

SENATE BILL No. 295

DIGEST OF INTRODUCED BILL

Citations Affected: IC 4-12-16-3; IC 6-7-3; IC 8-21-1-8; IC 9-30-6-4.3; IC 13-30-8-1; IC 33-39-8; IC 34-6-2; IC 34-24-1; IC 35-31.5-2; IC 35-32-4; IC 35-33-5-5; IC 36-1-17-2.

Synopsis: Criminal forfeiture. Repeals the existing civil forfeiture law and establishes a procedure for criminal forfeiture. Makes conforming amendments.

Effective: July 1, 2022.

Boots

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



Second Regular Session of the 122nd General Assembly (2022)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2021 Regular Session of the General Assembly.

SENATE BILL No. 295

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 4-12-16-3, AS AMENDED BY P.L.141-2021,
2 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2022]: Sec. 3. (a) The fund consists of:
4 (1) except as provided in subsections (b) and (c), all funds
5 received by the state under:
6 (A) multistate and Indiana specific settlements;
7 (B) assurances of voluntary compliance accepted by the
8 attorney general; and
9 (C) any other form of agreement that:
10 (i) is enforceable by a court; and
11 (ii) settles litigation between the state and another party; and
12 (2) all money recovered as court costs or costs related to
13 litigation.
14 (b) Any amount of restitution that is:
15 (1) awarded to an individual or institution under a settlement or
16 assurance of voluntary compliance;
17 (2) unclaimed by an individual or institution;



1 (3) received by a state agency; and
 2 (4) determined to be abandoned property under IC 32-34-1.5;
 3 must be deposited in the abandoned property fund under
 4 IC 32-34-1.5-42.

5 (c) The fund does not include the following:

6 (1) Funds received by the state department of revenue.

7 (2) Funds required to be deposited in the securities division
 8 enforcement account (IC 23-19-6-1).

9 ~~(3) Funds received as the result of a civil forfeiture under~~
 10 ~~IC 34-24-1.~~

11 ~~(4) (3) Funds received as a civil penalty or as part of an~~
 12 ~~enforcement or collection action by an agency authorized to~~
 13 ~~impose a civil penalty or engage in an enforcement or collection~~
 14 ~~action, if the funds are required to be deposited in the general~~
 15 ~~fund or another fund by statute.~~

16 ~~(5) (4) Funds recovered by the Medicaid fraud control unit in~~
 17 ~~actions to recover money inappropriately paid out of or obtained~~
 18 ~~from the state Medicaid program.~~

19 ~~(6) (5) Amounts required to be paid as consumer restitution or~~
 20 ~~refunds in settlements specified in this chapter.~~

21 ~~(7) (6) Amounts received under the Master Settlement Agreement~~
 22 ~~(as defined in IC 24-3-3-6).~~

23 SECTION 2. IC 6-7-3-14 IS AMENDED TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2022]: Sec. 14. All jeopardy assessments issued
 25 for nonpayment of tax shall be considered a secondary lien to the
 26 seizure and forfeiture provisions of IC 16-42-20, ~~IC 34-24-1,~~
 27 ~~IC 34-24-2,~~ and any federal law.

28 SECTION 3. IC 6-7-3-20 IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2022]: Sec. 20. The excise taxes required by
 30 this chapter are intended to be in addition to any criminal penalties
 31 under IC 35-48-4 and forfeitures under IC 16-42-20 ~~IC 34-24-1,~~ or
 32 ~~IC 34-24-2. (or IC 34-4-30.1 or IC 34-4-30.5 before their repeal).~~

33 SECTION 4. IC 8-21-1-8, AS AMENDED BY P.L.136-2018,
 34 SECTION 99, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2022]: Sec. 8. (a) The department shall encourage, foster, and
 36 assist in the development of aeronautics in this state and shall
 37 encourage the establishment of airports, landing fields, and other
 38 navigation facilities.

39 (b) The department shall cooperate with and assist the federal
 40 government, the political subdivisions of this state, and others engaged
 41 in aeronautics or the advancement of aeronautics and shall seek to
 42 coordinate the aeronautical activities of these bodies.



1 (c) All rules prescribed by the department concerning aeronautics
2 shall be kept in conformity with, and limited to as nearly as may be, the
3 then current federal legislation governing aeronautics and the
4 regulations duly promulgated thereunder.

5 (d) The department shall develop and continuously update a
6 proposed state airports system plan which will best serve the interests
7 of the state and its political subdivisions. Such state airports system
8 plan shall be coordinated with the national airport plan prepared by the
9 federal agency fostering civil aviation.

10 (e) The department may publish and revise from time to time a state
11 airways system plan, and maps, directories, or other materials deemed
12 necessary may be sold by the department at a price which shall be fixed
13 by the department. All money accruing from the sale of any such
14 publication:

15 (1) shall be paid into the state treasury;

16 (2) shall be credited to the department; and

17 (3) is hereby appropriated to such department to be used for
18 future publications by the department, without reversion to the
19 general fund of the state at the end of any fiscal year. However,
20 any time the balance in said fund exceeds ten thousand dollars
21 (\$10,000), such excess shall revert to the general fund of the state.

22 (f) The department may offer the engineering or other technical
23 advice of the department, without charge, to any municipality or person
24 desiring them in connection with the construction, maintenance, or
25 operation or proposed construction, maintenance, or operation of an
26 airport or landing field.

27 (g) The department may recommend necessary legislation to
28 advance the interests of the state in aeronautics and represent the state
29 in aeronautical matters before federal agencies and other state agencies.

30 (h) The department shall have the power to approve or disapprove
31 all purchases made by any municipality of any land to be used by said
32 municipality for the establishment of any airport or landing field, and
33 the establishment by any municipality of any airport or landing field.

34 (i) The department may participate as party plaintiff or defendant,
35 or as intervener on behalf of the state or any municipality or citizen
36 thereof in any controversy having to do with any claimed encroachment
37 by the federal government or any foreign state upon any state or
38 individual rights pertaining to aeronautics.

39 (j) Municipalities are authorized to cooperate with the department
40 in the development of aeronautics and aeronautical facilities and
41 services of other agencies of the state to the utmost extent possible, and
42 such agencies are authorized and directed to make available such



1 facilities and services.

2 (k) The department, or any employee designated by it, shall have the
3 power to hold investigations, and hearings concerning matters covered
4 by this chapter and orders and rules of the department, in accordance
5 with IC 4-21.5. All hearings so conducted shall be open to the public.
6 The reports of investigations or hearings, or any part of the
7 investigations or hearings, shall not be admitted in evidence or used for
8 any purpose in any suit, action, or proceeding, growing out of any
9 matter referred to in the investigation, hearing, or report of the
10 investigation or hearing, except in case of criminal or other
11 proceedings instituted in behalf of the department or this state under
12 the provisions of this chapter and other laws of this state.

13 (l) The department may render advice in the acquisition,
14 development, operation, or maintenance of airports owned, controlled,
15 or operated, or to be owned, controlled, or operated, by municipalities
16 in this state.

17 (m) The department may not grant any exclusive right for the use of
18 any airway, airport, landing field, or other air navigation facility under
19 its jurisdiction. This subsection shall not prevent the making of leases
20 in accordance with other provisions of this chapter.

21 (n) Gifts or grants of money for aeronautical purposes may be
22 received by the state and shall be deposited in an aviation fund.
23 Disbursal of such funds shall be for aeronautical purposes only or for
24 the purpose for which they were given or granted. Gifts or grants of
25 property for aeronautical purposes may be received by the state and
26 shall be used for the purpose given or granted. Gifts or grants of money
27 or property for aeronautical purposes must be administered in the same
28 manner as other gifts and grants received by the state are administered.

29 (o) The department may adopt rules under IC 4-22-2 for the control
30 of aircraft accident sites in Indiana. Until representatives of appropriate
31 federal agencies arrive on the site of an aircraft accident, state and local
32 law enforcement agencies and accident investigation agencies shall
33 comply with any rules adopted by the department under this section.

34 (p) The department may, with written approval of the budget
35 agency, purchase and operate aircraft forfeited under **IC 35-32-4 (or**
36 **IC 34-24-1 before its repeal)**. ~~(or IC 34-4-30.1 before its repeal).~~
37 When the department acquires an aircraft, it shall pay all proper
38 expenses of the proceedings for forfeiture and sale, including expenses
39 of seizure, maintenance of custody, and advertising and court costs.

40 SECTION 5. IC 9-30-6-4.3, AS AMENDED BY P.L.13-2013,
41 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
42 JULY 1, 2022]: Sec. 4.3. (a) This section applies only to a person



1 whose motor vehicle has been seized under ~~IC 34-24-1-1(a)(15)~~;
 2 **IC 35-32-4-1(a)**.

3 (b) If the bureau receives an order from a court recommending that
 4 the bureau not register a motor vehicle in the name of a person whose
 5 motor vehicle has been seized under ~~IC 34-24-1-1(a)(15)~~;
 6 **IC 35-32-4-1(a)**, the bureau may not register a motor vehicle in the
 7 name of the person whose motor vehicle has been seized until the
 8 person proves that the person possesses a driver's license with valid
 9 driving privileges.

10 SECTION 6. IC 13-30-8-1 IS REPEALED [EFFECTIVE JULY 1,
 11 2022]. ~~Sec. 1: A vehicle that is used to transport hazardous waste in the~~
 12 ~~commission of an offense described in IC 13-30-10-1.5 is subject to~~
 13 ~~forfeiture under IC 34-24-1.~~

14 SECTION 7. IC 33-39-8-5, AS AMENDED BY P.L.237-2015,
 15 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2022]: Sec. 5. The council shall do the following:

- 17 (1) Assist in the coordination of the duties of the prosecuting
 18 attorneys of the state and their staffs.
 19 (2) Prepare manuals of procedure.
 20 (3) Give assistance in preparation of the trial briefs, forms, and
 21 instructions.
 22 (4) Conduct research and studies that would be of interest and
 23 value to all prosecuting attorneys and their staffs.
 24 (5) Maintain liaison contact with study commissions and agencies
 25 of all branches of local, state, and federal government that will be
 26 of benefit to law enforcement and the fair administration of
 27 justice in Indiana.
 28 (6) Adopt guidelines for the expenditure of funds derived from a
 29 deferral program or a pretrial diversion program.
 30 (7) ~~The council shall:~~
 31 (A) ~~compile forfeiture data received under IC 34-24-1-4.5; and~~
 32 (B) ~~annually submit a report to the legislative council~~
 33 ~~containing the compiled data:~~

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

38 SECTION 8. IC 33-39-8-6 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 6. (a) The drug
 40 prosecution fund is established. The council shall administer the fund.
 41 Expenditures from the fund may be made only in accordance with
 42 appropriations made by the general assembly.



1 (b) The council may use money from the fund to provide assistance
2 to prosecuting attorneys to:

3 (1) investigate and prosecute violations of IC 35-48;

4 ~~(2) bring actions for forfeiture, law enforcement costs, and~~
5 ~~correction costs under IC 34-24-1;~~

6 ~~(3)~~ (2) bring actions for civil and criminal remedies for a violation
7 of IC 35-45-6; and

8 ~~(4)~~ (3) obtain training, equipment, and technical assistance that
9 would enhance the ability of prosecuting attorneys to reduce
10 illegal drug activity.

11 (c) The treasurer of state shall invest the money in the fund not
12 currently needed to meet the obligations of the fund in the same
13 manner as other public funds may be invested.

14 (d) Money in the fund at the end of a fiscal year does not revert to
15 the state general fund.

16 SECTION 9. IC 34-6-2-73 IS REPEALED [EFFECTIVE JULY 1,
17 2022]. Sec. 73. "Law enforcement costs", for purposes of IC 34-24-1,
18 means:

19 (1) expenses incurred by the law enforcement agency that makes
20 a seizure under IC 34-24-1 (or IC 34-4-30.1 before its repeal) for
21 the criminal investigation associated with the seizure;

22 (2) repayment of the investigative fund of the law enforcement
23 agency that makes a seizure under IC 34-24-1 to the extent that
24 the agency can specifically identify any part of the money as
25 having been expended from the fund; and

26 (3) expenses of the prosecuting attorney associated with the costs
27 of proceedings associated with the seizure and the offenses
28 related to the seizure:

29 SECTION 10. IC 34-6-2-145 IS AMENDED TO READ AS
30 FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 145. "Unit", for
31 purposes of IC 34-24-1 and IC 34-24-2, has the meaning specified in
32 IC 36-1-2-23.

33 SECTION 11. IC 34-24-1 IS REPEALED [EFFECTIVE JULY 1,
34 2022]. (Forfeiture of Property Used in Violation of Certain Criminal
35 Statutes).

36 SECTION 12. IC 35-31.5-2-1.2 IS ADDED TO THE INDIANA
37 CODE AS A NEW SECTION TO READ AS FOLLOWS
38 [EFFECTIVE JULY 1, 2022]: Sec. 1.2. "Abandoned property", for
39 purposes of IC 35-32-4, has the meaning set forth in IC 35-32-4-2.

40 SECTION 13. IC 35-31.5-2-3.5 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2022]: Sec. 3.5. "Actual knowledge", for



1 **purposes of IC 35-32-4, has the meaning set forth in IC 35-32-4-2.**

2 SECTION 14. IC 35-31.5-2-62, AS AMENDED BY P.L.13-2013,
3 SECTION 95, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
4 JULY 1, 2022]: Sec. 62. (a) "Contraband", for purposes of
5 IC 35-44.1-3-6, has the meaning set forth in IC 35-44.1-3-6(a).

6 **(b) "Contraband", for purposes of IC 35-32-4, has the meaning
7 set forth in IC 35-32-4-2.**

8 SECTION 15. IC 35-31.5-2-65.3 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2022]: Sec. 65.3. **"Controlled substance
11 dealing offense", for purposes of IC 35-32-4, has the meaning set
12 forth in IC 35-32-4-2.**

13 SECTION 16. IC 35-31.5-2-139.1 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2022]: Sec. 139.1. **"Forfeiture", "forfeits",
16 and "forfeited", for purposes of IC 35-32-4, has the meaning set
17 forth in IC 35-32-4-2.**

18 SECTION 17. IC 35-31.5-2-171.2 IS ADDED TO THE INDIANA
19 CODE AS A NEW SECTION TO READ AS FOLLOWS
20 [EFFECTIVE JULY 1, 2022]: Sec. 171.2. **"Innocent owner", for
21 purposes of IC 35-32-4, has the meaning set forth in IC 35-32-4-2.**

22 SECTION 18. IC 35-31.5-2-173.4 IS ADDED TO THE INDIANA
23 CODE AS A NEW SECTION TO READ AS FOLLOWS
24 [EFFECTIVE JULY 1, 2022]: Sec. 173.4. **"Instrumentality", for
25 purposes of IC 35-32-4, has the meaning set forth in IC 35-32-4-2.**

26 SECTION 19. IC 35-31.5-2-183, AS AMENDED BY P.L.144-2018,
27 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
28 JULY 1, 2022]: Sec. 183. (a) "Law enforcement agency," for purposes
29 of receiving information concerning a violation of IC 35-42-3.5-1
30 through IC 35-42-3.5-1.4 (human trafficking), means:

31 (1) an agency or department of:

32 (A) the state; or

33 (B) a political subdivision of the state;

34 whose principal function is the apprehension of criminal
35 offenders; and

36 (2) the attorney general.

37 (b) "Law enforcement agency", for purposes of IC 35-47-15 **and**
38 **IC 35-32-4**, has the meaning set forth in IC 35-47-15-2.

39 SECTION 20. IC 35-31.5-2-247, AS ADDED BY P.L.114-2012,
40 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
41 JULY 1, 2022]: Sec. 247. (a) "Proceeds", for purposes of IC 35-45-15,
42 has the meaning set forth in IC 35-45-15-4.



1 (b) "Proceeds", for purposes of IC 35-32-4, has the meaning set
2 forth in IC 35-32-4-2.

3 SECTION 21. IC 35-31.5-2-288.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2022]: **Sec. 288.5. "Secured interest holder",**
6 **for purposes of IC 35-32-4, has the meaning set forth in**
7 **IC 35-32-4-2.**

8 SECTION 22. IC 35-31.5-2-290.2 IS ADDED TO THE INDIANA
9 CODE AS A NEW SECTION TO READ AS FOLLOWS
10 [EFFECTIVE JULY 1, 2022]: **Sec. 290.2. "Seizure" or "seized", for**
11 **purposes of IC 35-32-4, has the meaning set forth in IC 35-32-4-2.**

12 SECTION 23. IC 35-32-4 IS ADDED TO THE INDIANA CODE
13 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
14 JULY 1, 2022]:

15 **Chapter 4. Seizure and Forfeiture**

16 **Sec. 1. (a) The following may be forfeited under this chapter:**

- 17 (1) Proceeds of a controlled substance dealing offense.
18 (2) An instrumentality of a controlled substance dealing
19 offense.

20 (b) Contraband may be forfeited under this chapter, even if it
21 is not connected to a controlled substance dealing offense.

22 **Sec. 2. The following definitions apply throughout this chapter:**

- 23 (1) "Abandoned property" means personal property left by
24 an owner who relinquishes or intends to relinquish all rights
25 to its control. The term does not include real property.
26 (2) "Actual knowledge" means direct and clear awareness of
27 information, a fact, or a condition.
28 (3) "Contraband" means goods that, in themselves, are
29 unlawful to possess, including scheduled drugs without a valid
30 prescription and a firearm that is illegal for the person from
31 whom it was seized to possess.
32 (4) "Controlled substance dealing offense" means:
33 (A) an offense described in IC 35-48-4-1 through
34 IC 35-48-4-5 (drug dealing or manufacturing offenses);
35 (B) IC 35-48-4-10 (dealing in marijuana); or
36 (C) IC 35-48-4-10.1 (dealing in smokable hemp).
37 (5) "Forfeiture", "forfeits", and "forfeited" means the
38 transfer of ownership to the state under this chapter.
39 (6) "Innocent owner" means an owner, an owner in joint
40 tenancy, or the defendant's heir or assigns of property subject
41 to forfeiture who does not have actual knowledge of the use of
42 the property in a crime that authorizes the forfeiture of



- 1 **property. The term does not include the defendant or a**
 2 **secured interest holder.**
 3 **(7) "Instrumentality" means property otherwise lawful to**
 4 **possess that is used in a crime described in section 1 of this**
 5 **chapter.**
 6 **(8) "Law enforcement agency" has the meaning set forth in**
 7 **IC 35-47-15-2.**
 8 **(9) "Proceeds" means anything of value obtained from the**
 9 **sale of property.**
 10 **(10) "Secured interest holder" means a person who is a**
 11 **secured creditor, lienholder, or other person who has a**
 12 **secured property interest in property subject to forfeiture.**
 13 **The term does not include the defendant or an innocent**
 14 **owner.**
 15 **(11) "Seizure" or "seized" means the taking of a property into**
 16 **temporary custody under this chapter pending a forfeiture**
 17 **determination.**
 18 **Sec. 3. Upon motion of the prosecuting attorney, a court may**
 19 **issue an ex parte order to seize personal property for which**
 20 **forfeiture is sought and to provide for its custody pending a**
 21 **forfeiture hearing.**
 22 **Sec. 4. Personal property not exempt under section 6 of this**
 23 **chapter may be seized without a court order if one (1) or more of**
 24 **the following apply:**
 25 **(1) The personal property is seized incident to a lawful arrest.**
 26 **(2) The personal property is subject to forfeiture under this**
 27 **chapter and the state has probable cause to believe the delay**
 28 **caused by the necessity of obtaining process would result in**
 29 **the removal or destruction of the personal property.**
 30 **(3) The personal property is the subject of a prior and valid**
 31 **judgment of forfeiture in favor of the state.**
 32 **(4) The personal property is contraband.**
 33 **Sec. 5. (a) This section applies only to real property not exempt**
 34 **under section 6 of this chapter.**
 35 **(b) Real property may not be seized without a court order.**
 36 **(c) A court may not issue a seizure order for real property**
 37 **unless the defendant and any other person with a known interest**
 38 **in the property receive proper notice and are given an opportunity**
 39 **for a contested hearing to determine the existence of probable**
 40 **cause for the seizure.**
 41 **(d) Nothing in this section prohibits the prosecuting attorney**
 42 **from seeking a lis pendens or restraining order to hinder the sale**



1 or destruction of real property. However, if the prosecuting
2 attorney obtains a lis pendens or restraining order, the prosecuting
3 attorney shall notify the defendant and any other person with a
4 known interest in the property within thirty (30) days.

5 Sec. 6. (a) The following are exempt from seizure and forfeiture:

6 (1) A homestead (as defined by IC 6-1.1-12-37).

7 (2) United States currency having a value of less than two
8 hundred dollars (\$200).

9 (3) A motor vehicle having a fair market value of less than
10 two thousand dollars (\$2,000).

11 (b) In any seizure or forfeiture proceeding, the prosecuting
12 attorney bears the burden of proving by a preponderance of the
13 evidence that the property is not exempt from seizure and
14 forfeiture.

15 (c) Nothing in this section precludes a prosecuting attorney from
16 establishing a seizure threshold higher than those described in
17 subsection (a).

18 (d) The prosecuting attorney in a county may prescribe one (1)
19 or more publications that a law enforcement agency may use to
20 establish the value of a motor vehicle seized within the county.

21 Sec. 7. When property is seized, the law enforcement officer who
22 seizes the property shall give an itemized receipt to the person
23 possessing the property at the time of the seizure. If the person
24 possessing the property is not present, the law enforcement officer
25 shall leave a receipt in the place where the property was found, if
26 reasonably possible.

27 Sec. 8. (a) A law enforcement officer, other than the prosecuting
28 attorney, may not request a person to waive the person's interest
29 in property for purposes of seizure or forfeiture.

30 (b) A waiver prohibited under subsection (a) is void as against
31 public policy and is inadmissible as evidence against the person
32 who owns or possesses the property in any judicial proceeding.

33 Sec. 9. (a) As soon as practicable following a seizure, the
34 prosecuting attorney shall perform a reasonable search of public
35 records to identify any person, other than the defendant, known to
36 have an interest in the property subject to forfeiture.

37 (b) The prosecuting attorney shall give notice to any person, not
38 charged, believed to have an interest in the property subject to
39 forfeiture. Notice must be given as provided by the Indiana rules
40 of trial procedure.

41 (c) The notice described in subsection (b) must include the
42 following or substantially similar language:



1 **"WARNING: You may lose the right to be heard in court if**
2 **you do not file promptly a statement of interest or ownership.**
3 **You do not have to pay a filing fee to file your notice."**

4 **The language described in this subsection must be conspicuous and**
5 **set forth in not less than 12 point type.**

6 **(d) If notice is not served on any person appearing to have an**
7 **interest in the property and no time extension is granted or the**
8 **extension period has expired, the prosecuting attorney or court, if**
9 **applicable, shall return or order the return of the property to the**
10 **person who makes a request. Contraband may not be returned.**

11 **Sec. 10. (a) This section does not apply to contraband.**

12 **(b) A defendant, or any other person with an interest in seized**
13 **property, has a right to a prompt postseizure hearing.**

14 **(c) A person with an interest in the seized property may petition**
15 **the court for a hearing.**

16 **(d) The court shall set a postseizure hearing not later than thirty**
17 **(30) days after the date of the seizure. The court may hold a**
18 **postseizure hearing:**

19 **(1) as a separate hearing; or**

20 **(2) at the same time as the initial hearing or other pretrial**
21 **hearing.**

22 **(e) Any party to the postseizure hearing, by agreement or for**
23 **good cause, may move for one (1) extension of not more than ten**
24 **(10) days.**

25 **(f) At the conclusion of the postseizure hearing, the court shall**
26 **order the return of the seized property if it finds one (1) or more of**
27 **the following:**

28 **(1) The seizure was invalid.**

29 **(2) The property is not subject to forfeiture under section 1 of**
30 **this chapter.**

31 **(3) A criminal charge has not been filed and the statute of**
32 **limitations has expired.**

33 **(4) The property is not reasonably required to be held as**
34 **evidence.**

35 **(5) The final judgment likely will be in favor of the defendant**
36 **or any other person with an interest in the property.**

37 **(6) The property is the only reasonable means for the**
38 **defendant to pay for legal representation, unless the**
39 **prosecuting attorney shows by clear and convincing evidence**
40 **that the property is the instrumentality of or proceeds derived**
41 **directly from the crime for which the defendant is charged.**

42 **(g) At the court's discretion, it may order the return of sufficient**



1 funds and property, not needed as evidence, for the defendant to
 2 pay reasonable attorney's fees and costs of the defendant's counsel
 3 of choice.

4 **Sec. 11. (a) The court may not order property forfeited to the**
 5 **state if the property is owned by an innocent owner.**

6 **(b) The prosecuting attorney shall return property to an**
 7 **innocent owner as soon as practicable after learning that the**
 8 **property is owned by an innocent owner.**

9 **(c) If the prosecuting attorney does not return property to an**
 10 **innocent owner, the innocent owner may petition the court for**
 11 **return of the property at any time before the court enters an order**
 12 **for forfeiture under section 13 of this chapter.**

13 **(d) In a petition for return of property to an innocent owner, the**
 14 **petitioner must include a statement briefly describing:**

- 15 **(1) why the petitioner is an innocent owner;**
- 16 **(2) the petitioner's right, title, or interest in the property;**
- 17 **(3) the time, facts, and circumstances surrounding the**
 18 **petitioner's acquisition of the interest in the property;**
- 19 **(4) any additional facts supporting the petitioner's claim; and**
- 20 **(5) the relief sought by the petitioner.**

21 **(e) A petitioner under this section:**

- 22 **(1) is not required to pay a filing fee; and**
- 23 **(2) shall serve a copy of the petition on the prosecuting**
 24 **attorney.**

25 **(f) The court shall hear the petition not later than thirty (30)**
 26 **days after its filing, unless the court sets another time for hearing.**
 27 **The court may consolidate the hearing on the petition with any**
 28 **other hearing before the court in the case.**

29 **(g) In a hearing under this section:**

- 30 **(1) the petitioner has the burden of proving by a**
 31 **preponderance of the evidence the validity of the petitioner's**
 32 **ownership interest; and**
- 33 **(2) if the petitioner has established an ownership interest, the**
 34 **prosecuting attorney has the burden of proving by clear and**
 35 **convincing evidence that the petitioner is not an innocent**
 36 **owner because:**

37 **(A) the petitioner had actual knowledge that the property**
 38 **would be used in the crime with which the defendant is**
 39 **charged; or**

40 **(B) the petitioner is not a bona fide purchaser without**
 41 **notice of any defect in title and for valuable consideration.**

42 **If the petitioner meets the burden under subdivision (1) and the**



1 prosecuting attorney fails to meet the burden under subdivision (2),
 2 the court shall order the state to relinquish all claims and return
 3 the property to the petitioner. However, if the petitioner has a
 4 partial ownership interest, the court shall order only the return of
 5 that portion of the property in which the petitioner has an
 6 ownership interest, and may order the property sold in accordance
 7 with section 19 of this chapter.

8 **Sec. 12. (a)** The court may not order property forfeited to the
 9 state if and to the extent that the property is encumbered by a
 10 security interest, other than a security interest held by the
 11 defendant or an innocent owner.

12 (b) The prosecuting attorney shall return property to a secured
 13 interest holder as soon as practicable after learning that the
 14 property is encumbered by a security interest.

15 (c) If the prosecuting attorney does not return property to a
 16 secured interest holder, the secured interest holder may petition
 17 the court for return of the property at any time before the court
 18 enters an order for forfeiture under section 13 of this chapter.

19 (d) In a petition for return of property to a secured interest
 20 holder, the petitioner must include a statement briefly describing:

- 21 (1) the nature and extent of the security interest;
- 22 (2) the time, facts, and circumstances surrounding the
- 23 security interest;
- 24 (3) any additional facts supporting the petitioner's claim; and
- 25 (4) the relief sought by the petitioner.

26 (e) A petitioner under this section:

- 27 (1) is not required to pay a filing fee; and
- 28 (2) shall serve a copy of the petition on the prosecuting
- 29 attorney.

30 (f) The court shall hear the petition not later than thirty (30)
 31 days after its filing, unless the court sets another time for hearing.
 32 The court may consolidate the hearing on the petition with any
 33 other hearing before the court in the case.

34 (g) In a hearing under this section:

- 35 (1) the petitioner has the burden of proving by a
- 36 preponderance of the evidence the validity and extent of the
- 37 petitioner's security interest; and
- 38 (2) if the petitioner has established a security interest, the
- 39 prosecuting attorney has the burden of proving by clear and
- 40 convincing evidence that:
 - 41 (A) the petitioner's interest is invalid;
 - 42 (B) the petitioner's interest resulted from a fraudulent



1 conveyance or fraudulent transfer; or

2 (C) the petitioner consented to the use of the property in
3 the crime for which the defendant is charged.

4 If the petitioner meets the burden under subdivision (1) and the
5 prosecuting attorney fails to meet the burden under subdivision (2),
6 the court shall order the state to relinquish all claims and return to
7 the petitioner the portion of the property to which the security
8 interest applies. If the petitioner's secured interest only applies to
9 part of the property, the court may order the property sold in
10 accordance with section 19 of this chapter.

11 Sec. 13. (a) In a criminal proceeding, the state may seek, on a
12 page separate from the rest of a charging instrument, to forfeit
13 property, if:

- 14 (1) the person is convicted of the charged offense; and
15 (2) the state proves by clear and convincing evidence that the
16 property:
17 (A) is an instrumentality of the charged offense;
18 (B) consists of proceeds from the charged offense; or
19 (C) consists of property purchased with the proceeds of the
20 charged offense.

21 (b) The state must identify, on the page seeking forfeiture, the
22 property sought to be forfeited with as much specificity as is
23 reasonably possible under the circumstances.

24 (c) If the person is convicted of the offense in a jury trial, the
25 jury shall reconvene to hear evidence in the forfeiture hearing. If
26 the trial was to the court, or the judgment was entered on a guilty
27 plea, the court alone shall hear evidence in the forfeiture hearing.

28 (d) If the jury (if the hearing is by jury) or the court (if the
29 hearing is to the court alone) finds that the state has proved by
30 clear and convincing evidence that the property is:

- 31 (1) an instrumentality;
32 (2) the proceeds; or
33 (3) property purchased with the proceeds;

34 of the crime of which the person was convicted, the court shall,
35 except as otherwise provided in this chapter, order the property
36 forfeited to the state. The court may order the forfeiture of
37 substitute property in accordance with section 15 of this chapter.

38 Sec. 14. The court may not order property forfeited to the state
39 if the forfeiture would be unconstitutionally excessive or
40 disproportionate under the federal or state constitution. In
41 determining whether the forfeiture is unconstitutionally excessive,
42 the court shall consider the fair market value of the property and



1 all relevant factors, including:

- 2 (1) the seriousness of the crime and its impact on the
 3 community, including the duration of the activity and harm
 4 caused by the defendant;
 5 (2) the extent to which the defendant participated in the
 6 crime;
 7 (3) the extent to which the property was used in committing
 8 the crime;
 9 (4) the sentence to be imposed for committing the crime;
 10 (5) whether the crime was completed or attempted;
 11 (6) the hardship to the defendant if the forfeiture is realized
 12 and if the forfeiture would deprive the defendant of the
 13 defendant's livelihood; and
 14 (7) the hardship from the loss of property to the defendant's
 15 family members or others if the property is forfeited.

16 The court may not consider the value of the property to the state
 17 in determining whether the forfeiture is unconstitutionally
 18 excessive or disproportionate.

19 Sec. 15. If the state proves by a preponderance of the evidence
 20 that the defendant intentionally:

- 21 (1) dissipated the property;
 22 (2) transferred, sold, or deposited property with a third party
 23 to avoid forfeiture;
 24 (3) diminished substantially the value of property; or
 25 (4) commingled property with other property that cannot be
 26 divided without difficulty;

27 the court may order the forfeiture of substitute property owned
 28 solely by the defendant up to the value of the property described in
 29 subdivisions (1) through (4).

30 Sec. 16. (a) The state may not seek a personal money judgment
 31 or another remedy related to the forfeiture of property not
 32 expressly provided for in this chapter.

33 (b) A defendant is not jointly and severally liable for a forfeiture
 34 award owed by another defendant. However, if the precise
 35 ownership is unclear, the court may order each defendant to forfeit
 36 property on a pro rata basis or by another means the court finds
 37 equitable.

38 Sec. 17. If the property owner prevails by recovering at least
 39 half, by value, of the seized property, the law enforcement agency
 40 that seized the property shall be liable for court costs and other
 41 reasonable attorney's fees incurred by the claimant and directly
 42 related to the seizure. In addition, the claimant is entitled to any



1 interest or income earned by the property, and to postjudgment
2 interest, if applicable.

3 Sec. 18. (a) If the court orders the return of property, the law
4 enforcement agency that holds the property shall return the
5 property to the rightful owner within a reasonable period not to
6 exceed five (5) days after the date of the order.

7 (b) The rightful owner is not liable for any expenses related to
8 towing, storage, or preservation of the property.

9 (c) The law enforcement agency that has custody of the property
10 is responsible for any damages, storage fees, and related costs
11 applicable to property returned under this section.

12 Sec. 19. (a) Contraband shall be disposed of in accordance with
13 IC 35-33-5-5.

14 (b) If abandoned property or property seized from a defendant
15 who:

- 16 (1) flees the jurisdiction;
- 17 (2) dies; or
- 18 (3) is deported;

19 is no longer needed as evidence and is not required to be retained,
20 the court may order it to be sold in accordance with this section.

21 (c) If the court orders real property forfeited, the court shall
22 order the sale of the property in the same manner as real property
23 is sold on execution under IC 34-55-6.

24 (d) Where disposition of property is to be made at a public sale,
25 notice of sale shall be published in accordance with IC 34-55-6.

26 (e) When property is sold at a public sale under this chapter, the
27 proceeds shall be distributed in the following order:

- 28 (1) First, to the sheriff of the county for all expenditures made
29 or incurred in connection with the sale, including storage,
30 transportation, and necessary repair.
- 31 (2) Second, to an innocent owner.
- 32 (3) Third, to a secured interest holder, up to the amount of
33 that person's interest as determined by the court.
- 34 (4) Fourth, at the discretion of the court and in amounts
35 determined by the court, to:
 - 36 (A) pay restitution to the victim of the crime;
 - 37 (B) satisfy recorded liens, mortgages, or filed security
38 interests in the forfeited property;
 - 39 (C) pay reasonable costs for the towing, storage,
40 maintenance, repairs, advertising and sale, and other
41 operating costs related to the forfeited property;
 - 42 (D) reimburse the seizing law enforcement agency for



1 nonpersonnel operating costs, including controlled drug
 2 buy money, actually incurred and calculated on a case by
 3 case basis, to the investigation of the crime; and
 4 (E) reimburse the prosecuting attorney, public defender, or
 5 court appointed attorney for nonpersonnel court costs,
 6 including filing fees, subpoenas, court reporters, and
 7 transcripts actually incurred in the prosecution and
 8 defense of the crime associated with the forfeiture, as
 9 calculated on a case by case basis.

10 (5) Fifth, the court may, in its discretion, distribute:

11 (A) up to fifty percent (50%) of the remaining funds to
 12 reimburse the seizing law enforcement agency for the
 13 salaries, benefits, and overtime pay of uniformed personnel
 14 actually expended in the seizure of the property and
 15 investigation of the crime and calculated on a case by case
 16 basis;

17 (B) up to twenty-five percent (25%) of the remaining funds
 18 to reimburse the prosecuting authority for the salaries,
 19 benefits, and overtime pay actually expended in the
 20 prosecution of the crime and forfeiture proceeding and
 21 calculated on a case by case basis; and

22 (C) up to twenty-five percent (25%) of the remaining funds
 23 to reimburse the county public defender or court (in the
 24 case of a court appointed public defender) for the salaries,
 25 benefits, and overtime pay actually expended in the defense
 26 of the criminal defendant and forfeiture proceeding and
 27 calculated on a case by case basis.

28 The court shall order all remaining proceeds transferred to
 29 the treasurer of state for deposit in the common school fund.

30 (f) Forfeited currency, cash, and cash equivalents shall be
 31 distributed in the same manner as proceeds are distributed under
 32 subsection (e)(2) through (e)(5).

33 Sec. 20. The following persons may not purchase property sold
 34 at a sale conducted under section 19 of this chapter:

35 (1) A law enforcement officer.

36 (2) An employee of a law enforcement agency.

37 (3) A relative (as defined in IC 36-1-20.2-8) of a person
 38 described in subdivision (1) or (2).

39 Sec. 21. Property seized under this chapter may not be
 40 transferred to a federal authority for disposition under 18 U.S.C.
 41 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e), or any related
 42 regulations adopted by the United States Department of Justice,



1 **unless the property was seized in connection with an investigation**
 2 **conducted by a joint federal-state task force.**

3 SECTION 24. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,
 4 SECTION 225, IS AMENDED TO READ AS FOLLOWS
 5 [EFFECTIVE JULY 1, 2022]: Sec. 5. (a) All items of property seized
 6 by any law enforcement agency as a result of an arrest, search warrant,
 7 or warrantless search, shall be securely held by the law enforcement
 8 agency under the order of the court trying the cause, except as provided
 9 in this section.

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

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

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

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

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

24 the law enforcement agency holding the property shall, at a
 25 convenient time, dispose of this property at a public auction. The
 26 proceeds of this property shall be paid into the county general
 27 fund.

28 (2) Except as provided in subsection (e), property, the possession
 29 of which is unlawful, shall be destroyed by the law enforcement
 30 agency holding it sixty (60) days after final disposition of the
 31 cause.

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

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

38 (e) A law enforcement agency may destroy or cause to be destroyed
 39 chemicals, controlled substances, or chemically contaminated
 40 equipment (including drug paraphernalia as described in
 41 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or
 42 controlled substances without a court order if all the following



- 1 conditions are met:
- 2 (1) The law enforcement agency collects and preserves a
- 3 sufficient quantity of the chemicals, controlled substances, or
- 4 chemically contaminated equipment to demonstrate that the
- 5 chemicals, controlled substances, or chemically contaminated
- 6 equipment was associated with the illegal manufacture of drugs
- 7 or controlled substances.
- 8 (2) The law enforcement agency takes photographs of the illegal
- 9 drug manufacturing site that accurately depict the presence and
- 10 quantity of chemicals, controlled substances, and chemically
- 11 contaminated equipment.
- 12 (3) The law enforcement agency completes a chemical inventory
- 13 report that describes the type and quantities of chemicals,
- 14 controlled substances, and chemically contaminated equipment
- 15 present at the illegal manufacturing site.
- 16 The photographs and description of the property shall be admissible
- 17 into evidence in place of the actual physical evidence.
- 18 (f) For purposes of preserving the record of any conviction on
- 19 appeal, a photograph demonstrating the nature of the property, and an
- 20 adequate description of the property must be obtained before the
- 21 disposition of the property. In the event of a retrial, the photograph and
- 22 description of the property shall be admissible into evidence in place
- 23 of the actual physical evidence. All other rules of law governing the
- 24 admissibility of evidence shall apply to the photographs.
- 25 (g) The law enforcement agency disposing of property in any
- 26 manner provided in subsection (b), (c), or (e) shall maintain certified
- 27 records of any disposition under subsection (b), (c), or (e). Disposition
- 28 by destruction of property shall be witnessed by two (2) persons who
- 29 shall also attest to the destruction.
- 30 (h) This section does not affect the procedure for the disposition of
- 31 firearms seized by a law enforcement agency.
- 32 (i) A law enforcement agency that disposes of property by auction
- 33 under this section shall permanently stamp or otherwise permanently
- 34 identify the property as property sold by the law enforcement agency.
- 35 (j) Upon motion of the prosecuting attorney, the court shall order
- 36 property seized under ~~IC 34-24-1~~ **IC 35-32-4 in connection with an**
- 37 **investigation conducted by a joint federal-state task force**
- 38 transferred, subject to the perfected liens or other security interests of
- 39 any person in the property, to the appropriate federal authority for
- 40 disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
- 41 881(e) and any related regulations adopted by the United States
- 42 Department of Justice. **However, a court may not order seized**



1 **property transferred to a federal authority for disposition under**
 2 **this subsection if the property was not seized in connection with an**
 3 **investigation conducted by a joint federal-state task force.**

4 SECTION 25. IC 36-1-17-2, AS ADDED BY P.L.128-2005,
 5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2022]: Sec. 2. Except as provided in section 3 of this chapter,
 7 a unit or municipal corporation may not pay the legal expenses incurred
 8 by an officer or employee of the unit or the municipal corporation:

9 (1) in defending against:

10 (A) a criminal action;

11 (B) a civil action brought by the attorney general of the United
 12 States, a United States attorney, the attorney general of
 13 Indiana, or an Indiana prosecuting attorney under:

14 ~~(i) IC 34-24-1;~~

15 ~~(ii) (i) IC 34-24-2;~~

16 ~~(iii) (ii) IC 34-24-3;~~

17 ~~(iv) (iii) IC 5-11-5;~~

18 ~~(v) (iv) IC 5-11-6;~~

19 ~~(vi) (v) IC 5-13-6;~~

20 ~~(vii) (vi) IC 5-13-14-3; or~~

21 ~~(viii) (vii) 18 U.S.C. 1964; or~~

22 (C) a proceeding to enforce an ordinance or a statute defining
 23 an infraction; or

24 (2) who is the target of a grand jury investigation, if the scope of
 25 the investigation includes a claim that the officer or employee
 26 committed a criminal act.

