

First Regular Session 111th General Assembly (1999)

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 1998 General Assembly.

SENATE ENROLLED ACT No. 592

AN ACT to amend the Indiana Code concerning civil and criminal law and procedure.

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

SECTION 1. IC 34-24-1-9 IS ADDED TO THE INDIANA CODE A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: **Sec. 9. (a) Upon motion of a prosecuting attorney under IC 35-33-5-5(i), property seized under this chapter must be transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.**

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

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

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

SEA 592



C
O
P
Y

SECTION 2. IC 35-33-5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 1999]: Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

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

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

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

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

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

the law enforcement agency holding the property shall, at such time as it is convenient, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

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

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

(f) The law enforcement agency disposing of property in any manner provided in subsections (b) and (c) of this section shall maintain certified records of any such disposition. Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

SEA 592



C
o
p
y

(g) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(h) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(i) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

C
o
p
y

