an unlawful assembly. Permits the chief executive officer of a political subdivision to establish a curfew under certain circumstances. Makes refusing to leave a location in violation of a curfew, after having been informed of the curfew and ordered to leave by a law enforcement officer, a Class B misdemeanor. Allows for the civil forfeiture of property that is used by a person to finance a crime committed by a person who is a member of an unlawful assembly. Prohibits a person from being released on bail without a hearing in open court, establishes a rebuttable presumption that money bail shall be required, and requires a court to consider whether bail conditions more stringent than the local guidelines should be imposed. Adds enhanced penalties to the crimes of: (1) rioting; and (2) obstruction of traffic. Allows a conspiracy charge for a misdemeanor committed while a member of an unlawful assembly. Provides that a person may recover actual damages in a civil action against a county, city, or town (unit) for loss of property proximately caused by an unlawful assembly, if the unit recklessly fails to exercise reasonable diligence to prevent or suppress the unlawful assembly.

Effective: July 1, 2021.

Young M, Grooms, Koch, Freeman

January 12, 2021, read first time and referred to Committee on Corrections and Criminal Law.
February 11, 2021, amended, reported favorably — Do Pass.

SB 198—LS 7100/DI 106



February 12, 2021

First Regular Session of the 122nd General Assembly (2021)

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 2020 Regular Session of the General Assembly.

SENATE BILL No. 198

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 4-6-2-1.1, AS AMENDED BY P.L.205-2013,
2 SECTION 54, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2021]: Sec. 1.1. **(a) Subject to subsections (b) and (c)**, the
4 attorney general has concurrent jurisdiction with the prosecuting
5 attorney in the prosecution of the following:
6 (1) Actions in which a person is accused of committing, while a
7 member of an unlawful assembly as defined in IC 35-45-1-1, a
8 ~~homicide (IC 35-42-1)~~. **criminal offense.**
9 (2) Actions in which a person is accused of assisting a criminal
10 (IC 35-44.1-2-5), if the person alleged to have been assisted is a
11 person described in subdivision (1).
12 (3) Actions in which a sheriff is accused of any offense that
13 involves a failure to protect the life of a prisoner in the sheriff's
14 custody.
15 (4) Actions in which a violation of IC 2-8.2-4-6 (concerning
16 constitutional convention delegates) has occurred.
17 **(b) If the attorney general discovers evidence of criminal**

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1 activity described in subsection (a), the attorney general shall
 2 certify to the appropriate prosecuting attorney the following
 3 information:

- 4 (1) The identity of any person who may be involved in the
 5 criminal activity.
 6 (2) The criminal statute that the attorney general believes has
 7 been violated.

8 In addition, the attorney general shall provide the prosecuting
 9 attorney with any relevant documents, transcripts, written
 10 statements, or other evidence. If the prosecuting attorney decides
 11 to prosecute the crime described in the information certified to the
 12 prosecuting attorney, or any other related crimes, the attorney
 13 general does not have jurisdiction to prosecute the case and shall
 14 cooperate with the prosecuting attorney in the investigation and
 15 prosecution of the case. However, upon request of the prosecuting
 16 attorney, the attorney general may participate on behalf of the
 17 state in any resulting criminal trial.

18 (c) If:

- 19 (1) the prosecuting attorney to whom the attorney general
 20 issues a certification under subsection (b):
 21 (A) is disqualified from investigating or bringing a
 22 criminal prosecution in the matter addressed in the
 23 certification;
 24 (B) does not file an information or seek an indictment not
 25 later than one hundred eighty (180) days after the date on
 26 which the attorney general certified the information to the
 27 prosecuting attorney; or
 28 (C) refers the case back to the attorney general; and
 29 (2) the attorney general finds that there may be probable
 30 cause to believe that a person identified in a certification
 31 under subsection (b) has violated a criminal statute listed in
 32 subsection (a);

33 the attorney general has jurisdiction to prosecute the criminal
 34 action. If the attorney general exercises jurisdiction to prosecute
 35 the criminal action, the prosecuting attorney no longer has
 36 jurisdiction over that action.

37 SECTION 2. IC 10-14-3-29, AS AMENDED BY P.L.172-2014,
 38 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 39 JULY 1, 2021]: Sec. 29. (a) A local disaster emergency:

- 40 (1) may be declared only by the principal executive officer of a
 41 political subdivision; and
 42 (2) may not be continued or renewed for more than seven (7) days



- 1 except by or with the consent of the governing board of the
2 political subdivision.
- 3 Any order or proclamation declaring, continuing, or terminating a local
4 disaster emergency shall be given prompt and general publicity and
5 shall be filed promptly in the office of the clerk of the political
6 subdivision.
- 7 (b) The effect of a declaration of a local disaster emergency is to:
8 (1) activate the response and recovery aspects of all applicable
9 local or interjurisdictional disaster emergency plans; and
10 (2) authorize the furnishing of aid and assistance under the plans.
- 11 (c) An interjurisdictional agency or official may not declare a local
12 disaster emergency unless expressly authorized by the agreement under
13 which the agency functions. However, an interjurisdictional disaster
14 agency shall provide aid and services according to the agreement.
- 15 (d) If a local disaster emergency **or curfew** is declared under this
16 section, the political subdivision may not prohibit individuals engaged
17 in employment necessary to:
18 (1) maintain a safe rail system;
19 (2) restore utility service; or
20 (3) provide any other emergency public service;
21 from traveling on the highways within the political subdivision during
22 the local disaster emergency.
- 23 (e) If a local disaster emergency **or curfew** is declared under this
24 section, the political subdivision may not prohibit individuals trained
25 and certified as first response broadcasters, as set forth in section 22.5
26 of this chapter, from traveling on the highways within the political
27 subdivision during the local disaster emergency.
- 28 (f) If a local emergency **or curfew** is declared under this section, the
29 political subdivision may not prohibit individuals trained and certified
30 as first response communications service providers, as set forth in
31 section 22.6 of this chapter, from traveling on the highways within the
32 political subdivision during the local disaster emergency.
- 33 **(g) If a local disaster emergency is declared under this section,**
34 **the principal executive officer of a political subdivision may**
35 **establish a curfew if all of the following conditions are met:**
36 **(1) The principal executive officer has received specific,**
37 **credible information from a federal, state, or local law**
38 **enforcement agency that rioting or an unlawful assembly is**
39 **likely to occur in the political subdivision.**
40 **(2) After consulting with a federal, state, or local law**
41 **enforcement agency, the principal executive officer**
42 **determines that there is a reasonable likelihood that**



1 imposition of a curfew will prevent or minimize the
 2 occurrence of rioting or an unlawful assembly.

3 (3) The curfew is:

4 (A) narrowly tailored to prevent or minimize the
 5 occurrence of rioting or an unlawful assembly while
 6 preserving the rights protected by the Constitution of the
 7 State of Indiana and the Constitution of the United States;
 8 and

9 (B) a reasonable time, place, and manner restriction.

10 A principal executive officer may impose a curfew for not more
 11 than three (3) days during a local disaster emergency without the
 12 consent of the governing body of the political subdivision. The
 13 three (3) day limit applies even if the disaster emergency period is
 14 continued or renewed. The principal executive officer shall give the
 15 order establishing a curfew prompt and general publicity and shall
 16 file the order promptly in the office of the clerk of the political
 17 subdivision.

18 SECTION 3. IC 34-13-3.6 IS ADDED TO THE INDIANA CODE
 19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
 20 JULY 1, 2021]:

21 **Chapter 3.6. Property Loss Due to Unlawful Assembly**

22 **Sec. 1.** As used in this chapter, "property" means real or
 23 personal property. The term does not include property of the state
 24 or a political subdivision.

25 **Sec. 2.** As used in this chapter, "unit" means a county, city, or
 26 town.

27 **Sec. 3.** As used in this chapter, "unlawful assembly" has the
 28 meaning set forth in IC 35-45-1-1.

29 **Sec. 4.** Notwithstanding IC 34-13-3-3, and except as otherwise
 30 provided in this chapter, if an unlawful assembly within a unit is
 31 the proximate cause of the theft, damage, or destruction of real or
 32 personal property located within the unit, the injured party may
 33 recover actual damages for the loss in a civil action against the unit
 34 if the injured party establishes that the unit recklessly failed to
 35 prevent the theft, damage, or destruction of real or personal
 36 property by failing to exercise reasonable diligence to prevent or
 37 suppress the unlawful assembly.

38 **Sec. 5.** In determining whether a unit recklessly failed to prevent
 39 the theft, damage, or destruction of real property under this
 40 chapter, the trier of fact may consider whether the unit:

41 (1) had:

42 (A) good reason to believe that the unlawful assembly was



- 1 **imminent; or**
- 2 **(B) sufficient notice that the unlawful assembly was taking**
- 3 **place in time to prevent the theft, damage, or destruction**
- 4 **of the property; and**
- 5 **(2) had the ability to prevent the theft, damage, or destruction**
- 6 **of the property by using:**
- 7 **(A) the unit's police department; or**
- 8 **(B) the unit's police department with the assistance of**
- 9 **another law enforcement agency with which the unit has**
- 10 **an agreement for mutual aid.**

11 **Sec. 6. A county is not liable under this chapter for theft,**
 12 **damage, or destruction of property located within a municipality**
 13 **that:**

- 14 **(1) is located within the county; and**
- 15 **(2) has a municipal police department.**

16 **Sec. 7. This chapter does not:**

- 17 **(1) impose liability on; or**
- 18 **(2) create a cause of action against;**

19 **a unit that renders or fails to render mutual aid to the unit in**
 20 **which the unlawful assembly occurs.**

21 SECTION 4. IC 34-24-1-1, AS AMENDED BY P.L.142-2020,
 22 SECTION 55, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2021]: Sec. 1. (a) The following may be seized:

- 24 (1) All vehicles (as defined by IC 35-31.5-2-346), if they are used
- 25 or are intended for use by the person or persons in possession of
- 26 them to transport or in any manner to facilitate the transportation
- 27 of the following:
- 28 (A) A controlled substance for the purpose of committing,
- 29 attempting to commit, or conspiring to commit any of the
- 30 following:
- 31 (i) Dealing in or manufacturing cocaine or a narcotic drug
- 32 (IC 35-48-4-1).
- 33 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
- 34 (iii) Manufacturing methamphetamine (IC 35-48-4-1.2).
- 35 (iv) Dealing in a schedule I, II, or III controlled substance
- 36 (IC 35-48-4-2).
- 37 (v) Dealing in a schedule IV controlled substance
- 38 (IC 35-48-4-3).
- 39 (vi) Dealing in a schedule V controlled substance
- 40 (IC 35-48-4-4).
- 41 (vii) Dealing in a counterfeit substance (IC 35-48-4-5).
- 42 (viii) Possession of cocaine or a narcotic drug



- 1 (IC 35-48-4-6).
 2 (ix) Possession of methamphetamine (IC 35-48-4-6.1).
 3 (x) Dealing in paraphernalia (IC 35-48-4-8.5).
 4 (xi) Dealing in marijuana, hash oil, hashish, or salvia
 5 (IC 35-48-4-10).
 6 (xii) An offense under IC 35-48-4 involving a synthetic drug
 7 (as defined in IC 35-31.5-2-321), a synthetic drug lookalike
 8 substance (as defined in IC 35-31.5-2-321.5 (before its
 9 repeal on July 1, 2019)) under IC 35-48-4-10.5 (before its
 10 repeal on July 1, 2019), a controlled substance analog (as
 11 defined in IC 35-48-1-9.3), or a substance represented to be
 12 a controlled substance (as described in IC 35-48-4-4.6).
 13 (B) Any stolen (IC 35-43-4-2) or converted property
 14 (IC 35-43-4-3) if the retail or repurchase value of that property
 15 is one hundred dollars (\$100) or more.
 16 (C) Any hazardous waste in violation of IC 13-30-10-1.5.
 17 (D) A bomb (as defined in IC 35-31.5-2-31) or weapon of
 18 mass destruction (as defined in IC 35-31.5-2-354) used to
 19 commit, used in an attempt to commit, or used in a conspiracy
 20 to commit a felony terrorist offense (as defined in
 21 IC 35-50-2-18) or an offense under IC 35-47 as part of or in
 22 furtherance of an act of terrorism (as defined by
 23 IC 35-31.5-2-329).
 24 (2) All money, negotiable instruments, securities, weapons,
 25 communications devices, or any property used to commit, used in
 26 an attempt to commit, or used in a conspiracy to commit a felony
 27 terrorist offense (as defined in IC 35-50-2-18) or an offense under
 28 IC 35-47 as part of or in furtherance of an act of terrorism or
 29 commonly used as consideration for a violation of IC 35-48-4
 30 (other than items subject to forfeiture under IC 16-42-20-5 or
 31 IC 16-6-8.5-5.1, before its repeal):
 32 (A) furnished or intended to be furnished by any person in
 33 exchange for an act that is in violation of a criminal statute;
 34 (B) used to facilitate any violation of a criminal statute; or
 35 (C) traceable as proceeds of the violation of a criminal statute.
 36 (3) Any portion of real or personal property purchased with
 37 money that is traceable as a proceed of a violation of a criminal
 38 statute.
 39 (4) A vehicle that is used by a person to:
 40 (A) commit, attempt to commit, or conspire to commit;
 41 (B) facilitate the commission of; or
 42 (C) escape from the commission of;



- 1 murder (IC 35-42-1-1), dealing in a controlled substance resulting
2 in death (IC 35-42-1-1.5), kidnapping (IC 35-42-3-2), criminal
3 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
4 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
5 under IC 35-47 as part of or in furtherance of an act of terrorism.
6 (5) Real property owned by a person who uses it to commit any of
7 the following as a Level 1, Level 2, Level 3, Level 4, or Level 5
8 felony:
- 9 (A) Dealing in or manufacturing cocaine or a narcotic drug
10 (IC 35-48-4-1).
 - 11 (B) Dealing in methamphetamine (IC 35-48-4-1.1).
 - 12 (C) Manufacturing methamphetamine (IC 35-48-4-1.2).
 - 13 (D) Dealing in a schedule I, II, or III controlled substance
14 (IC 35-48-4-2).
 - 15 (E) Dealing in a schedule IV controlled substance
16 (IC 35-48-4-3).
 - 17 (F) Dealing in marijuana, hash oil, hashish, or salvia
18 (IC 35-48-4-10).
 - 19 (G) Dealing in a synthetic drug (as defined in
20 IC 35-31.5-2-321) or synthetic drug lookalike substance (as
21 defined in IC 35-31.5-2-321.5 (before its repeal on July 1,
22 2019)) under IC 35-48-4-10.5 (before its repeal on July 1,
23 2019).
 - 24 (H) Dealing in a controlled substance resulting in death
25 (IC 35-42-1-1.5).
- 26 (6) Equipment and recordings used by a person to commit fraud
27 under IC 35-43-5-4(10).
- 28 (7) Recordings sold, rented, transported, or possessed by a person
29 in violation of IC 24-4-10.
- 30 (8) Property (as defined by IC 35-31.5-2-253) or an enterprise (as
31 defined by IC 35-45-6-1) that is the object of a corrupt business
32 influence violation (IC 35-45-6-2).
- 33 (9) Unlawful telecommunications devices (as defined in
34 IC 35-45-13-6) and plans, instructions, or publications used to
35 commit an offense under IC 35-45-13.
- 36 (10) Any equipment, including computer equipment and cellular
37 telephones, used for or intended for use in preparing,
38 photographing, recording, videotaping, digitizing, printing,
39 copying, or disseminating matter in violation of IC 35-42-4.
- 40 (11) Destructive devices used, possessed, transported, or sold in
41 violation of IC 35-47.5.
- 42 (12) Tobacco products that are sold in violation of IC 24-3-5,



1 tobacco products that a person attempts to sell in violation of
 2 IC 24-3-5, and other personal property owned and used by a
 3 person to facilitate a violation of IC 24-3-5.

4 (13) Property used by a person to commit counterfeiting or
 5 forgery in violation of IC 35-43-5-2.

6 (14) After December 31, 2005, if a person is convicted of an
 7 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
 8 following real or personal property:

9 (A) Property used or intended to be used to commit, facilitate,
 10 or promote the commission of the offense.

11 (B) Property constituting, derived from, or traceable to the
 12 gross proceeds that the person obtained directly or indirectly
 13 as a result of the offense.

14 (15) Except as provided in subsection (e), a vehicle used by a
 15 person who operates the vehicle:

16 (A) while intoxicated, in violation of IC 9-30-5-1 through
 17 IC 9-30-5-5, if in the previous five (5) years the person has two
 18 (2) or more prior unrelated convictions for operating a motor
 19 vehicle while intoxicated in violation of IC 9-30-5-1 through
 20 IC 9-30-5-5; or

21 (B) on a highway while the person's driving privileges are
 22 suspended in violation of IC 9-24-19-2 through IC 9-24-19-3,
 23 if in the previous five (5) years the person has two (2) or more
 24 prior unrelated convictions for operating a vehicle while
 25 intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5.

26 If a court orders the seizure of a vehicle under this subdivision,
 27 the court shall transmit an order to the bureau of motor vehicles
 28 recommending that the bureau not permit a vehicle to be
 29 registered in the name of the person whose vehicle was seized
 30 until the person possesses a current driving license (as defined in
 31 IC 9-13-2-41).

32 (16) The following real or personal property:

33 (A) Property used or intended to be used to commit, facilitate,
 34 or promote the commission of an offense specified in
 35 IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or
 36 IC 30-2-13-38(f).

37 (B) Property constituting, derived from, or traceable to the
 38 gross proceeds that a person obtains directly or indirectly as a
 39 result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b),
 40 IC 30-2-10-9(b), or IC 30-2-13-38(f).

41 (17) An automated sales suppression device (as defined in
 42 IC 35-43-5-4.6(a)(1) or phantom-ware (as defined in



- 1 IC 35-43-5-4.6(a)(3).
 2 (18) Real or personal property, including a vehicle, that is used by
 3 a person to:
 4 (A) commit, attempt to commit, or conspire to commit;
 5 (B) facilitate the commission of; or
 6 (C) escape from the commission of;
 7 a violation of IC 35-42-3.5-1 through IC 35-42-3.5-1.4 (human
 8 trafficking) or IC 35-45-4-4 (promoting prostitution).
 9 **(19) Real or personal property that is used by a person to**
 10 **finance or facilitate the financing of a crime committed by a**
 11 **person while the person is part of an unlawful assembly (as**
 12 **defined in IC 35-31.5-2-341).**
 13 (b) A vehicle used by any person as a common or contract carrier in
 14 the transaction of business as a common or contract carrier is not
 15 subject to seizure under this section, unless it can be proven by a
 16 preponderance of the evidence that the owner of the vehicle knowingly
 17 permitted the vehicle to be used to engage in conduct that subjects it to
 18 seizure under subsection (a).
 19 (c) Equipment under subsection (a)(10) may not be seized unless it
 20 can be proven by a preponderance of the evidence that the owner of the
 21 equipment knowingly permitted the equipment to be used to engage in
 22 conduct that subjects it to seizure under subsection (a)(10).
 23 (d) Money, negotiable instruments, securities, weapons,
 24 communications devices, or any property commonly used as
 25 consideration for a violation of IC 35-48-4 found near or on a person
 26 who is committing, attempting to commit, or conspiring to commit any
 27 of the following offenses shall be admitted into evidence in an action
 28 under this chapter as prima facie evidence that the money, negotiable
 29 instrument, security, or other thing of value is property that has been
 30 used or was to have been used to facilitate the violation of a criminal
 31 statute or is the proceeds of the violation of a criminal statute:
 32 (1) IC 35-42-1-1.5 (dealing in a controlled substance resulting in
 33 death).
 34 (2) IC 35-48-4-1 (dealing in or manufacturing cocaine or a
 35 narcotic drug).
 36 (3) IC 35-48-4-1.1 (dealing in methamphetamine).
 37 (4) IC 35-48-4-1.2 (manufacturing methamphetamine).
 38 (5) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 39 substance).
 40 (6) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
 41 (7) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 42 as a Level 4 felony.



- 1 (8) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a
- 2 Level 3, Level 4, or Level 5 felony.
- 3 (9) IC 35-48-4-6.1 (possession of methamphetamine) as a Level
- 4 3, Level 4, or Level 5 felony.
- 5 (10) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, or
- 6 salvia) as a Level 5 felony.
- 7 (11) IC 35-48-4-10.5 (before its repeal on July 1, 2019) (dealing
- 8 in a synthetic drug or synthetic drug lookalike substance) as a
- 9 Level 5 felony or Level 6 felony (or as a Class C felony or Class
- 10 D felony under IC 35-48-4-10 before its amendment in 2013).
- 11 (e) A vehicle operated by a person who is not:
- 12 (1) an owner of the vehicle; or
- 13 (2) the spouse of the person who owns the vehicle;
- 14 is not subject to seizure under subsection (a)(15) unless it can be
- 15 proven by a preponderance of the evidence that the owner of the
- 16 vehicle knowingly permitted the vehicle to be used to engage in
- 17 conduct that subjects it to seizure under subsection (a)(15).
- 18 SECTION 5. IC 35-31.5-2-79.9 IS ADDED TO THE INDIANA
- 19 CODE AS A NEW SECTION TO READ AS FOLLOWS
- 20 [EFFECTIVE JULY 1, 2021]: **Sec. 79.9. "Curfew", for purposes of**
- 21 **IC 35-45-1-2.2 has the meaning set forth in IC 35-45-1-2.2.**
- 22 SECTION 6. IC 35-31.5-2-341, AS ADDED BY P.L.114-2012,
- 23 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 24 JULY 1, 2021]: Sec. 341. "Unlawful assembly" for purposes of
- 25 ~~IC 35-45-1-~~ has the meaning set forth in IC 35-45-1-1.
- 26 SECTION 7. IC 35-33-8-3.7 IS ADDED TO THE INDIANA CODE
- 27 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
- 28 1, 2021]: **Sec. 3.7. (a) This section applies only to a person arrested**
- 29 **for or charged with an offense committed while the person was a**
- 30 **member of an unlawful assembly.**
- 31 **(b) A court may not admit a person to whom this section applies**
- 32 **to bail until the court has conducted a bail hearing in open court.**
- 33 **(c) There is a presumption that a person to whom this section**
- 34 **applies should not be released without payment of money bail.**
- 35 **(d) At the conclusion of the hearing described in subsection (b)**
- 36 **and after consideration of subsection (c) and the bail guidelines**
- 37 **described in section 3.8 of this chapter, the court shall consider**
- 38 **whether the factors described in section 4 of this chapter,**
- 39 **including:**
- 40 **(1) the distance the person traveled to commit the offense in**
- 41 **Indiana; and**
- 42 **(2) the damage or harm caused by the offense;**



1 **warrant the imposition of a bail amount that exceeds court or**
 2 **county guidelines, if applicable.**
 3 SECTION 8. IC 35-41-5-2, AS AMENDED BY P.L.158-2013,
 4 SECTION 409, IS AMENDED TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A person conspires to commit
 6 a felony **or a misdemeanor committed while a member of an**
 7 **unlawful assembly**, when, with intent to commit the ~~felony~~, **offense**,
 8 the person agrees with another person to commit the ~~felony~~. **offense**.
 9 A conspiracy to commit a ~~felony~~ **an offense** is a felony **or**
 10 **misdemeanor** of the same **class or** level as the underlying ~~felony~~:
 11 **offense**. However, a conspiracy to commit murder is:
 12 (1) a Level 2 felony if the conspiracy does not result in the death
 13 of a person; and
 14 (2) a Level 1 felony if the conspiracy results in the death of
 15 another person.
 16 (b) The state must allege and prove that either the person or the
 17 person with whom he or she agreed performed an overt act in
 18 furtherance of the agreement.
 19 (c) It is no defense that the person with whom the accused person is
 20 alleged to have conspired:
 21 (1) has not been prosecuted;
 22 (2) has not been convicted;
 23 (3) has been acquitted;
 24 (4) has been convicted of a different crime;
 25 (5) cannot be prosecuted for any reason; or
 26 (6) lacked the capacity to commit the crime.
 27 SECTION 9. IC 35-44.1-2-13, AS AMENDED BY P.L.188-2015,
 28 SECTION 130, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) Except as provided in
 30 subsection (b), a person who, with the intent to obstruct vehicular or
 31 pedestrian traffic, obstructs vehicular or pedestrian traffic commits
 32 obstruction of traffic, a Class B misdemeanor.
 33 (b) The offense described in subsection (a) is:
 34 (1) a Class A misdemeanor if the offense includes the use of a
 35 motor vehicle; ~~and~~
 36 (2) a Level 6 felony if the offense results in serious bodily injury;
 37 **and**
 38 **(3) a Level 5 felony if the offense results in catastrophic bodily**
 39 **injury or death.**
 40 (c) A person who unreasonably obstructs vehicular or pedestrian
 41 traffic commits a Class C infraction.
 42 (d) It is a defense to an action under subsection (c) that the



1 obstruction was caused by a vehicle malfunction.

2 SECTION 10. IC 35-45-1-2, AS AMENDED BY P.L.158-2013,
3 SECTION 521, IS AMENDED TO READ AS FOLLOWS
4 [EFFECTIVE JULY 1, 2021]: Sec. 2. A person who, being a member
5 of an unlawful assembly, recklessly, knowingly, or intentionally
6 engages in tumultuous conduct commits rioting, a Class A
7 misdemeanor. However, the offense is:

8 (1) a Level 6 felony if it:

9 (A) is committed while armed with a deadly weapon;

10 (B) results in serious bodily injury; or

11 (C) causes property damage of at least seven hundred fifty
12 dollars (\$750) and less than fifty thousand dollars
13 (\$50,000); and

14 (2) a Level 5 felony if it:

15 (A) results in catastrophic injury or death; or

16 (B) causes property damage of at least fifty thousand
17 dollars (\$50,000).

18 SECTION 11. IC 35-45-1-2.2 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2021]: Sec. 2.2. (a) As used in this section,
21 "curfew" means a curfew established by the:

22 (1) governor under IC 10-14-3-12; or

23 (2) principal executive officer of a political subdivision under
24 IC 10-14-3-29.

25 (b) A person who, after having been:

26 (1) informed by a law enforcement officer that the person is
27 violating a curfew order by remaining in a specified location;
28 and

29 (2) ordered by a law enforcement officer to leave the location;
30 knowingly or intentionally refuses to leave the location commits
31 violating an emergency curfew, a Class B misdemeanor.



COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 198, 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, line 3, delete "The" and insert "**(a) Subject to subsections (b) and (c), the**".

Page 1, between lines 16 and 17, begin a new paragraph and insert:
"(b) If the attorney general discovers evidence of criminal activity described in subsection (a), the attorney general shall certify to the appropriate prosecuting attorney the following information:

- (1) The identity of any person who may be involved in the criminal activity.**
- (2) The criminal statute that the attorney general believes has been violated.**

In addition, the attorney general shall provide the prosecuting attorney with any relevant documents, transcripts, written statements, or other evidence. If the prosecuting attorney decides to prosecute the crime described in the information certified to the prosecuting attorney, or any other related crimes, the attorney general does not have jurisdiction to prosecute the case and shall cooperate with the prosecuting attorney in the investigation and prosecution of the case. However, upon request of the prosecuting attorney, the attorney general may participate on behalf of the state in any resulting criminal trial.

(c) If:

- (1) the prosecuting attorney to whom the attorney general issues a certification under subsection (b):**
 - (A) is disqualified from investigating or bringing a criminal prosecution in the matter addressed in the certification;**
 - (B) does not file an information or seek an indictment not later than one hundred eighty (180) days after the date on which the attorney general certified the information to the prosecuting attorney; or**
 - (C) refers the case back to the attorney general; and**
- (2) the attorney general finds that there may be probable cause to believe that a person identified in a certification under subsection (b) has violated a criminal statute listed in subsection (a);**



the attorney general has jurisdiction to prosecute the criminal action. If the attorney general exercises jurisdiction to prosecute the criminal action, the prosecuting attorney no longer has jurisdiction over that action."

Page 3, between lines 22 and 23, begin a new paragraph and insert:
"SECTION 3. IC 34-13-3.6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]:

Chapter 3.6. Property Loss Due to Unlawful Assembly

Sec. 1. As used in this chapter, "property" means real or personal property. The term does not include property of the state or a political subdivision.

Sec. 2. As used in this chapter, "unit" means a county, city, or town.

Sec. 3. As used in this chapter, "unlawful assembly" has the meaning set forth in IC 35-45-1-1.

Sec. 4. Notwithstanding IC 34-13-3-3, and except as otherwise provided in this chapter, if an unlawful assembly within a unit is the proximate cause of the theft, damage, or destruction of real or personal property located within the unit, the injured party may recover actual damages for the loss in a civil action against the unit if the injured party establishes that the unit recklessly failed to prevent the theft, damage, or destruction of real or personal property by failing to exercise reasonable diligence to prevent or suppress the unlawful assembly.

Sec. 5. In determining whether a unit recklessly failed to prevent the theft, damage, or destruction of real property under this chapter, the trier of fact may consider whether the unit:

(1) had:

(A) good reason to believe that the unlawful assembly was imminent; or

(B) sufficient notice that the unlawful assembly was taking place in time to prevent the theft, damage, or destruction of the property; and

(2) had the ability to prevent the theft, damage, or destruction of the property by using:

(A) the unit's police department; or

(B) the unit's police department with the assistance of another law enforcement agency with which the unit has an agreement for mutual aid.

Sec. 6. A county is not liable under this chapter for theft, damage, or destruction of property located within a municipality



that:

- (1) is located within the county; and
- (2) has a municipal police department.

Sec. 7. This chapter does not:

- (1) impose liability on; or
- (2) create a cause of action against;

a unit that renders or fails to render mutual aid to the unit in which the unlawful assembly occurs."

Page 8, line 42, delete "whether the person traveled from another state" and insert "**the distance the person traveled**".

Page 9, delete lines 5 through 30, begin a new paragraph and insert:

"SECTION 7. IC 35-41-5-2, AS AMENDED BY P.L.158-2013, SECTION 409, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A person conspires to commit a felony **or a misdemeanor committed while a member of an unlawful assembly**, when, with intent to commit the ~~felony~~, **offense**, the person agrees with another person to commit the ~~felony~~. **offense**. A conspiracy to commit a ~~felony~~ **an offense** is a felony **or misdemeanor** of the same **class or** level as the underlying ~~felony~~. **offense**. However, a conspiracy to commit murder is:

- (1) a Level 2 felony if the conspiracy does not result in the death of a person; and
- (2) a Level 1 felony if the conspiracy results in the death of another person.

(b) The state must allege and prove that either the person or the person with whom he or she agreed performed an overt act in furtherance of the agreement.

(c) It is no defense that the person with whom the accused person is alleged to have conspired:

- (1) has not been prosecuted;
- (2) has not been convicted;
- (3) has been acquitted;
- (4) has been convicted of a different crime;
- (5) cannot be prosecuted for any reason; or
- (6) lacked the capacity to commit the crime."

Page 10, delete lines 22 through 39.

Page 11, delete lines 12 through 25.

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 198 as introduced.)

SB 198—LS 7100/DI 106



YOUNG M, Chairperson

Committee Vote: Yeas 6, Nays 2.

