CONFERENCE COMMITTEE REPORT
DIGEST FOR ESB 215

Citations Affected: IC 34-24-1.

Synopsis: Forfeiture. Conference committee report for ESB 215. Requires counties to create an asset forfeiture account. Provides that, in a forfeiture proceeding, 1/3 of the proceeds may be provided to the prosecuting attorney or an attorney retained by the prosecuting attorney in a forfeiture action, unless the prosecuting attorney has declined a request from the state police department to transfer the forfeiture to federal jurisdiction, in which case 20% of the proceeds but no more than $5,000 may be transferred to the prosecuting attorney. Provides that of the remaining proceeds, 15% shall be provided to the common school fund and 85% shall be distributed to an account for distribution to law enforcement agencies participating in the seizure as necessary law enforcement expenses. Specifies that money or the proceeds of seized property placed in a county asset forfeiture account may be disbursed only by action of the county legislative body under a claim submitted by a law enforcement agency or prosecuting attorney, and must be disbursed pursuant to an interlocal agreement, if applicable. Permits a prosecuting attorney to retain an attorney to bring a forfeiture action only if the attorney general reviews the compensation agreement between the prosecuting attorney and the retained attorney, and requires that the compensation agreement with the attorney be capped at: (1) 33 1/3% of the first $10,000 of the amount of the proceeds or money obtained; (2) 25% of the part of the amount between $10,000 and $100,000; and (3) 20% of the part of the amount that is at least $100,000; unless a court finds that the forfeiture action is unusually complex. Requires a court to notify the Indiana criminal justice institute of the amount and manner of a forfeiture distribution. Provides that a prosecuting attorney or deputy prosecuting attorney who engages in a forfeiture action for the prosecuting attorney's office may not receive a contingency fee. **(This conference committee report: (1) provides that the prosecuting attorney or attorney retained by a prosecuting attorney receives 20% (to a maximum of $5,000) of the forfeiture proceeds if the prosecuting attorney declines to transfer a forfeiture case to federal jurisdiction; (2) provides that 15% of the remaining funds shall be transferred to the common school fund, and 85% to participating law enforcement agencies as necessary law enforcement expenses; (3) removes a provision permitting the state police department to move to transfer a forfeiture to federal jurisdiction; and (4) removes provisions concerning the school safety fund.)**

Effective: July 1, 2011.

CONFERENCE COMMITTEE REPORT

MADAM PRESIDENT:

Your Conference Committee appointed to confer with a like committee from the House upon Engrossed House Amendments to Engrossed Senate Bill No. 215 respectfully reports that said two committees have conferred and agreed as follows to wit:

that the Senate recede from its dissent from all House amendments and that the Senate now concur in all House amendments to the bill and that the bill be further amended as follows:

Delete everything after the enacting clause and insert the following:

SECTION 1. IC 34-24-1-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 3. (a) The prosecuting attorney for the county in which the seizure occurs may, within ninety (90) days after receiving written notice from the owner demanding return of the seized property or within one hundred eighty (180) days after the property is seized, whichever occurs first, cause an action for ~~reimbursement of law enforcement costs and~~ forfeiture to be brought by filing a complaint in the circuit, superior, or county court in the jurisdiction where the seizure occurred. The action must be brought:

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

(2) within the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure.

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

(c) The owner of the seized property, or any person whose right,

title, or interest is of record may, within twenty (20) days after service of the complaint under the Indiana Rules of Trial Procedure, file an answer to the complaint and may appear at the hearing on the action.

(d) If, at the end of the time allotted for an answer, there is no answer on file, the court, upon motion, shall enter judgment in favor of the state ~~and the unit (if appropriate) for reimbursement of law enforcement costs~~ and shall order the property disposed of in accordance with section 4 of this chapter.

SECTION 2. IC 34-24-1-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense. **If the property seized was personal property that is not a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest in the personal property knew or had reason to know that the personal property was being used in the commission of the offense.**

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

(c) If the court enters judgment in favor of the state, ~~or the state and a unit (if appropriate),~~ the court, subject to section 5 of this chapter, shall order ~~delivery to the law enforcement agency that seized the property.~~ **distribution of the property in accordance with subsection (d).** The court's order may permit the **law enforcement** agency to use the property for a period not to exceed three (3) years. However, the order must require that, after the period specified by the court, the law enforcement agency shall deliver the property to the county sheriff for public sale.

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

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

~~(2)~~ order that:

~~(A)~~ **(1)** the property, if it is not money or real property, be sold under section 6 of this chapter by the sheriff of the county in which the property was seized, and if the property is a vehicle, this sale must occur after any period of use specified in subsection (c);

~~(B)~~ **(2)** the property, if it is real property, be sold in the same manner as real property is sold on execution under IC 34-55-6;

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

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

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

~~an offense, an attempted offense, or a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism; and~~

~~(D) any excess in value of the proceeds or the money over the law enforcement costs be forfeited and transferred to the treasurer of state for deposit in the common school fund.~~ **and**

(3) the proceeds of the sale or the money shall be transferred to the county auditor for deposit in the county's asset forfeiture account, established by ordinance, for distribution as follows:

(A) If the state police department has not requested that the seized property be transferred 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, not more than thirty-three and one-third percent (33 1/3%) of the proceeds of the sale or the money to be transferred as an administrative fee to:

(i) the prosecuting attorney's office only if an attorney was not retained under a compensation agreement under section 8 of this chapter; or

(ii) an attorney retained by the prosecuting attorney under a compensation agreement under section 8 of this chapter.

(B) If the prosecuting attorney has declined a request from the state police department that the seized property be transferred 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, not more than twenty percent (20%) of the proceeds of the sale or the money, up to a maximum of five thousand dollars ($5,000), to be transferred as an administrative fee to:

(i) the prosecuting attorney's office only if an attorney was not retained under a compensation agreement under section 8 of this chapter; or

(ii) an attorney retained by the prosecuting attorney under a compensation agreement under section 8 of this chapter.

After the administrative fee is deducted under clause (A) or (B), fifteen percent (15%) of the remaining money or sale proceeds shall be transferred to the county auditor for deposit in the common school fund, and eighty-five percent (85%) of the remaining money or sale proceeds shall be distributed to the county auditor for distribution to law enforcement agencies participating in the seizure or forfeiture, as provided in subsection (e).

(e) The distribution of the eighty-five percent (85%) share allocated to law enforcement agencies under subsection (d)(3) must be made as follows:

(1) Pursuant to a claim submitted by the prosecuting attorney

to the county auditor on behalf of the prosecuting attorney or another agency. However, a claim on behalf of the prosecuting attorney may be approved only if:

(A) the prosecuting attorney is not entitled to the administrative fee under subsection (d)(3); and

(B) the prosecuting attorney presents documented evidence of direct costs incurred as a result of the seizure or forfeiture.

(2) In accordance with the terms of an interlocal agreement or memorandum of understanding among all local, state, out-of-state, and federal law enforcement agencies and the prosecuting attorney, if applicable.

(3) If there is no interlocal agreement or memorandum of understanding among all local, state, out-of-state, and federal law enforcement agencies and the prosecuting attorney, the court may distribute remaining proceeds among local, state, out-of-state, and federal law enforcement agencies and the prosecuting attorney in proportion to the contribution the agency or prosecuting attorney made to the seizure or forfeiture. In determining the appropriate distribution under this subdivision, the court shall consider any form, document, agreement, or other documentary evidence relevant to this distribution. The prosecuting attorney may receive a distribution under this subdivision only if:

(A) the prosecuting attorney is not entitled to the administrative fee under subsection (d)(3); and

(B) the prosecuting attorney presents documented evidence of direct costs incurred as a result of the seizure or forfeiture.

Funds distributed to a law enforcement agency of a city or town shall be transferred to the fiscal body of the city or town and may only be disbursed pursuant to an appropriation. Funds distributed under this subsection may be used only for law enforcement purposes.

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

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

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

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

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

(h) This subsection applies to every forfeiture action, including a forfeiture action that is the result of a settlement. Every forfeiture action must be filed with a court. Except for money or property seized under this chapter that is transferred to a federal authority under IC 34-24-1-9, money or other proceeds from a forfeiture action may be disbursed only in accordance with this section.

(i) As soon as practicable after the proceeds of the forfeiture have been distributed, the court shall notify the Indiana criminal justice institute of the amount and manner of the distribution.

(j) Funds transferred:

(1) as an administrative fee to a prosecuting attorney or an attorney retained by a prosecuting attorney under subsection (d)(3)(A) or (d)(3)(B); or

(2) to a law enforcement agency or prosecuting attorney under subsection (e);

are necessary reimbursement of law enforcement expenses without which a forfeiture could not have been effected.

SECTION 3. IC 34-24-1-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 6. (a) Where disposition of property is to be made at a public sale, notice of sale shall be published in accordance with IC 34-55-6.

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

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

(2) Second, to any person:

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

(B) who is a co-owner and has an ownership interest;

up to the amount of that person's interest as determined by the court.

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

SECTION 4. IC 34-24-1-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 8. (a) A prosecuting attorney may retain an attorney to bring an action under this chapter **only in accordance with this section.**

(b) The compensation agreement between a prosecuting attorney and an attorney retained to bring an action under this chapter must be:

(1) in writing; and

(2) approved by the attorney general for form and legality.

(c) Except as provided in subsection (d), a compensation agreement between a prosecuting attorney and an attorney retained to bring an action under this chapter may be established under a contingency fee agreement limited as follows:

(1) The contingency fee may not exceed thirty-three and

one-third percent (33 1/3%) of the first ten thousand dollars ($10,000) of proceeds or money obtained under a settlement or judgment.

(2) The contingency fee may not exceed twenty-five percent (25%) of the part of the proceeds or money obtained under a settlement or judgment that is more than ten thousand dollars ($10,000) and less than one hundred thousand dollars ($100,000).

(3) The contingency fee may not exceed twenty percent (20%) of the part of the proceeds or money obtained under a settlement or judgment that is at least one hundred thousand dollars ($100,000).

(d) A court may authorize a compensation agreement between a prosecuting attorney and an attorney retained to bring an action under this chapter that exceeds the limits established in subsection (c) if the court finds that the issues presented in a particular forfeiture action are unusually complex or time consuming as compared with other forfeiture actions.

~~(b)~~ **(e)** An attorney retained under this section is not required to be a deputy prosecuting attorney, but must be admitted to the practice of law in Indiana. **A prosecuting attorney or deputy prosecuting attorney who engages in a forfeiture action for the prosecuting attorney's office may not receive a contingency fee.**

(f) A prosecuting attorney may request the assistance of the attorney general in bringing an action under this chapter. The attorney general may decline to provide assistance.

(g) If an attorney retained under this section is paid on a contingency or percentage basis, the value of seized property used to calculate the attorney's fee is, unless otherwise ordered by a court:

(1) for currency, the value of the seized currency; and

(2) for other property, the amount realized from the sale of the property at auction.

(Reference is to ESB 215 as reprinted April 12, 2011.)

Conference Committee Report
on
Engrossed Senate Bill 215

Signed by:

Senator Bray Chairperson	Representative Foley
Senator Lanane	Representative Lawson L
Senate Conferees	**House Conferees**