
SENATE BILL No. 553

DIGEST OF INTRODUCED BILL

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

Synopsis: Civil forfeiture. Provides that a prosecuting attorney may initiate a civil forfeiture by notifying the owner of the seized property of the intent to seize the property, and specifies that the property will be forfeited if the owner does not timely object. Provides that the owner of forfeited property may object to the forfeiture by objecting in writing to the forfeiture and (if the owner is not indigent) providing a 10% bond. Specifies that the prosecuting attorney is entitled to 22% of forfeited funds, the clerk of the courts to 3% of the funds, and the law enforcement agency that seized the property to 75% of the funds. Prohibits a prosecuting attorney from retaining an attorney to bring a forfeiture action, and prohibits adoptive forfeiture (where seized property is transferred to a federal court for a forfeiture action) unless required by federal law.

Effective: July 1, 2011.

Arnold

January 20, 2011, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.

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First Regular Session 117th General Assembly (2011)

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 2010 Regular Session of the General Assembly.

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SENATE BILL No. 553



A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 34-24-1-2 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 2. (a) Property may be
- 3 seized under this chapter by a law enforcement officer only if:
- 4 (1) the seizure is incident to a lawful:
 - 5 (A) arrest;
 - 6 (B) search; or
 - 7 (C) administrative inspection;
- 8 (2) the property has been the subject of a prior judgment in favor
- 9 of the state or unit in a proceeding under this chapter (or
- 10 IC 34-4-30.1 before its repeal); or
- 11 (3) a court, after making an ex parte determination that there is
- 12 probable cause to believe the property is subject to seizure under
- 13 this chapter, issues an order for seizure.
- 14 (b) When property is seized under subsection (a), the law
- 15 enforcement agency making the seizure:
 - 16 (1) may, pending final disposition:
 - 17 (†) (A) place the property under seal;



1 ~~(2)~~ **(B)** remove the property to a place designated by the court;
 2 or
 3 ~~(3)~~ **(C)** require another agency authorized by law to take
 4 custody of the property and remove it to an appropriate
 5 location; **and**
 6 **(2) shall, not later than forty-five (45) days after the property**
 7 **has been seized, notify the prosecuting attorney in writing of**
 8 **the seizure.**

9 (c) Property that is seized under subsection (a) (or IC 34-4-30.1-2(a)
 10 before its repeal) is not subject to replevin but is considered to be in the
 11 custody of the law enforcement agency making the seizure.

12 SECTION 2. IC 34-24-1-2.5 IS ADDED TO THE INDIANA CODE
 13 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 14 1, 2011]: **Sec. 2.5. (a) Not later than forty-five (45) days after**
 15 **receipt of a seizure notice described in section 2 of this chapter, the**
 16 **prosecuting attorney shall review the seizure and determine if**
 17 **there is probable cause to seek forfeiture of the property.**

18 **(b) If the prosecuting attorney determines that probable cause**
 19 **to seek forfeiture of the property does not exist, the prosecuting**
 20 **attorney shall instruct the law enforcement agency that seized the**
 21 **property to return the property.**

22 **(c) If the prosecuting attorney determines that probable cause**
 23 **exists to seek forfeiture of the property, the prosecuting attorney**
 24 **may institute forfeiture proceedings by transmitting to the owner**
 25 **and any person having an interest in the property:**

- 26 **(1) a written notice of intent to seek forfeiture of the property;**
- 27 **(2) an estimate of the fair market value of the property;**
- 28 **(3) a brief description of the grounds upon which the**
 29 **forfeiture is justified; and**
- 30 **(4) a written statement of the procedure to be followed to**
 31 **contest the forfeiture.**

32 SECTION 3. IC 34-24-1-2.7 IS ADDED TO THE INDIANA CODE
 33 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 34 1, 2011]: **Sec. 2.7. (a) If the owner or any person having an interest**
 35 **in property subject to forfeiture under this chapter objects to the**
 36 **forfeiture, not later than thirty (30) days after receipt of the notice**
 37 **described in section 2 of this chapter, the owner and any person**
 38 **having an interest in the property may transmit a verified**
 39 **objection to the forfeiture to the prosecuting attorney, succinctly**
 40 **setting forth why the property is not subject to forfeiture. Unless**
 41 **the owner and any person having an interest in the property are**
 42 **indigent, they shall file a bond with the clerk of the court at the**

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1 time of mailing the verified objection in the amount of ten percent
2 (10%) of the fair market value of the property.

3 (b) If the owner or any person having an interest in the property
4 does not timely object to the forfeiture or fails to file a bond when
5 required, the prosecuting attorney shall certify this fact to a circuit
6 or superior court, and the court shall dispose of the property in
7 accordance with section 4 of this chapter.

8 SECTION 4. IC 34-24-1-3 IS AMENDED TO READ AS
9 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) ~~The prosecuting~~
10 ~~attorney for the county in which the seizure occurs may, within ninety~~
11 ~~(90) days after receiving written notice from the owner demanding~~
12 ~~return of the seized property or within one hundred eighty (180) days~~
13 ~~after the property is seized; whichever occurs first; cause an action for~~
14 ~~reimbursement of law enforcement costs and forfeiture to be brought~~
15 ~~by filing a complaint in the circuit, superior, or county court in the~~
16 ~~jurisdiction where the seizure occurred. Not later than ten (10) days~~
17 ~~after receipt of a verified objection under section 2.7(a) of this~~
18 ~~chapter, the prosecuting attorney shall:~~

19 (1) order the property and the bond described in section 2.7
20 of this chapter returned to the owner and any person having
21 an interest in the property; or

22 (2) file an action for forfeiture in a circuit or superior court of
23 the county.

24 ~~The~~ An action under subdivision (2) must be brought

25 ~~(1)~~ in the name of the state or the state and the unit that employed
26 the law enforcement officers who made the seizure if the state
27 was not the employer, and

28 ~~(2)~~ within **must be brought not later than** the period that a
29 prosecution may be commenced under IC 35-41-4-2 for the
30 offense that is the basis for the seizure.

31 (b) If the property seized was a vehicle or real property, the
32 prosecuting attorney shall serve, under the Indiana Rules of Trial
33 Procedure, a copy of the complaint upon each person whose right, title,
34 or interest is of record in the bureau of motor vehicles, in the county
35 recorder's office, or other office authorized to receive or record vehicle
36 or real property ownership interests.

37 (c) The owner of the seized property, or any person whose right,
38 title, or interest is of record may, within twenty (20) days after service
39 of the complaint under the Indiana Rules of Trial Procedure, file an
40 answer to the complaint and may appear at the hearing on the action.

41 (d) If, at the end of the time allotted for an answer, there is no
42 answer on file, the court, upon motion, shall enter judgment in favor of

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1 the state and the unit (if appropriate) for ~~reimbursement of law~~
 2 ~~enforcement costs forfeiture~~ and shall order the property disposed of
 3 in accordance with section 4 of this chapter.

4 SECTION 5. IC 34-24-1-4 IS AMENDED TO READ AS
 5 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) At the hearing,
 6 the prosecuting attorney must show by a preponderance of the evidence
 7 that the property was within the definition of property subject to seizure
 8 under section 1 of this chapter. If the property seized was a vehicle, the
 9 prosecuting attorney must also show by a preponderance of the
 10 evidence that a person who has an ownership interest of record in the
 11 bureau of motor vehicles knew or had reason to know that the vehicle
 12 was being used in the commission of the offense.

13 (b) If the prosecuting attorney fails to meet the burden of proof, the
 14 court shall order the property **and the bond described in section 2.7**
 15 **of this chapter** released to the owner.

16 (c) If the court enters judgment in favor of the state, or the state and
 17 a unit (if appropriate), the court, subject to section 5 of this chapter,
 18 shall order delivery to the law enforcement agency that seized the
 19 property. The court's order may permit the agency to use the property
 20 for a period not to exceed three (3) years. However, the order must
 21 require that, after the period specified by the court, the law
 22 enforcement agency ~~shall to~~ deliver the property to the county sheriff
 23 for public sale. **In addition, the court shall order the bond described**
 24 **in section 2.7 of this chapter forfeited.**

25 (d) If the court enters judgment in favor of the state, or the state and
 26 a unit (if appropriate), the court shall, subject to section 5 of this
 27 chapter,

28 (1) ~~determine the amount of law enforcement costs; and~~

29 (2) order that:

30 (A) ~~the property, if it is not money or real property, be sold~~
 31 ~~under section 6 of this chapter, by the sheriff of the county in~~
 32 ~~which the property was seized, and if the property is a vehicle,~~
 33 ~~this sale must occur after any period of use specified in~~
 34 ~~subsection (c);~~

35 (B) ~~the property, if it is real property, be sold in the same~~
 36 ~~manner as real property is sold on execution under IC 34-55-6;~~

37 (C) ~~the proceeds of the sale or the money be:~~

38 (i) ~~deposited in the general fund of the state, or the unit that~~
 39 ~~employed the law enforcement officers that seized the~~
 40 ~~property; or~~

41 (ii) ~~deposited in the general fund of a unit if the property~~
 42 ~~was seized by a local law enforcement agency of the unit for~~

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1 an offense, an attempted offense, or a conspiracy to commit
 2 an offense under IC 35-47 as part of or in furtherance of an
 3 act of terrorism; and
 4 ~~(D)~~ any excess in value of the proceeds or the money over the
 5 law enforcement costs be forfeited and transferred to the
 6 treasurer of state for deposit in the common school fund.
 7 order the property, if it is not money or real property, to be sold
 8 under section 6 of this chapter by the sheriff of the county in which
 9 the property was seized. If the property is real property, the court
 10 shall order the property to be sold in the same manner as real
 11 property is sold on execution under IC 34-55-6.

12 (e) Money, the bond described in section 2.7 of this chapter, and
 13 funds from the sale of forfeited property shall be disposed of as
 14 follows:

- 15 (1) Twenty-two percent (22%) shall be deposited in the county
 16 general fund and shall be appropriated to the prosecuting
 17 attorney.
- 18 (2) Three percent (3%) shall be deposited in the county
 19 general fund and shall be appropriated to the clerk of the
 20 court to defray the costs of collecting the bond.
- 21 (3) If the law enforcement agency that seized the property is
 22 employed by a unit (as defined in IC 36-1-2-23), seventy-five
 23 percent (75%) shall be deposited in the general fund of the
 24 unit and shall be appropriated to the law enforcement agency
 25 that seized the property for purposes of enforcing the criminal
 26 laws that relate to the seized property.
- 27 (4) If the law enforcement agency that seized the property was
 28 the state police department, seventy-five percent (75%) shall
 29 be deposited in the drug interdiction fund (created under
 30 IC 10-11-7).
- 31 (5) If law enforcement agencies from more than one (1)
 32 jurisdiction seized the property, seventy-five percent (75%)
 33 shall be divided on a pro rata basis as determined by the court
 34 and distributed to the appropriate funds in a manner
 35 consistent with this section. However, a court may not order
 36 funds transferred to a jurisdiction outside Indiana unless:
 37 (A) federal law requires the transfer; or
 38 (B) the jurisdiction outside Indiana permits the proceeds
 39 of a forfeiture in that jurisdiction to be shared with a
 40 participating law enforcement agency in Indiana.

41 ~~(e)~~ (f) If property that is seized under this chapter (or IC 34-4-30.1-4
 42 before its repeal) is transferred:

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

5 the person to whom the property is transferred must establish an
 6 ownership interest of record as a bona fide purchaser for value. A
 7 person is a bona fide purchaser for value under this section if the
 8 person, at the time of the transfer, did not have reasonable cause to
 9 believe that the property was subject to forfeiture under this chapter.

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

16 SECTION 6. IC 34-24-1-5 IS AMENDED TO READ AS
 17 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) If:

- 18 (1) the court has entered judgment in favor of the state, and a unit
- 19 (if appropriate) concerning property that is subject to seizure
- 20 under this chapter; and
- 21 (2) a person:

- 22 (A) holding a valid lien, mortgage, security interest, or interest
- 23 under a conditional sales contract; or
- 24 (B) who is a co-owner of the property;
- 25 did not know of the illegal use;

26 the court shall determine whether the secured interest or the co-owner's
 27 interest is equal to or in excess of the appraised value of the property.

28 (b) Appraised value is to be determined as of the date of judgment
 29 on a wholesale basis by:

- 30 (1) agreement between the secured party or the co-owner and the
- 31 prosecuting attorney; or
- 32 (2) the inheritance tax appraiser for the county in which the action
- 33 is brought.

34 (c) If the amount:

- 35 (1) due to the secured party; or
- 36 (2) of the co-owner's interest;

37 is equal to or greater than the appraised value of the property, the court
 38 shall order the property released to the secured party or the co-owner.

39 (d) If the amount:

- 40 (1) due the secured party; or
- 41 (2) of the co-owner's interest;

42 is less than the appraised value of the property, the holder of the

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1 interest or the co-owner may pay into the court an amount equal to the
 2 owner's equity, which shall be the difference between the appraised
 3 value and the amount of the lien, mortgage, security interest, interest
 4 under a conditional sales contract, or co-owner's interest. Upon such
 5 payment, the state or unit, or both, shall relinquish all claims to the
 6 property, and the court shall order the payment deposited as provided
 7 in section ~~4(d)~~ 4 of this chapter.

8 ~~(c) If the seized property is a vehicle and if the security holder or the~~
 9 ~~co-owner elects not to make payment as stated in subsection (d), the~~
 10 ~~vehicle shall be disposed of in accordance with section 4(c) of this~~
 11 ~~chapter.~~

12 SECTION 7. IC 34-24-1-6 IS AMENDED TO READ AS
 13 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Where
 14 disposition of property is to be made at a public sale, notice of sale
 15 shall be published in accordance with IC 34-55-6.

16 (b) When property is sold at a public sale under this chapter, the
 17 proceeds shall be distributed in the following order:

18 (1) First, to the sheriff of the county for all expenditures made or
 19 incurred in connection with the sale, including storage,
 20 transportation, and necessary repair.

21 (2) Second, to any person:

22 (A) holding a valid lien, mortgage, land contract, or interest
 23 under a conditional sales contract or the holder of other such
 24 interest; or

25 (B) who is a co-owner and has an ownership interest;
 26 up to the amount of that person's interest as determined by the
 27 court.

28 (3) The remainder, if any, shall be transferred by the sheriff to the
 29 appropriate fund as ordered by the court in section ~~4(d)~~ 4 of this
 30 chapter.

31 SECTION 8. IC 34-24-1-8 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. ~~(a)~~ A prosecuting
 33 attorney may **not** retain an attorney to bring an action under this
 34 chapter.

35 ~~(b) An attorney retained under this section is not required to be a~~
 36 ~~deputy prosecuting attorney but must be admitted to the practice of law~~
 37 ~~in Indiana.~~

38 SECTION 9. IC 34-24-1-9 IS AMENDED TO READ AS
 39 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 9. **(a) This section**
 40 **applies only to the extent required by federal law.**

41 ~~(a)~~ **(b)** Upon motion of a prosecuting attorney under IC 35-33-5-5(j),
 42 property seized under this chapter must be transferred, subject to the

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1 perfected liens or other security interests of any person in the property,
2 to the appropriate federal authority for disposition under 18 U.S.C.
3 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related
4 regulations adopted by the United States Department of Justice.

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

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

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

17 SECTION 10. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,
18 SECTION 225, IS AMENDED TO READ AS FOLLOWS
19 [EFFECTIVE JULY 1, 2011]: Sec. 5. (a) All items of property seized
20 by any law enforcement agency as a result of an arrest, search warrant,
21 or warrantless search, shall be securely held by the law enforcement
22 agency under the order of the court trying the cause, except as provided
23 in this section.

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

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

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

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

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

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

42 (2) Except as provided in subsection (e), property, the possession

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

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

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

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

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

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

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

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

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

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

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1 shall also attest to the destruction.
2 (h) This section does not affect the procedure for the disposition of
3 firearms seized by a law enforcement agency.
4 (i) A law enforcement agency that disposes of property by auction
5 under this section shall permanently stamp or otherwise permanently
6 identify the property as property sold by the law enforcement agency.
7 (j) **This subsection applies only to the extent required by federal**
8 **law.** Upon motion of the prosecuting attorney, the court shall order
9 property seized under IC 34-24-1 transferred, subject to the perfected
10 liens or other security interests of any person in the property, to the
11 appropriate federal authority for disposition under 18 U.S.C. 981(e), 19
12 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted
13 by the United States Department of Justice.

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