



Reprinted  
February 16, 2021

---

---

## SENATE BILL No. 198

---

DIGEST OF SB 198 (Updated February 15, 2021 4:08 pm - DI 106)

**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, until January 1, 2025, 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,  
Messmer, Sandlin**

---

---

January 12, 2021, read first time and referred to Committee on Corrections and Criminal Law.  
February 11, 2021, amended, reported favorably — Do Pass.  
February 15, 2021, read second time, amended, ordered engrossed.

---

---

SB 198—LS 7100/DI 106





Reprinted  
February 16, 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).  
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 **(5) Actions in which a person is accused of committing, while**

SB 198—LS 7100/DI 106



1 a member of an unlawful assembly as defined in IC 35-45-1-1,  
2 a criminal offense. This subdivision expires January 1, 2025.

3 (b) If the attorney general discovers evidence of criminal  
4 activity described in subsection (a), the attorney general shall  
5 certify to the appropriate prosecuting attorney the following  
6 information:

7 (1) The identity of any person who may be involved in the  
8 criminal activity.

9 (2) The criminal statute that the attorney general believes has  
10 been violated.

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

21 (c) If:

22 (1) the prosecuting attorney to whom the attorney general  
23 issues a certification under subsection (b):

24 (A) is disqualified from investigating or bringing a  
25 criminal prosecution in the matter addressed in the  
26 certification;

27 (B) does not file an information or seek an indictment not  
28 later than one hundred eighty (180) days after the date on  
29 which the attorney general certified the information to the  
30 prosecuting attorney; or

31 (C) refers the case back to the attorney general; and

32 (2) the attorney general finds that there may be probable  
33 cause to believe that a person identified in a certification  
34 under subsection (b) has violated a criminal statute listed in  
35 subsection (a);

36 the attorney general has jurisdiction to prosecute the criminal  
37 action. If the attorney general exercises jurisdiction to prosecute  
38 the criminal action, the prosecuting attorney no longer has  
39 jurisdiction over that action.

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



1 (1) may be declared only by the principal executive officer of a  
2 political subdivision; and

3 (2) may not be continued or renewed for more than seven (7) days  
4 except by or with the consent of the governing board of the  
5 political subdivision.

6 Any order or proclamation declaring, continuing, or terminating a local  
7 disaster emergency shall be given prompt and general publicity and  
8 shall be filed promptly in the office of the clerk of the political  
9 subdivision.

10 (b) The effect of a declaration of a local disaster emergency is to:

11 (1) activate the response and recovery aspects of all applicable  
12 local or interjurisdictional disaster emergency plans; and

13 (2) authorize the furnishing of aid and assistance under the plans.

14 (c) An interjurisdictional agency or official may not declare a local  
15 disaster emergency unless expressly authorized by the agreement under  
16 which the agency functions. However, an interjurisdictional disaster  
17 agency shall provide aid and services according to the agreement.

18 (d) If a local disaster emergency **or curfew** is declared under this  
19 section, the political subdivision may not prohibit individuals engaged  
20 in employment necessary to:

21 (1) maintain a safe rail system;

22 (2) restore utility service; or

23 (3) provide any other emergency public service;

24 from traveling on the highways within the political subdivision during  
25 the local disaster emergency.

26 (e) If a local disaster emergency **or curfew** is declared under this  
27 section, the political subdivision may not prohibit individuals trained  
28 and certified as first response broadcasters, as set forth in section 22.5  
29 of this chapter, from traveling on the highways within the political  
30 subdivision during the local disaster emergency.

31 (f) If a local emergency **or curfew** is declared under this section, the  
32 political subdivision may not prohibit individuals trained and certified  
33 as first response communications service providers, as set forth in  
34 section 22.6 of this chapter, from traveling on the highways within the  
35 political subdivision during the local disaster emergency.

36 **(g) If a local disaster emergency is declared under this section,**  
37 **the principal executive officer of a political subdivision may**  
38 **establish a curfew if all of the following conditions are met:**

39 **(1) The principal executive officer has received specific,**  
40 **credible information from a federal, state, or local law**  
41 **enforcement agency that rioting or an unlawful assembly is**  
42 **likely to occur in the political subdivision.**



1 (2) After consulting with a federal, state, or local law  
 2 enforcement agency, the principal executive officer  
 3 determines that there is a reasonable likelihood that  
 4 imposition of a curfew will prevent or minimize the  
 5 occurrence of rioting or an unlawful assembly.

6 (3) The curfew is:

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

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

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

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

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

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

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

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

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

41 **Sec. 5.** In determining whether a unit recklessly failed to prevent  
 42 the theft, damage, or destruction of real property under this



1 **chapter, the trier of fact may consider whether the unit:**

2 **(1) had:**

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

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

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

10 **(A) the unit's police department; or**

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

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

17 **(1) is located within the county; and**

18 **(2) has a municipal police department.**

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

20 **(1) impose liability on; or**

21 **(2) create a cause of action against;**

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

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

27 (1) All vehicles (as defined by IC 35-31.5-2-346), if they are used  
28 or are intended for use by the person or persons in possession of  
29 them to transport or in any manner to facilitate the transportation  
30 of the following:

31 (A) A controlled substance for the purpose of committing,  
32 attempting to commit, or conspiring to commit any of the  
33 following:

34 (i) Dealing in or manufacturing cocaine or a narcotic drug  
35 (IC 35-48-4-1).

36 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).

37 (iii) Manufacturing methamphetamine (IC 35-48-4-1.2).

38 (iv) Dealing in a schedule I, II, or III controlled substance  
39 (IC 35-48-4-2).

40 (v) Dealing in a schedule IV controlled substance  
41 (IC 35-48-4-3).

42 (vi) Dealing in a schedule V controlled substance



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





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



- 1 (11) Destructive devices used, possessed, transported, or sold in  
 2 violation of IC 35-47.5.
- 3 (12) Tobacco products that are sold in violation of IC 24-3-5,  
 4 tobacco products that a person attempts to sell in violation of  
 5 IC 24-3-5, and other personal property owned and used by a  
 6 person to facilitate a violation of IC 24-3-5.
- 7 (13) Property used by a person to commit counterfeiting or  
 8 forgery in violation of IC 35-43-5-2.
- 9 (14) After December 31, 2005, if a person is convicted of an  
 10 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the  
 11 following real or personal property:
- 12 (A) Property used or intended to be used to commit, facilitate,  
 13 or promote the commission of the offense.
- 14 (B) Property constituting, derived from, or traceable to the  
 15 gross proceeds that the person obtained directly or indirectly  
 16 as a result of the offense.
- 17 (15) Except as provided in subsection (e), a vehicle used by a  
 18 person who operates the vehicle:
- 19 (A) while intoxicated, in violation of IC 9-30-5-1 through  
 20 IC 9-30-5-5, if in the previous five (5) years the person has two  
 21 (2) or more prior unrelated convictions for operating a motor  
 22 vehicle while intoxicated in violation of IC 9-30-5-1 through  
 23 IC 9-30-5-5; or
- 24 (B) on a highway while the person's driving privileges are  
 25 suspended in violation of IC 9-24-19-2 through IC 9-24-19-3,  
 26 if in the previous five (5) years the person has two (2) or more  
 27 prior unrelated convictions for operating a vehicle while  
 28 intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5.
- 29 If a court orders the seizure of a vehicle under this subdivision,  
 30 the court shall transmit an order to the bureau of motor vehicles  
 31 recommending that the bureau not permit a vehicle to be  
 32 registered in the name of the person whose vehicle was seized  
 33 until the person possesses a current driving license (as defined in  
 34 IC 9-13-2-41).
- 35 (16) The following real or personal property:
- 36 (A) Property used or intended to be used to commit, facilitate,  
 37 or promote the commission of an offense specified in  
 38 IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or  
 39 IC 30-2-13-38(f).
- 40 (B) Property constituting, derived from, or traceable to the  
 41 gross proceeds that a person obtains directly or indirectly as a  
 42 result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b),



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



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



1           **(1) the distance the person traveled to commit the offense in**  
 2           **Indiana; and**  
 3           **(2) the damage or harm caused by the offense;**  
 4           **warrant the imposition of a bail amount that exceeds court or**  
 5           **county guidelines, if applicable.**

6           SECTION 8. IC 35-41-5-2, AS AMENDED BY P.L.158-2013,  
 7           SECTION 409, IS AMENDED TO READ AS FOLLOWS  
 8           [EFFECTIVE JULY 1, 2021]: Sec. 2. (a) A person conspires to commit  
 9           a felony **or a misdemeanor committed while a member of an**  
 10           **unlawful assembly**, when, with intent to commit the ~~felony~~; **offense**,  
 11           the person agrees with another person to commit the ~~felony~~. **offense**.  
 12           A conspiracy to commit a ~~felony~~ **an offense** is a felony **or**  
 13           **misdemeanor** of the same **class or** level as the underlying ~~felony~~.  
 14           **offense**. However, a conspiracy to commit murder is:

15           (1) a Level 2 felony if the conspiracy does not result in the death  
 16           of a person; and

17           (2) a Level 1 felony if the conspiracy results in the death of  
 18           another person.

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

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

24           (1) has not been prosecuted;

25           (2) has not been convicted;

26           (3) has been acquitted;

27           (4) has been convicted of a different crime;

28           (5) cannot be prosecuted for any reason; or

29           (6) lacked the capacity to commit the crime.

30           SECTION 9. IC 35-44.1-2-13, AS AMENDED BY P.L.188-2015,  
 31           SECTION 130, IS AMENDED TO READ AS FOLLOWS  
 32           [EFFECTIVE JULY 1, 2021]: Sec. 13. (a) Except as provided in  
 33           subsection (b), a person who, with the intent to obstruct vehicular or  
 34           pedestrian traffic, obstructs vehicular or pedestrian traffic commits  
 35           obstruction of traffic, a Class B misdemeanor.

36           (b) The offense described in subsection (a) is:

37           (1) a Class A misdemeanor if the offense includes the use of a  
 38           motor vehicle; ~~and~~

39           (2) a Level 6 felony if the offense results in serious bodily injury;  
 40           **and**

41           (3) a Level 5 felony if the offense results in catastrophic bodily  
 42           injury or death.



1 (c) A person who unreasonably obstructs vehicular or pedestrian  
2 traffic commits a Class C infraction.

3 (d) It is a defense to an action under subsection (c) that the  
4 obstruction was caused by a vehicle malfunction.

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

11 (1) a Level 6 felony if it:

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

13 (B) results in serious bodily injury; or

14 (C) causes property damage of at least seven hundred fifty  
15 dollars (\$750) and less than fifty thousand dollars  
16 (\$50,000); and

17 (2) a Level 5 felony if it:

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

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

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

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

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

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

29 (1) informed by a law enforcement officer that the person is  
30 violating a curfew order by remaining in a specified location;  
31 and

32 (2) ordered by a law enforcement officer to leave the location;  
33 knowingly or intentionally refuses to leave the location commits  
34 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.

---

SENATE MOTION

Madam President: I move that Senate Bill 198 be amended to read as follows:

Page 1, line 8, reset in roman "homicide (IC 35-42-1)".

Page 1, line 8, delete "criminal offense".

Page 1, between lines 16 and 17, begin a new line block indented and insert:

**"(5) Actions in which a person is accused of committing, while a member of an unlawful assembly as defined in IC 35-45-1-1, a criminal offense. This subdivision expires January 1, 2025."**

(Reference is to SB 198 as printed February 12, 2021.)

YOUNG M

