

COMMITTEE REPORT

MADAM PRESIDENT:

The Senate Committee on Judiciary, to which was referred Senate Bill No. 215, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

1 Page 1, delete lines 1 through 17, begin a new paragraph, and insert:
2 "SECTION 1. IC 34-24-1-4 IS AMENDED TO READ AS
3 FOLLOWS [EFFECTIVE JULY 1, 2011]: Sec. 4. (a) At the hearing,
4 the prosecuting attorney must show by a preponderance of the evidence
5 that the property was within the definition of property subject to seizure
6 under section 1 of this chapter. If the property seized was a vehicle, the
7 prosecuting attorney must also show by a preponderance of the
8 evidence that a person who has an ownership interest of record in the
9 bureau of motor vehicles knew or had reason to know that the vehicle
10 was being used in the commission of the offense.
11 (b) If the prosecuting attorney fails to meet the burden of proof, the
12 court shall order the property released to the owner.
13 (c) If the court enters judgment in favor of the state, or the state and
14 a unit (if appropriate), the court, subject to section 5 of this chapter,
15 shall order delivery to the law enforcement agency that seized the
16 property. The court's order may permit the agency to use the property
17 for a period not to exceed three (3) years. However, the order must
18 require that, after the period specified by the court, the law
19 enforcement agency shall deliver the property to the county sheriff for

1 public sale.

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

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

6 ~~(2) order that:~~

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

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

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

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

18 ~~(ii) deposited in the general fund of a unit if the property~~
19 ~~was seized by a local law enforcement agency of the unit for~~
20 ~~an offense; an attempted offense; or a conspiracy to commit~~
21 ~~an offense under IC 35-47 as part of or in furtherance of an~~
22 ~~act of terrorism; and~~

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

26 **(3) the proceeds of the sale or money be deposited as follows:**

27 **(A) Eighty-five percent (85%) of the proceeds shall be**
28 **deposited in the:**

29 **(i) state police asset forfeiture fund, if the property was**
30 **seized by the state police department; or**

31 **(ii) local law enforcement forfeiture fund, if the unit has**
32 **established a local law enforcement forfeiture fund. If**
33 **there is no local law enforcement forfeiture fund, the**
34 **proceeds shall be deposited in the safe schools fund**
35 **established under IC 5-2-10.1.**

36 **(B) Fifteen percent (15%) of the proceeds shall be**
37 **transferred to the treasurer of state for deposit in the**
38 **common school fund.**

1 **If law enforcement agencies from more than one (1) jurisdiction**
 2 **participated in the seizure of forfeited property, the court shall**
 3 **determine how the proceeds of the sale or money shall be divided**
 4 **among the participating law enforcement agencies.**

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

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

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

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

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

22 **(g) Twenty-five percent (25%) of the part of the sale proceeds**
 23 **or money under subsection (d)(3)(A) shall be transferred to the**
 24 **state general fund for disbursement to the prosecuting attorney for**
 25 **use in defraying the expense of initiating and maintaining a**
 26 **forfeiture action. However, a prosecuting attorney may not receive**
 27 **in one (1) action more than:**

28 **(1) ten thousand dollars (\$10,000), if the total value of**
 29 **property seized under this article is less than one hundred**
 30 **thousand dollars (\$100,000); or**

31 **(2) twenty thousand dollars (\$20,000), if the total value of**
 32 **property seized under this article is one hundred thousand**
 33 **dollars (\$100,000) or more.**

34 **(h) Proceeds or money described under subsection (d)(3)(A)**
 35 **may be:**

36 **(1) disbursed only from the local law enforcement forfeiture**
 37 **fund under an appropriation; and**

38 **(2) used only for law enforcement purposes.**

1 **(i) This subsection applies to every forfeiture action, including**
 2 **a forfeiture action that is the result of a settlement. Every**
 3 **forfeiture action must be filed with a court. Money or other**
 4 **proceeds from a forfeiture action may only be disbursed under a**
 5 **court order.**

6 **(j) As soon as practicable after the proceeds of the forfeiture**
 7 **have been distributed, the court shall notify the state police**
 8 **department of the amount and manner of the distribution."**

9 Delete pages 2 through 3.

10 Page 4, delete line 1.

11 Page 4, line 20, delete "4(e)" and insert "4".

12 Page 4, line 29, delete "general." and insert "**general for form and**
 13 **legality."**

14 Page 4, line 30, delete "The" and insert "**Except as provided in**
 15 **subsection (d), the"**.

16 Page 4, delete lines 39 through 42, begin a new paragraph and
 17 insert:

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

24 Page 5, delete lines 1 through 4.

25 Page 5, after line 7, begin a new paragraph and insert:

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

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

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

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

(Reference is to SB 215 as introduced.)

and when so amended that said bill do pass.

Committee Vote: Yeas 7, Nays 0.

Bray

Chairperson