

HOUSE BILL No. 1028

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1-1; IC 35-44-3-3.

Synopsis: Forfeiture of vehicle used to flee law enforcement. Provides that a vehicle used in committing resisting law enforcement is subject to seizure if the vehicle is owned by the operator, or the spouse of the operator, of the vehicle.

Effective: July 1, 2012.

Cheatham, Mahan

January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.

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Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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HOUSE BILL No. 1028



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 34-24-1-1, AS AMENDED BY P.L.182-2011,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2012]: Sec. 1. (a) The following may be seized:
4 (1) All vehicles (as defined by IC 35-41-1), if they are used or are
5 intended for use by the person or persons in possession of them to
6 transport or in any manner to facilitate the transportation of the
7 following:
8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:
11 (i) Dealing in or manufacturing cocaine or a narcotic drug
12 (IC 35-48-4-1).
13 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
14 (iii) Dealing in a schedule I, II, or III controlled substance
15 (IC 35-48-4-2).
16 (iv) Dealing in a schedule IV controlled substance
17 (IC 35-48-4-3).



- 1 (v) Dealing in a schedule V controlled substance
 2 (IC 35-48-4-4).
 3 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
 4 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
 5 (viii) Possession of methamphetamine (IC 35-48-4-6.1).
 6 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
 7 (x) Dealing in marijuana, hash oil, hashish, salvia, or a
 8 synthetic cannabinoid (IC 35-48-4-10).
 9 (B) Any stolen (IC 35-43-4-2) or converted property
 10 (IC 35-43-4-3) if the retail or repurchase value of that property
 11 is one hundred dollars (\$100) or more.
 12 (C) Any hazardous waste in violation of IC 13-30-10-1.5.
 13 (D) A bomb (as defined in IC 35-41-1-4.3) or weapon of mass
 14 destruction (as defined in IC 35-41-1-29.4) used to commit,
 15 used in an attempt to commit, or used in a conspiracy to
 16 commit an offense under IC 35-47 as part of or in furtherance
 17 of an act of terrorism (as defined by IC 35-41-1-26.5).
 18 (2) All money, negotiable instruments, securities, weapons,
 19 communications devices, or any property used to commit, used in
 20 an attempt to commit, or used in a conspiracy to commit an
 21 offense under IC 35-47 as part of or in furtherance of an act of
 22 terrorism or commonly used as consideration for a violation of
 23 IC 35-48-4 (other than items subject to forfeiture under
 24 IC 16-42-20-5 or IC 16-6-8.5-5.1 before its repeal):
 25 (A) furnished or intended to be furnished by any person in
 26 exchange for an act that is in violation of a criminal statute;
 27 (B) used to facilitate any violation of a criminal statute; or
 28 (C) traceable as proceeds of the violation of a criminal statute.
 29 (3) Any portion of real or personal property purchased with
 30 money that is traceable as a proceed of a violation of a criminal
 31 statute.
 32 (4) A vehicle that is used by a person to:
 33 (A) commit, attempt to commit, or conspire to commit;
 34 (B) facilitate the commission of; or
 35 (C) escape from the commission of;
 36 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 37 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 38 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense
 39 under IC 35-47 as part of or in furtherance of an act of terrorism.
 40 (5) Real property owned by a person who uses it to commit any of
 41 the following as a Class A felony, a Class B felony, or a Class C
 42 felony:

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- 1 (A) Dealing in or manufacturing cocaine or a narcotic drug
 2 (IC 35-48-4-1).
 3 (B) Dealing in methamphetamine (IC 35-48-4-1.1).
 4 (C) Dealing in a schedule I, II, or III controlled substance
 5 (IC 35-48-4-2).
 6 (D) Dealing in a schedule IV controlled substance
 7 (IC 35-48-4-3).
 8 (E) Dealing in marijuana, hash oil, hashish, salvia, or a
 9 synthetic cannabinoid (IC 35-48-4-10).
 10 (6) Equipment and recordings used by a person to commit fraud
 11 under IC 35-43-5-4(10).
 12 (7) Recordings sold, rented, transported, or possessed by a person
 13 in violation of IC 24-4-10.
 14 (8) Property (as defined by IC 35-41-1-23) or an enterprise (as
 15 defined by IC 35-45-6-1) that is the object of a corrupt business
 16 influence violation (IC 35-45-6-2).
 17 (9) Unlawful telecommunications devices (as defined in
 18 IC 35-45-13-6) and plans, instructions, or publications used to
 19 commit an offense under IC 35-45-13.
 20 (10) Any equipment, including computer equipment and cellular
 21 telephones, used for or intended for use in preparing,
 22 photographing, recording, videotaping, digitizing, printing,
 23 copying, or disseminating matter in violation of IC 35-42-4.
 24 (11) Destructive devices used, possessed, transported, or sold in
 25 violation of IC 35-47.5.
 26 (12) Tobacco products that are sold in violation of IC 24-3-5,
 27 tobacco products that a person attempts to sell in violation of
 28 IC 24-3-5, and other personal property owned and used by a
 29 person to facilitate a violation of IC 24-3-5.
 30 (13) Property used by a person to commit counterfeiting or
 31 forgery in violation of IC 35-43-5-2.
 32 (14) After December 31, 2005, if a person is convicted of an
 33 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
 34 following real or personal property:
 35 (A) Property used or intended to be used to commit, facilitate,
 36 or promote the commission of the offense.
 37 (B) Property constituting, derived from, or traceable to the
 38 gross proceeds that the person obtained directly or indirectly
 39 as a result of the offense.
 40 (15) Except as provided in subsection (e), a motor vehicle used by
 41 a person who operates the motor vehicle:
 42 (A) while intoxicated, in violation of IC 9-30-5-1 through

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1 IC 9-30-5-5, if in the previous five (5) years the person has two
2 (2) or more prior unrelated convictions:

3 (i) for operating a motor vehicle while intoxicated in
4 violation of IC 9-30-5-1 through IC 9-30-5-5; or

5 (ii) for an offense that is substantially similar to IC 9-30-5-1
6 through IC 9-30-5-5 in another jurisdiction; or

7 (B) on a highway while the person's driver's license is
8 suspended in violation of IC 9-24-19-2 through IC 9-24-19-4,
9 if in the previous five (5) years the person has two (2) or more
10 prior unrelated convictions:

11 (i) for operating a motor vehicle while intoxicated in
12 violation of IC 9-30-5-1 through IC 9-30-5-5; or

13 (ii) for an offense that is substantially similar to IC 9-30-5-1
14 through IC 9-30-5-5 in another jurisdiction.

15 If a court orders the seizure of a motor vehicle under this
16 subdivision, the court shall transmit an order to the bureau of
17 motor vehicles recommending that the bureau not permit a motor
18 vehicle to be registered in the name of the person whose motor
19 vehicle was seized until the person possesses a current driving
20 license (as defined in IC 9-13-2-41).

21 (16) The following real or personal property:

22 (A) Property used or intended to be used to commit, facilitate,
23 or promote the commission of an offense specified in
24 IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or
25 IC 30-2-13-38(f).

26 (B) Property constituting, derived from, or traceable to the
27 gross proceeds that a person obtains directly or indirectly as a
28 result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b),
29 IC 30-2-10-9(b), or IC 30-2-13-38(f).

30 **(17) Except as provided in subsection (e), a motor vehicle used**
31 **by a person to commit resisting law enforcement**
32 **(IC 35-44-3-3(b)).**

33 (b) A vehicle used by any person as a common or contract carrier in
34 the transaction of business as a common or contract carrier is not
35 subject to seizure under this section, unless it can be proven by a
36 preponderance of the evidence that the owner of the vehicle knowingly
37 permitted the vehicle to be used to engage in conduct that subjects it to
38 seizure under subsection (a).

39 (c) Equipment under subsection (a)(10) may not be seized unless it
40 can be proven by a preponderance of the evidence that the owner of the
41 equipment knowingly permitted the equipment to be used to engage in
42 conduct that subjects it to seizure under subsection (a)(10).

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1 (d) Money, negotiable instruments, securities, weapons,
 2 communications devices, or any property commonly used as
 3 consideration for a violation of IC 35-48-4 found near or on a person
 4 who is committing, attempting to commit, or conspiring to commit any
 5 of the following offenses shall be admitted into evidence in an action
 6 under this chapter as prima facie evidence that the money, negotiable
 7 instrument, security, or other thing of value is property that has been
 8 used or was to have been used to facilitate the violation of a criminal
 9 statute or is the proceeds of the violation of a criminal statute:

10 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a
 11 narcotic drug).

12 (2) IC 35-48-4-1.1 (dealing in methamphetamine).

13 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 14 substance).

15 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).

16 (5) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 17 as a Class B felony.

18 (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a
 19 Class A felony, Class B felony, or Class C felony.

20 (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Class
 21 A felony, Class B felony, or Class C felony.

22 (8) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, salvia,
 23 or a synthetic cannabinoid) as a Class C felony.

24 (e) A motor vehicle operated by a person who is not:

25 (1) an owner of the motor vehicle; or

26 (2) the spouse of the person who owns the motor vehicle;

27 is not subject to seizure under subsection (a)(15) **or (a)(17)** unless it
 28 can be proven by a preponderance of the evidence that the owner of the
 29 vehicle knowingly permitted the vehicle to be used to engage in
 30 conduct that subjects it to seizure under subsection (a)(15) **or (a)(17)**.

31 SECTION 2. IC 35-44-3-3, AS AMENDED BY P.L.42-2011,
 32 SECTION 74, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2012]: Sec. 3. (a) A person who knowingly or intentionally:

34 (1) forcibly resists, obstructs, or interferes with a law enforcement
 35 officer or a person assisting the officer while the officer is
 36 lawfully engaged in the execution of the officer's duties;

37 (2) forcibly resists, obstructs, or interferes with the authorized
 38 service or execution of a civil or criminal process or order of a
 39 court; or

40 (3) flees from a law enforcement officer after the officer has, by
 41 visible or audible means, including operation of the law
 42 enforcement officer's siren or emergency lights, identified himself

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1 or herself and ordered the person to stop;
 2 commits resisting law enforcement, a Class A misdemeanor, except as
 3 provided in subsection (b).

4 (b) The offense under subsection (a) is a:

5 (1) Class D felony if:

6 (A) the offense is described in subsection (a)(3) and the person
 7 uses a vehicle to commit the offense; or

8 (B) while committing any offense described in subsection (a),
 9 the person draws or uses a deadly weapon, inflicts bodily
 10 injury on or otherwise causes bodily injury to another person,
 11 or operates a vehicle in a manner that creates a substantial risk
 12 of bodily injury to another person;

13 (2) Class C felony if, while committing any offense described in
 14 subsection (a), the person operates a vehicle in a manner that
 15 causes serious bodily injury to another person;

16 (3) Class B felony if, while committing any offense described in
 17 subsection (a), the person operates a vehicle in a manner that
 18 causes the death of another person; and

19 (4) Class A felony if, while committing any offense described in
 20 subsection (a), the person operates a vehicle in a manner that
 21 causes the death of a law enforcement officer while the law
 22 enforcement officer is engaged in the officer's official duties.

23 (c) For purposes of this section, a law enforcement officer includes
 24 an enforcement officer of the alcohol and tobacco commission and a
 25 conservation officer of the department of natural resources.

26 (d) If a person uses a vehicle to commit a felony offense under
 27 subsection (b)(1)(B), (b)(2), (b)(3), or (b)(4), as part of the criminal
 28 penalty imposed for the offense, the court shall impose a minimum
 29 executed sentence of at least:

30 (1) thirty (30) days, if the person does not have a prior unrelated
 31 conviction under this section;

32 (2) one hundred eighty (180) days, if the person has one (1) prior
 33 unrelated conviction under this section; or

34 (3) one (1) year, if the person has two (2) or more prior unrelated
 35 convictions under this section.

36 (e) Notwithstanding IC 35-50-2-2 and IC 35-50-3-1, the mandatory
 37 minimum sentence imposed under subsection (d) may not be
 38 suspended.

39 (f) If a person is convicted of an offense involving the use of a motor
 40 vehicle under:

41 (1) subsection (b)(1)(A), if the person exceeded the speed limit by
 42 at least twenty (20) miles per hour while committing the offense;

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1 (2) subsection (b)(2); or
2 (3) subsection (b)(3);
3 the court may notify the bureau of motor vehicles to suspend or revoke
4 the person's driver's license and all certificates of registration and
5 license plates issued or registered in the person's name in accordance
6 with IC 9-30-4-6(b)(3) for the period described in IC 9-30-4-6(d)(4) or
7 IC 9-30-4-6(d)(5). The court shall inform the bureau whether the
8 person has been sentenced to a term of incarceration. At the time of
9 conviction, the court may obtain the person's current driver's license
10 and return the license to the bureau of motor vehicles.
11 **(g) If a person is convicted of an offense involving the use of a**
12 **motor vehicle under subsection (b), the motor vehicle may be**
13 **seized under IC 34-24-1-1(a)(17) if the person, or the spouse of the**
14 **person, owns the motor vehicle.**

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