

# SENATE BILL No. 113

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 4-2-7-6; IC 6-7-3; IC 7.1-2-5; IC 8-21-1-8; IC 9-30-6-4.3; IC 10-11-2-11; IC 13-30-8-1; IC 16-42-20-5; IC 33-39-8; IC 34-6-2; IC 34-24; IC 35-33-5-5; IC 35-53; IC 36-1-17-2.

**Synopsis:** Seizure and forfeiture reporting. Provides that forfeiture may only occur following a criminal conviction. Establishes a procedure for criminal forfeiture, and repeals provisions relating to civil forfeiture. Requires that certain information concerning forfeitures be annually reported to the legislative council. Makes conforming amendments.

**Effective:** July 1, 2017.

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## Kruse

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January 4, 2017, read first time and referred to Committee on Corrections and Criminal Law.

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First Regular Session 120th General Assembly (2017)

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 2016 Regular Session of the General Assembly.

## SENATE BILL No. 113

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 4-2-7-6, AS AMENDED BY P.L.136-2012,  
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 6. (a) This section applies if the inspector general  
4 finds evidence of misfeasance, malfeasance, nonfeasance,  
5 misappropriation, fraud, or other misconduct that has resulted in a  
6 financial loss to the state or in an unlawful benefit to an individual in  
7 the conduct of state business.  
8 (b) If the inspector general finds evidence described in subsection  
9 (a), the inspector general shall certify a report of the matter to the  
10 attorney general and provide the attorney general with any relevant  
11 documents, transcripts, or written statements. Not later than one  
12 hundred eighty (180) days after receipt of the report from the inspector  
13 general, the attorney general shall do one (1) of the following:  
14 (1) File a civil action (including an action upon a state officer's  
15 official bond) to secure for the state the recovery of funds  
16 misappropriated, diverted, missing, or unlawfully gained. Upon  
17 request of the attorney general, the inspector general shall assist



the attorney general in the investigation, preparation, and prosecution of the civil action.

(2) Inform the inspector general that the attorney general does not intend to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. If the attorney general elects not to file a civil action, the attorney general shall return to the inspector general all documents and files initially provided by the inspector general.

(3) Inform the inspector general that the attorney general is diligently investigating the matter and after further investigation may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained. However, if more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general, the attorney general loses the authority to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained and shall return to the inspector general all documents and files initially provided by the inspector general.

(c) If the inspector general has found evidence described in subsection (a) and reported to the attorney general under subsection (b) and:

(1) the attorney general has elected under subsection (b)(2) not to file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained; or

(2) under subsection (b)(3) more than three hundred sixty-five (365) days have passed since the inspector general certified the report to the attorney general under subsection (b) and the attorney general has not filed a civil action;

the inspector general may file a civil action for the recovery of funds misappropriated, diverted, missing, or unlawfully gained.

~~(d) If the inspector general has found evidence described in subsection (a), the inspector general may institute forfeiture proceedings under IC 34-24-2 in a court having jurisdiction in a county where property derived from or realized through the misappropriation, diversion, disappearance, or unlawful gain of state funds may be located, unless a prosecuting attorney has already instituted forfeiture proceedings against that property.~~

~~(e)~~ (d) The inspector general may directly institute civil proceedings against a person who has failed to pay civil penalties imposed by the ethics commission under IC 4-2-6-12.

SECTION 2. IC 6-7-3-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 14. All jeopardy assessments issued



for nonpayment of tax shall be considered a secondary lien to the seizure and forfeiture provisions of ~~IC 16-42-20, IC 34-24-1, IC 34-24-2, and~~ any federal law.

SECTION 3. IC 6-7-3-20 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 20. The excise taxes required by this chapter are intended to be in addition to any criminal penalties under IC 35-48-4. ~~and forfeitures under IC 16-42-20, IC 34-24-1, or IC 34-24-2 (or IC 34-4-30.1 or IC 34-4-30.5 before their repeal).~~

SECTION 4. IC 7.1-2-5-7 IS REPEALED [EFFECTIVE JULY 1, 2017]. ~~Sec. 7. A person who is interested in illegal transportation; or who has knowledge of it, shall have no right, title, or interest in or to a conveyance of any kind used for the illegal transportation of alcohol; alcoholic beverages; malt articles; or a tobacco product.~~

SECTION 5. IC 7.1-2-5-8, AS AMENDED BY P.L.94-2008, SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. An officer who makes an arrest for a violation of the provisions of this title shall seize the evidence of the commission of that violation, including any vehicle, automobile, boat, air or water craft, or other conveyance in which alcohol, alcoholic beverages, malt articles, or tobacco products are kept, possessed, or transported contrary to law, or contrary to a rule or regulation of the commission. ~~The articles and vehicles mentioned in this section and in sections 5 through 7 of this chapter are hereby declared forfeited to the state and shall be seized.~~

SECTION 6. IC 8-21-1-8, AS AMENDED BY P.L.2-2014, SECTION 34, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 8. (a) The department shall encourage, foster, and assist in the development of aeronautics in this state and shall encourage the establishment of airports, landing fields, and other navigation facilities.

(b) The department shall cooperate with and assist the federal government, the political subdivisions of this state, and others engaged in aeronautics or the advancement of aeronautics and shall seek to coordinate the aeronautical activities of these bodies.

(c) All rules prescribed by the department concerning aeronautics shall be kept in conformity with, and limited to as nearly as may be, the then current federal legislation governing aeronautics and the regulations duly promulgated thereunder.

(d) The department shall develop and continuously update a proposed state airports system plan which will best serve the interests of the state and its political subdivisions. Such state airports system plan shall be coordinated with the national airport plan prepared by the



1 federal agency fostering civil aviation.

2 (e) The department may publish and revise from time to time a state  
3 airways system plan, and maps, directories, or other materials deemed  
4 necessary may be sold by the department at a price which shall be fixed  
5 by the department. All money accruing from the sale of any such  
6 publication:

7 (1) shall be paid into the state treasury;

8 (2) shall be credited to the department; and

9 (3) is hereby appropriated to such department to be used for  
10 future publications by the department, without reversion to the  
11 general fund of the state at the end of any fiscal year. However,  
12 any time the balance in said fund exceeds ten thousand dollars  
13 (\$10,000), such excess shall revert to the general fund of the state.

14 (f) The department may offer the engineering or other technical  
15 advice of the department, without charge, to any municipality or person  
16 desiring them in connection with the construction, maintenance, or  
17 operation or proposed construction, maintenance, or operation of an  
18 airport or landing field.

19 (g) The department may recommend necessary legislation to  
20 advance the interests of the state in aeronautics and represent the state  
21 in aeronautical matters before federal agencies and other state agencies.

22 (h) The department shall have the power to approve or disapprove  
23 all purchases made by any municipality of any land to be used by said  
24 municipality for the establishment of any airport or landing field, and  
25 the establishment by any municipality of any airport or landing field.

26 (i) The department may participate as party plaintiff or defendant,  
27 or as intervener on behalf of the state or any municipality or citizen  
28 thereof in any controversy having to do with any claimed encroachment  
29 by the federal government or any foreign state upon any state or  
30 individual rights pertaining to aeronautics.

31 (j) Municipalities are authorized to cooperate with the department  
32 in the development of aeronautics and aeronautical facilities and  
33 services of other agencies of the state to the utmost extent possible, and  
34 such agencies are authorized and directed to make available such  
35 facilities and services.

36 (k) The department, or any employee designated by it, shall have the  
37 power to hold investigations, and hearings concerning matters covered  
38 by this chapter and orders and rules of the department, in accordance  
39 with IC 4-21.5. All hearings so conducted shall be open to the public.  
40 The reports of investigations or hearings, or any part thereof, shall not  
41 be admitted in evidence or used for any purpose in any suit, action, or  
42 proceeding, growing out of any matter referred to in said investigation,



1 hearing, or report thereof, except in case of criminal or other  
 2 proceedings instituted in behalf of the department or this state under  
 3 the provisions of this chapter and other laws of this state.

4 (l) The department may render advice in the acquisition,  
 5 development, operation, or maintenance of airports owned, controlled,  
 6 or operated, or to be owned, controlled, or operated, by municipalities  
 7 in this state.

8 (m) The department may not grant any exclusive right for the use of  
 9 any airway, airport, landing field, or other air navigation facility under  
 10 its jurisdiction. This subsection shall not prevent the making of leases  
 11 in accordance with other provisions of this chapter.

12 (n) Gifts or grants of money for aeronautical purposes may be  
 13 received by the state and shall be deposited in an aviation fund.  
 14 Disbursal of such funds shall be for aeronautical purposes only or for  
 15 the purpose for which they were given or granted. Gifts or grants of  
 16 property for aeronautical purposes may be received by the state and  
 17 shall be used for the purpose given or granted. Gifts or grants of money  
 18 or property for aeronautical purposes must be administered in the same  
 19 manner as other gifts and grants received by the state are administered.

20 (o) The department may adopt rules under IC 4-22-2 for the control  
 21 of aircraft accident sites in Indiana. Until representatives of appropriate  
 22 federal agencies arrive on the site of an aircraft accident, state and local  
 23 law enforcement agencies and accident investigation agencies shall  
 24 comply with any rules adopted by the department under this section.

25 (p) ~~The department may, with written approval of the budget~~  
 26 ~~agency, purchase and operate aircraft forfeited under IC 34-24-1 (or~~  
 27 ~~IC 34-4-30.1 before its repeal). When the department acquires an~~  
 28 ~~aircraft, it shall pay all proper expenses of the proceedings for~~  
 29 ~~forfeiture and sale, including expenses of seizure, maintenance of~~  
 30 ~~custody, and advertising and court costs.~~

31 SECTION 7. IC 9-30-6-4.3, AS AMENDED BY P.L.13-2013,  
 32 SECTION 40, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 33 JULY 1, 2017]: Sec. 4.3. (a) This section applies only to a person  
 34 whose motor vehicle has been seized under ~~IC 34-24-1-1(a)(15);~~  
 35 **IC 35-53-14-3(27).**

36 (b) If the bureau receives an order from a court recommending that  
 37 the bureau not register a motor vehicle in the name of a person whose  
 38 motor vehicle has been seized under ~~IC 34-24-1-1(a)(15);~~  
 39 **IC 35-53-14-3(27)**, the bureau may not register a motor vehicle in the  
 40 name of the person whose motor vehicle has been seized until the  
 41 person proves that the person possesses a driver's license with valid  
 42 driving privileges.



SECTION 8. IC 10-11-2-11 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 11: (a) The superintendent, with the approval of the board and the budget agency, may accept for use by the department a motor vehicle forfeited under IC ~~16-42-20-5~~.

(b) If the department accepts a vehicle described in subsection (a), the department shall pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, and advertising and court costs.

SECTION 9. IC 13-30-8-1, AS AMENDED BY P.L.114-2008, SECTION 24, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. A vehicle that is used to transport hazardous waste in the commission of an offense described in IC 13-30-10-1.5 is subject to forfeiture under IC ~~34-24-1~~. **IC 35-53.**

SECTION 10. IC 16-42-20-5 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 5: (a) The following are subject to forfeiture:

(1) All controlled substances that are or have been unlawfully manufactured, distributed, dispensed, acquired, or possessed, or with respect to which there has been an act by a person in violation of laws relating to controlled substances.

(2) All raw materials, instruments, devices, and other objects that are used or intended for use by the person in possession of them in unlawfully planting, growing, manufacturing, compounding, processing, delivering, importing, or exporting a controlled substance.

(3) All property that is used or intended for use by the person in possession of the property as a container for property described in subdivision (1) or (2).

(4) All books, records, and research products and materials, including formulas, microfilm, tapes, and data that are used or intended for use by the person in possession in violation of a law relating to controlled substances.

(b) Property subject to forfeiture under this chapter may be seized by an enforcement officer upon process issued by any state court of record having jurisdiction over the property. Seizure without process may be made if any of the following conditions exist:

(1) The seizure is incident to an arrest, a search under a search warrant, or an inspection under an administrative inspection warrant.

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding.

(3) The Indiana board of pharmacy has probable cause to believe



that the property is directly or indirectly dangerous to health or safety.

(4) The Indiana board of pharmacy has probable cause to believe that the property was used by the person in possession of the property or is intended to be used in violation of a law relating to controlled substances.

(c) In a seizure under subsection (b), proceedings under subsection (d) shall be instituted promptly.

(d) Property taken or detained under this section is not subject to replevin; but is considered to be in the custody of the Indiana board of pharmacy subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the Indiana board of pharmacy may do any of the following:

(1) Place the property under seal.

(2) Remove the property to a place designated by the board.

(3) Take custody of the property and remove the property to an appropriate location for disposition in accordance with law.

All property seized under this chapter shall be retained by the Indiana board of pharmacy until all proceedings in which the property may be involved have concluded.

(e) When property is forfeited under this chapter, the Indiana board of pharmacy shall do the following:

(1) Sell property that by law is not required to be transferred or destroyed; that has a monetary value; and that is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure; maintenance of custody; advertising; and court costs. All proceeds in excess of expenses shall be paid into the common school fund of the state.

(2) Take custody of property that has no monetary value or cannot lawfully be sold and remove the property for disposition in accordance with administrative rule or forward the property to the Drug Enforcement Administration for disposition.

(f) Controlled substances listed in schedule I that are unlawfully possessed; transferred; sold; or offered for sale are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in schedule I that are seized or come into the possession of the state, the owners of which are unknown; are contraband and shall be summarily forfeited to the state.

(g) Species of plants from which controlled substances in schedules I and II may be derived that:





(1) have been unlawfully planted or cultivated and the owners or cultivators are unknown; or  
 (2) are wild growths;  
 may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the Indiana board of pharmacy or the board's authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that the person is the holder of the plants constitutes authority for the seizure and forfeiture of the plants.

SECTION 11. IC 33-39-8-5, AS AMENDED BY P.L.237-2015, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. The council shall do the following:

(1) Assist in the coordination of the duties of the prosecuting attorneys of the state and their staffs.

(2) Prepare manuals of procedure.

(3) Give assistance in preparation of the trial briefs, forms, and instructions.

(4) Conduct research and studies that would be of interest and value to all prosecuting attorneys and their staffs.

(5) Maintain liaison contact with study commissions and agencies of all branches of local, state, and federal government that will be of benefit to law enforcement and the fair administration of justice in Indiana.

(6) Adopt guidelines for the expenditure of funds derived from a deferral program or a pretrial diversion program.

(7) The council shall

~~(A) compile forfeiture data received under IC 34-24-1-4.5; and~~

~~(B) annually submit a the report concerning criminal forfeiture to the legislative council containing the compiled data.~~

The council shall submit the report to the legislative council before July 15 of every year. The report must be in an electronic format under IC 5-14-6. The council may adopt rules under IC 4-22-2 to implement this subdivision: **as required by IC 35-53-9-6.**

SECTION 12. IC 33-39-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) The drug prosecution fund is established. The council shall administer the fund. Expenditures from the fund may be made only in accordance with appropriations made by the general assembly.

(b) The council may use money from the fund to provide assistance



to prosecuting attorneys to:

- (1) investigate and prosecute violations of IC 35-48;
- (2) bring actions for forfeiture, law enforcement costs, and correction costs under ~~IC 34-24-1~~; **IC 35-53**;
- (3) bring actions for civil and criminal remedies for a violation of IC 35-45-6; and
- (4) obtain training, equipment, and technical assistance that would enhance the ability of prosecuting attorneys to reduce illegal drug activity.

(c) The treasurer of state shall invest the money in the fund not currently needed to meet the obligations of the fund in the same manner as other public funds may be invested.

(d) Money in the fund at the end of a fiscal year does not revert to the state general fund.

SECTION 13. IC 34-6-2-73 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 73: "Law enforcement costs", for purposes of ~~IC 34-24-1~~, means:

- (1) expenses incurred by the law enforcement agency that makes a seizure under ~~IC 34-24-1~~ (or ~~IC 34-4-30.1~~ before its repeal) for the criminal investigation associated with the seizure;
- (2) repayment of the investigative fund of the law enforcement agency that makes a seizure under ~~IC 34-24-1~~ to the extent that the agency can specifically identify any part of the money as having been expended from the fund; and
- (3) expenses of the prosecuting attorney associated with the costs of proceedings associated with the seizure and the offenses related to the seizure.

SECTION 14. IC 34-6-2-145 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 145: "Unit", for purposes of ~~IC 34-24-1~~ and ~~IC 34-24-2~~, has the meaning specified in ~~IC 36-1-2-23~~.

SECTION 15. IC 34-24-1 IS REPEALED [EFFECTIVE JULY 1, 2017]. (Forfeiture of Property Used in Violation of Certain Criminal Statutes).

SECTION 16. IC 34-24-2-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 1. (a) The prosecuting attorney in a county in which the violation occurs may bring an action under this section to enjoin a violation of IC 35-45-6-2 (corrupt business influence). An action under this section may be brought in any circuit or superior court in a county in which the violation occurs. If the court finds by a preponderance of the evidence that a violation of IC 35-45-6-2 has occurred, the court may:

- (1) order a defendant to divest the defendant of any interest in any



enterprise or property;

(2) impose reasonable restrictions upon the future activities or investments of a defendant, including prohibiting a defendant from engaging in the same type of endeavor as the enterprise in which the defendant was engaged in violation of IC 35-45-6-2;

(3) order the dissolution or reorganization of any enterprise;

(4) order the suspension or revocation of a license, permit, or prior approval granted to any enterprise by any agency of the state;

(5) order the forfeiture of the charter of a corporation organized under the laws of Indiana, or the revocation of a certificate authorizing a foreign corporation to conduct business within the state, upon finding that:

(A) the board of directors or a managerial agent acting on behalf of the corporation, in conducting the affairs of the corporation, has authorized or engaged in conduct in violation of IC 35-45-6-2; and

(B) for the prevention of future criminal activity, the public interest requires the charter of the corporation be forfeited and the corporation dissolved or the certificate revoked; and

(6) make any other order or judgment that the court considers appropriate.

In any order or judgment made by the court under this section, the judge shall make due provision for the rights of innocent persons, including a person having any rights, title, or interest of record in any of the property.

**(b) In addition to any other remedy, the prosecuting attorney may seek forfeiture under IC 35-53.**

SECTION 17. IC 34-24-2-2 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 2: (a) ~~The prosecuting attorney in a county in which any of the property is located may bring an action for the forfeiture of any property:~~

~~(1) used in the course of;~~

~~(2) intended for use in the course of;~~

~~(3) derived from; or~~

~~(4) realized through;~~

~~conduct in violation of IC 35-45-6-2.~~

~~(b) The inspector general may bring an action for forfeiture in accordance with IC 4-2-7-6 in a county where property that is:~~

~~(1) derived from; or~~

~~(2) realized through;~~

~~misfeasance, malfeasance, nonfeasance, misappropriation, fraud, or~~



1 other misconduct that has resulted in a financial loss to the state is  
2 located:

3 (c) An action for forfeiture may be brought in any circuit or superior  
4 court in a county in which any of the property is located:

5 (d) Upon a showing by a preponderance of the evidence that:

6 (1) property described in subsection (a) was used in the course of;  
7 intended for use in the course of; derived from; or realized  
8 through conduct in violation of IC 35-45-6-2; or

9 (2) property described in subsection (b) was derived from or  
10 realized through conduct described in subsection (b);

11 the court shall, subject to the right, title, or interest of record of any  
12 other party in the property determined under section 4 of this chapter;  
13 order the property forfeited to the state and specify the manner of  
14 disposition of the property; including the manner of disposition if the  
15 property is not transferable for value:

16 (e) The court shall order forfeitures and dispositions under this  
17 section:

18 (1) with due provision for the rights of innocent persons; and

19 (2) as provided under section 4 of this chapter:

20 SECTION 18. IC 34-24-2-3 IS REPEALED [EFFECTIVE JULY 1,  
21 2017]. Sec. 3: When an action is filed under section 2 of this chapter;  
22 the prosecuting attorney or the inspector general may move for an order  
23 to have property subject to forfeiture seized by a law enforcement  
24 agency. The judge shall issue such an order upon a showing of  
25 probable cause to believe that:

26 (1) a violation of IC 35-45-6-2, in the case of property described  
27 in section 2(a) of this chapter; or

28 (2) conduct described in section 2(b) of this chapter; in case of  
29 property described in section 2(b) of this chapter;

30 has occurred:

31 SECTION 19. IC 34-24-2-4 IS REPEALED [EFFECTIVE JULY 1,  
32 2017]. Sec. 4: (a) Property subject to forfeiture under this chapter shall  
33 be seized by a law enforcement officer upon court order. Seizure may  
34 be made without a court order only if:

35 (1) the seizure is incident to a lawful arrest or search; or to an  
36 inspection under an administrative inspection warrant; or

37 (2) the property subject to seizure has been the subject of a prior  
38 judgment in favor of the state in a forfeiture proceeding under this  
39 chapter (or IC 34-4-30.5 before its repeal):

40 (b) When property is seized under subsection (a); pending forfeiture  
41 and final disposition; the law enforcement officer making the seizure  
42 may:



- (1) place the property under seal;
- (2) remove the property to a place designated by the court; or
- (3) require another agency authorized by law to take custody of the property and remove it to an appropriate location.

(c) Property seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) is not subject to replevin; but is considered to be in the custody of the law enforcement officer making the seizure; subject only to order of the court. However, if a seizure of property is made in accordance with subsection (a), the prosecuting attorney or the inspector general shall bring an action for forfeiture under section 2 of this chapter within:

- (1) thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property; or

(2) one hundred eighty (180) days after the property is seized; whichever occurs first.

(d) If an action under subsection (c) is not filed within thirty (30) days after receiving notice from any person claiming a right, title, or interest in the property, the claimant:

- (1) is entitled to file a complaint seeking:

(A) replevin;

(B) foreclosure; or

(C) other appropriate remedy; and

- (2) shall immediately obtain a hearing on the complaint as provided in subsection (f):

If an action is not filed within one hundred eighty (180) days after the date of the seizure, and the property has not been previously released to an innocent person under section 5 of this chapter (or IC 34-4-30.5-4.5 before its repeal), the law enforcement agency whose officer made the seizure shall return the property to its owner.

(e) If property is seized under subsection (a) (or IC 34-4-30.5-4(a) before its repeal) and the property is a vehicle or real property, the prosecuting attorney or the inspector general shall serve, within thirty (30) days after the date the property is seized and as provided by the Indiana Rules of Trial Procedure, notice of seizure 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:

(f) The person whose right, title, or interest is of record may at any time file a complaint seeking:

(1) replevin;

(2) foreclosure; or

(3) another appropriate remedy;



1 to which the state may answer in forfeiture within the appropriate  
 2 statutory period. The court shall promptly set the matter for a hearing;  
 3 and in the case of replevin or foreclosure, the court shall set the hearing  
 4 as provided by the applicable statutory provisions.

5 SECTION 20. IC 34-24-2-5 IS REPEALED [EFFECTIVE JULY 1,  
 6 2017]. Sec. 5: (a) If a person holding a valid lien, mortgage, security  
 7 interest, or interest under a conditional sales contract did not know the  
 8 property was the object of corrupt business influence or conduct  
 9 described in section 2(b) of this chapter, the court shall determine  
 10 whether the secured interest is equal to or in excess of the appraised  
 11 value of the property.

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

14 (1) agreement between the secured party and the prosecuting  
 15 attorney; or

16 (2) the inheritance tax appraiser for the county in which the action  
 17 is brought.

18 (c) If the amount due to the secured party is equal to or greater than  
 19 the appraised value of the property, the court shall order the property  
 20 released to the secured party.

21 (d) If the amount due the secured party is less than the appraised  
 22 value of the property, the holder of the interest may pay into the court  
 23 an amount equal to the owner's equity, which shall be the difference  
 24 between the appraised value and the amount of the lien, mortgage,  
 25 security interest, or interest under a conditional sales contract. Upon  
 26 payment, the state or unit, or both, shall relinquish all claims to the  
 27 property.

28 SECTION 21. IC 34-24-2-6, AS AMENDED BY P.L.222-2005,  
 29 SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 30 JULY 1, 2017]: Sec. 6. (a) An aggrieved person may ~~in addition to~~  
 31 ~~proceeding under section 4 of this chapter~~, bring an action for  
 32 injunctive relief from corrupt business influence in a circuit or superior  
 33 court in the county of the aggrieved person's residence, or in a county  
 34 where any of the affected property or the affected enterprise is located.  
 35 If the court finds, through a preponderance of the evidence, that the  
 36 aggrieved person is suffering from corrupt business influence, the court  
 37 shall make an appropriate order for injunctive relief. This order must  
 38 be made in accordance with the principles that govern the granting of  
 39 injunctive relief from threatened loss or damage in other civil cases,  
 40 except that a showing of special or irreparable damage to the aggrieved  
 41 person is not required. The court may order injunctive relief only after  
 42 the execution of a bond by the aggrieved person for an injunction



improvidently granted, in an amount established by the court. In addition, the court may order a temporary restraining order or a preliminary injunction, but only after a showing of immediate danger of significant loss or damage to the aggrieved person.

(b) An aggrieved person may bring an action against a person who has violated IC 35-45-6-2 in a circuit or superior court in the county of the aggrieved person's residence, or in a county where any of the affected property or the affected enterprise is located, for damages suffered as a result of corrupt business influence. Upon a showing by a preponderance of the evidence that the aggrieved person has been damaged by corrupt business influence, the court shall order the person causing the damage through a violation of IC 35-45-6-2 to pay to the aggrieved person:

- (1) an amount equal to three (3) times the person's actual damages;
- (2) the costs of the action;
- (3) a reasonable attorney's fee; and
- (4) any punitive damages awarded by the court and allowable under law.

(c) The defendant and the aggrieved person are entitled to a trial by jury in an action brought under this section (or IC 34-4-30.5-5 before its repeal).

~~(d) In addition to any rights provided under section 4 of this chapter, An aggrieved person has a right or claim to forfeited property or to the proceeds derived from forfeited property superior to any right or claim the state has in the same property or proceeds.~~

(e) If the state is an aggrieved person, the attorney general and the inspector general have concurrent jurisdiction with the prosecuting attorney to bring an action under this section.

SECTION 22. IC 34-24-2-8 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 8: ~~(a) A prosecuting attorney or the inspector general may retain an attorney to bring an action under this chapter.~~

~~(b) 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.~~

SECTION 23. IC 35-33-5-5, AS AMENDED BY P.L.1-2007, SECTION 225, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: 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 **and IC 35-53.**



(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) **Except as provided in subsection (j)**, 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 a convenient time, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), 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.

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

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with **IC 35-53** or an order of the court trying the cause.

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

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

(2) The law enforcement agency takes photographs of the illegal





1 drug manufacturing site that accurately depict the presence and  
 2 quantity of chemicals, controlled substances, and chemically  
 3 contaminated equipment.

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

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

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

17 (g) The law enforcement agency disposing of property in any  
 18 manner provided in subsection (b), (c), or (e) shall maintain certified  
 19 records of any disposition under subsection (b), (c), or (e). Disposition  
 20 by destruction of property shall be witnessed by two (2) persons who  
 21 shall also attest to the destruction.

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

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

27 (j) ~~Upon motion of the prosecuting attorney, the court shall order~~  
 28 ~~property seized under IC 34-24-1 transferred; subject to the perfected~~  
 29 ~~liens or other security interests of any person in the property; to the~~  
 30 ~~appropriate federal authority for disposition under 18 U.S.C. 981(e), 19~~  
 31 ~~U.S.C. 1616a; or 21 U.S.C. 881(e) and any related regulations adopted~~  
 32 ~~by the United States Department of Justice. Property that was the~~  
 33 ~~subject of a forfeiture action shall be disposed of in accordance~~  
 34 ~~with IC 35-53.~~

35 SECTION 24. IC 35-53 IS ADDED TO THE INDIANA CODE AS  
 36 A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE JULY 1,  
 37 2017]:

## 38 **ARTICLE 53. FORFEITURE**

### 39 **Chapter 1. Definitions**

40 **Sec. 1. The definitions in this chapter apply throughout this**  
 41 **article.**

42 **Sec. 2. "Claimant" means a defendant or innocent third party**



1 having an ownership interest in seized property or property  
2 otherwise subject to forfeiture.

3 Sec. 3. "Contraband" means goods that are unlawful to possess.

4 The term:

5 (1) includes a prescription drug possessed by a person without  
6 a valid prescription; and

7 (2) does not include a firearm, even if the firearm was seized  
8 from a person who could not legally possess the firearm.

9 Sec. 4. "Conveyance" means a device used for ground, air, or  
10 water transportation and any trailer or other equipment attached  
11 to the device.

12 Sec. 5. "Derived from an offense" means property that:

13 (1) a person derived directly from the commission of a crime;  
14 or

15 (2) is directly traceable to property derived directly from the  
16 commission of a crime.

17 Sec. 6. "Innocent third party" means a person with an  
18 ownership interest in property subject to forfeiture who, with  
19 respect to:

20 (1) an instrumentality, at the time of or before the offense was  
21 committed:

22 (A) did not have actual knowledge of the defendant's use of  
23 or intent to use the property in connection with the offense;  
24 or

25 (B) had actual knowledge of the defendant's use of or  
26 intent to use the property in connection with the offense,  
27 and:

28 (i) took reasonable steps to prevent the use of the  
29 property in connection with the offense; or

30 (ii) reasonably believed that taking reasonable steps to  
31 prevent the use of the property in connection with the  
32 offense would subject the person or another person to  
33 physical danger; and

34 (2) property directly traceable to property derived directly  
35 from the commission of the crime, is a bona fide purchaser for  
36 value without actual knowledge that the property is property  
37 derived directly from the commission of the crime.

38 The term does not include a person with an ownership interest in  
39 property derived directly from the commission of a crime.

40 Sec. 7. "Instrumentality" means property otherwise lawful to  
41 possess that is used in connection with an offense. The term  
42 includes a tool, a firearm (even if it is unlawful for the person who



1 uses it in connection with an offense to possess), a conveyance, a  
 2 computer, computer software (including an automated sales  
 3 suppression device and phantom-ware), real property, a mobile  
 4 home, a telecommunications device, money, and other means of  
 5 exchange.

6 Sec. 8. A "law subject to forfeiture" is a criminal statute listed  
 7 in IC 35-53-14-3 that authorizes the forfeiture of specified property  
 8 upon conviction.

9 Sec. 9. "Reasonable steps to prevent commission of the offense"  
 10 includes:

11 (1) timely informing a law enforcement agency or another  
 12 appropriate enforcement agency of information relating to  
 13 the criminal offense; and

14 (2) in a timely fashion, revoking or making a good faith  
 15 attempt to revoke permission for the defendant to use the  
 16 property.

#### 17 Chapter 2. Application

18 Sec. 1. (a) This article sets forth the exclusive process governing  
 19 forfeiture and supersedes any conflicting provisions.

20 (b) A unit does not have the power to adopt an ordinance  
 21 authorizing forfeiture.

22 (c) A state agency does not have the power to adopt a rule  
 23 authorizing forfeiture.

24 Sec. 2. Civil forfeiture is abolished.

#### 25 Chapter 3. Criminal Forfeiture

26 Sec. 1. When a person is convicted of an offense that is a  
 27 violation of a law subject to forfeiture and the trier of fact  
 28 determines that the property is subject to forfeiture, the court,  
 29 consistent with this article, shall order the person to forfeit:

30 (1) property derived from an offense; and

31 (2) an instrumentality of the offense;

32 subject to the rights of an innocent third party.

33 Sec. 2. Property is subject to forfeiture only if:

34 (1) the owner or person in possession of the property violates  
 35 a law subject to forfeiture;

36 (2) the violation is established by a criminal conviction; and

37 (3) the trier of fact determines that the property is:

38 (A) an instrumentality of; or

39 (B) derived from;

40 an offense alleged in the charging instrument.

41 Sec. 3. The state must prove that property is subject to  
 42 forfeiture by clear and convincing evidence.



1       **Sec. 4. The court shall resolve any ambiguity in this article**  
 2 **relating to forfeiture in favor of the property owner.**

3       **Sec. 5. If a property owner or other person opposing forfeiture**  
 4 **is indigent, the court shall appoint an attorney to represent the**  
 5 **person's interests.**

6       **Sec. 6. Forfeiture is permitted only under an explicit grant of**  
 7 **authority.**

8       **Sec. 7. No property right exists in contraband. Contraband is**  
 9 **subject to seizure and must be disposed of according to law.**  
 10 **Contraband is not subject to forfeiture.**

11       **Sec. 8. Upon motion of the state following conviction, the court**  
 12 **may order the forfeiture of substitute property owned fully by the**  
 13 **defendant up to the value of unreachable property if the state**  
 14 **proves by a preponderance of the evidence that the defendant**  
 15 **transferred property to, sold property to, or deposited property**  
 16 **with a third party with intent to avoid the court's jurisdiction.**

17       **Sec. 9. Except as otherwise provided by law, the state may not**  
 18 **seek additional remedies from a defendant with respect to property**  
 19 **subject to forfeiture, including personal money judgments.**

20       **Sec. 10. A defendant is not jointly and severally liable for a**  
 21 **forfeiture or a forfeiture award owed by another defendant.**  
 22 **However, if the ownership of forfeited property between multiple**  
 23 **defendants cannot be established, a court may order each**  
 24 **defendant to forfeit property on a pro rata basis proportional to**  
 25 **the proceeds that each defendant personally received.**

26       **Chapter 4. Procedure**

27       **Sec. 1. The state may seek the forfeiture of property used by a**  
 28 **defendant in connection with the violation of a law subject to**  
 29 **forfeiture by alleging, on a page separate from the rest of the**  
 30 **charging instrument, that the property was:**

31           **(1) an instrumentality of; or**

32           **(2) derived from;**

33 **an offense alleged in the charging instrument. The state must**  
 34 **specify the time and place of the violation, identify the property,**  
 35 **and particularly describe its use in the commission of the crime or**  
 36 **present facts showing that it was derived from the commission of**  
 37 **the crime.**

38       **Sec. 2. If the person was convicted of an offense alleged in the**  
 39 **charging instrument in a jury trial, the jury shall reconvene to**  
 40 **hear evidence in the forfeiture hearing. If the trial was to the court,**  
 41 **or the judgment was entered on a guilty plea, the court alone shall**  
 42 **hear evidence in the forfeiture hearing.**



1       **Sec. 3. (a) If the jury (if the hearing is by jury) or the court (if**  
 2 **the hearing is to the court alone) finds that the state has proved by**  
 3 **clear and convincing evidence that the property is:**

4           **(1) an instrumentality of; or**

5           **(2) derived from;**

6 **an offense alleged in the charging instrument, the court shall enter**  
 7 **a preliminary order of forfeiture. Except as provided in subsection**  
 8 **(b), a preliminary order of forfeiture becomes final one hundred**  
 9 **eighty (180) days from the date of entry.**

10       **(b) A preliminary order of forfeiture does not become final**  
 11 **under subsection (a) if the:**

12           **(1) court finds that the forfeiture is excessive or**  
 13 **disproportionate under section 4 of this chapter;**

14           **(2) prosecuting attorney remits or mitigates the forfeiture**  
 15 **under section 4 of this chapter; or**

16           **(3) court finds that an innocent third party has an interest in**  
 17 **the property.**

18 **If the court makes a finding under subdivision (1) or (3), or the**  
 19 **prosecuting attorney remits or mitigates the forfeiture under**  
 20 **subdivision (2), the court shall enter a final order consistent with**  
 21 **the finding, remission, or mitigation not later than one hundred**  
 22 **eighty (180) days from the entry of the preliminary order of**  
 23 **forfeiture, unless, for good cause shown, the court extends the time**  
 24 **for entry of the final order.**

25       **Sec. 4. (a) This section applies only to the forfeiture of an**  
 26 **instrumentality. Not later than thirty (30) days after entry of a**  
 27 **preliminary order of forfeiture with respect to an instrumentality,**  
 28 **the defendant may petition the court to determine whether the**  
 29 **forfeiture is unconstitutionally excessive or disproportionate. The**  
 30 **defendant bears the burden of proving by a preponderance of the**  
 31 **evidence that the forfeiture is unconstitutionally excessive or**  
 32 **disproportionate.**

33       **(b) In determining whether the forfeiture is unconstitutionally**  
 34 **excessive or disproportionate, the court shall consider the**  
 35 **following:**

36           **(1) The seriousness of the offense and its impact on the**  
 37 **community, including the duration of the criminal activity**  
 38 **and the harm caused by the defendant.**

39           **(2) The extent to which the defendant whose property is**  
 40 **subject to forfeiture participated in the offense.**

41           **(3) The extent to which the property was used in committing**  
 42 **the offense.**



(4) The sentence imposed for committing the offense subject to forfeiture.

(5) Whether the offense was completed or attempted.

(6) Any other relevant factor.

(c) In determining the value of the instrumentality subject to forfeiture, the court shall consider the following:

(1) The fair market value of the property.

(2) The value of the property to the defendant whose property is subject to forfeiture, including any hardship to the owner if the forfeiture is realized.

(3) The hardship from the loss of a motor vehicle or other property to family members or others if the property is forfeited.

(4) Any other relevant factor.

(d) The court may not consider the value of the instrumentality to the state in determining whether the forfeiture is unconstitutionally excessive.

(e) Prior to the entry of a court's final order of forfeiture, the prosecuting attorney may remit or mitigate the forfeiture upon terms and conditions the prosecuting attorney finds reasonable if the prosecuting attorney finds that:

(1) the petitioner did not intend to violate the law; or

(2) extenuating circumstances justify the remission or mitigation of the forfeiture.

#### **Chapter 5. Seizure**

**Sec. 1.** At the request of the state, a court may issue an ex parte preliminary order to seize or secure property for which forfeiture is sought.

**Sec. 2.** Property subject to forfeiture may be seized without a court order if:

(1) the seizure is incident to a lawful arrest or a lawful search;

(2) the property subject to seizure is the subject of a prior judgment in favor of the state; or

(3) the state has probable cause to believe that:

(A) the delay caused by obtaining a court order would result in the removal or destruction of the property; and

(B) the property is subject to forfeiture.

**Sec. 3.** When property is seized, the law enforcement officer or other person seizing the property shall:

(1) give an itemized receipt to the person in possession of the property; or

(2) if no person is in possession of the property, leave an



1 itemized receipt in the place where the property was found, if  
2 reasonably practicable.

3 Sec. 4. The law enforcement agency or other entity having  
4 custody of seized property shall use reasonable diligence to secure  
5 the property and prevent damage or waste.

6 Sec. 5. The state obtains provisional title to seized property:

- 7 (1) at the time a court issues an order for seizure; or
- 8 (2) if a court has not issued an order for seizure, at the time  
9 the property is seized.

10 Provisional title authorizes the law enforcement agency or entity  
11 having custody of the property to hold and protect the property.

12 Sec. 6. A law enforcement agency or other entity having custody  
13 of seized property shall maintain the following records with respect  
14 to seized property:

- 15 (1) The exact kind, quantity, and form of the property.
- 16 (2) The date it received the property.
- 17 (3) The person from whom it received the property.
- 18 (4) The violation of law or other legal justification that  
19 subjects the property to seizure.
- 20 (5) The existence of any liens against the seized property.
- 21 (6) The make, model, and serial number of each seized  
22 firearm.
- 23 (7) To whom and when the notice of forfeiture was given, or  
24 the manner in which notice was given if notice was not given  
25 to a person.
- 26 (8) To whom it delivered the property.
- 27 (9) The date and manner of destruction or disposition of the  
28 property.
- 29 (10) Any other records required to be maintained by any  
30 other law.

31 Sec. 7. (a) This section does not apply to property reasonably  
32 held for investigatory purposes.

33 (b) If the owner of property that has been seized seeks  
34 possession of the property before the criminal trial, the owner may  
35 post bond or give substitute property in an amount equal to the fair  
36 market value of the seized property at the time the bond amount is  
37 determined.

38 (c) Not later than three (3) days after the owner of seized  
39 property posts a bond or gives substitute property under  
40 subsection (b), the law enforcement agency or other entity having  
41 custody of the seized property shall return the seized property to  
42 the owner. A forfeiture action may proceed against the bond or



1 substitute property as if it were the seized property.

2 **Chapter 6. Pretrial Hearing for Return of Seized Property**

3 **Sec. 1.** Following the seizure of property under IC 35-53-5, a  
4 claimant has a right to a pretrial hearing to determine the validity  
5 of the seizure.

6 **Sec. 2.** A claimant may challenge the validity of a seizure by  
7 filing a verified petition for return of seized property with the  
8 court having jurisdiction over the case not later than sixty (60)  
9 days before trial. The claimant shall serve a copy of the verified  
10 petition for return of seized property on the prosecuting attorney  
11 at the time the claimant files the petition with the court.

12 **Sec. 3.** The claimant shall briefly describe in the petition filed  
13 under section 2 of this chapter why the claimant is entitled to  
14 return of the seized property.

15 **Sec. 4.** The court shall schedule a hearing on the petition:

16 (1) at least ten (10) days; and

17 (2) not later than thirty (30) days;

18 after the petition is filed. The prosecuting attorney shall file its  
19 response not later than ten (10) days before the hearing.

20 **Sec. 5. (a)** The court shall grant the petition if the claimant  
21 proves by a preponderance of the evidence that:

22 (1) it is likely that the claimant will prevail on the forfeiture  
23 action at trial;

24 (2) the claimant is an innocent third party; or

25 (3) the seized property is the only reasonable means for the  
26 claimant to pay for legal representation.

27 (b) Instead of ordering the return of the property, the court may  
28 order any other appropriate relief.

29 **Chapter 7. Innocent Third Parties**

30 **Sec. 1. (a)** A bona fide security interest is not subject to  
31 forfeiture.

32 (b) The property interest of an innocent third party, including  
33 a:

34 (1) joint tenant;

35 (2) tenant in common;

36 (3) tenant by the entirety;

37 (4) partial or joint owner; and

38 (5) person to whom:

39 (A) an unsecured debt;

40 (B) child support; or

41 (C) employment related compensation;

42 is owed;





1 is not subject to forfeiture.

2 (c) A person claiming to be an innocent third party bears the  
3 burden of establishing:

4 (1) the validity of the person's property interest; and

5 (2) that the person is an innocent third party;

6 by a preponderance of the evidence.

7 Sec. 2. An innocent third party may file a:

8 (1) pretrial motion for return of property under IC 35-53-6;

9 or

10 (2) petition for return of property after entry of a preliminary  
11 order of forfeiture under IC 35-53-4-3.

12 However, an innocent third party may not intervene in the  
13 criminal trial, including in any bifurcated part of the trial.

14 Sec. 3. (a) Following the entry of a preliminary order of  
15 forfeiture under this article, the state shall exercise reasonable  
16 diligence to identify every person with a potential interest in the  
17 property, including any person claiming:

18 (1) court ordered child support;

19 (2) employment related compensation; or

20 (3) payment of unsecured debts;

21 even if the state believes that the person is not an innocent third  
22 party.

23 (b) The state shall provide notice in writing and by publication,  
24 in accordance with the Indiana rules of trial procedure, to every  
25 person described in subsection (a) of the preliminary order of  
26 forfeiture. The notice must inform the recipient of the recipient's  
27 right to a hearing to assert an interest in property within sixty (60)  
28 days.

29 Sec. 4. Not later than sixty (60) days from the date notice is  
30 mailed or published, whichever is later, a person other than a  
31 defendant who wishes to assert a legal interest in the property may  
32 petition the court for a hearing to adjudicate the validity of the  
33 person's interest in the property.

34 Sec. 5. The request for a hearing must be signed by the  
35 petitioner under penalties of perjury and include:

36 (1) the nature and extent of the petitioner's right, title, or  
37 interest in the property;

38 (2) the time and circumstances of the petitioner's acquisition  
39 of the right, title, or interest;

40 (3) any additional facts supporting the petitioner's claim; and

41 (4) the relief sought.

42 Sec. 6. Upon the filing of a petition, the court shall schedule the



1 hearing as soon as practicable but in no event later than six (6)  
 2 months after the sentencing of any defendant convicted on the  
 3 same information or indictment.

4 Sec. 7. If, at the conclusion of the hearing, the court determines  
 5 that the petitioner has established by a preponderance of the  
 6 evidence the petitioner is an innocent third party, the court shall  
 7 issue a final order of forfeiture in accordance with its  
 8 determination.

9 Sec. 8. A qualified indigent who wishes to contest the forfeiture  
 10 of property and makes a prima facie showing that the indigent is  
 11 an innocent third party has a right to court appointed counsel.

12 Chapter 8. Procedures After Entry of a Final Order of  
 13 Forfeiture

14 Sec. 1. At the time a court enters a final order of forfeiture, the  
 15 court shall order the state, law enforcement agency, or other entity  
 16 having custody of the property to:

- 17 (1) return stolen property to its rightful owner;
- 18 (2) sell all other firearms, ammunition, and firearm
- 19 accessories in a commercially reasonable manner to a licensed
- 20 firearms dealer for resale, salvage, or repair; and
- 21 (3) sell all other property in a commercially reasonable
- 22 manner.

23 Sec. 2. The law enforcement agency or other entity that seized  
 24 property forfeited under this chapter may not retain the property  
 25 for its own use or sell the property directly or indirectly to any  
 26 employee of the agency, to a person related to an employee by  
 27 blood or marriage, or to another law enforcement agency.

28 Sec. 3. (a) Proceeds seized and proceeds from the sale of  
 29 forfeited assets may be distributed only in accordance with a court  
 30 order. The court shall order the funds be used to pay, in order of  
 31 priority, for the following purposes:

- 32 (1) Storage and sale expenses.
- 33 (2) Satisfaction of valid liens against the property.
- 34 (3) Restitution ordered to the victim of the offense.
- 35 (4) Reimbursement of investigation costs, not including
- 36 salaries, that the law enforcement agency incurred in the
- 37 seizure of the assets subject to the forfeiture action.
- 38 (5) Court ordered child support obligations.
- 39 (6) Claims for compensation by the defendant's employees.
- 40 (7) Claims for compensation by the defendant's unsecured
- 41 creditors.

42 (b) All remaining funds must be deposited into the common



1 school fund.

2 **Chapter 9. Reporting**

3 **Sec. 1. The prosecuting attorney of a county and every law**  
 4 **enforcement or other agency that seizes property shall provide a**  
 5 **written record of every seizure and every forfeiture, regardless of**  
 6 **whether the property was ultimately forfeited, to the Indiana**  
 7 **prosecuting attorneys council. The report shall be made monthly,**  
 8 **in a form and manner as determined by the Indiana prosecuting**  
 9 **attorneys council.**

10 **Sec. 2. The record must include the amount seized or forfeited,**  
 11 **the underlying crime or conduct leading to the seizure or**  
 12 **forfeiture, its date, and whether the property is subject to a lien.**  
 13 **The record must also list the number of firearms seized or forfeited**  
 14 **and the make, model, and serial number of each firearm seized or**  
 15 **forfeited. The record must indicate the ultimate disposition of the**  
 16 **property.**

17 **Sec. 3. The law enforcement agency and the prosecuting**  
 18 **attorney shall report to the Indiana prosecuting attorneys council**  
 19 **all instances in which property seized for forfeiture is returned to**  
 20 **the property's owner either because forfeiture was not pursued or**  
 21 **for any other reason.**

22 **Sec. 4. (a) For forfeitures resulting from the activities of**  
 23 **multijurisdictional law enforcement entities, each entity on its own**  
 24 **behalf shall report the information required in this section.**

25 **(b) The prosecuting attorney, law enforcement agency, or other**  
 26 **entity must report every transfer to the federal government of an**  
 27 **investigation or criminal proceeding that involves forfeiture.**

28 **Sec. 5. The Indiana prosecuting attorneys council may require**  
 29 **additional information not specified in this section to be reported.**

30 **Sec. 6. (a) The Indiana prosecuting attorneys council shall**  
 31 **submit a report to the legislative council before December 31 of**  
 32 **each year. The report must be in an electronic format under**  
 33 **IC 5-14-6. The report must include the following:**

34 **(1) The number of seizures and forfeitures conducted in the**  
 35 **preceding year.**

36 **(2) A statistical breakdown of the reason for each seizure and**  
 37 **forfeiture.**

38 **(3) The disposition of seized and forfeited property, including**  
 39 **the amount of seized property that was ultimately returned to**  
 40 **its owner and the reason for the return.**

41 **(4) The value of forfeited property and the disposition of**  
 42 **funds received from forfeited property.**



(5) If a law enforcement agency or prosecuting attorney has conducted seizures or forfeitures in a manner that does not substantially comply with this article, the name of the law enforcement agency or prosecuting attorney and any recommended actions to ensure compliance.

(6) Any other information that the Indiana prosecuting attorneys council believes would be useful to the general assembly or the public.

(b) The Indiana prosecuting attorneys council may include in its report any recommended changes to forfeiture law.

#### **Chapter 10. Return of Property**

**Sec. 1.** The state, a law enforcement agency, or another agency having custody of seized property shall return the property within a reasonable period of time, not to exceed three (3) business days, after a court determines that:

- (1) the owner has a bona fide security interest in the property;
- (2) the owner is an innocent third party;
- (3) charges made in connection with the proposed forfeiture have been dismissed; or
- (4) the defendant was found not guilty of the criminal charge that is the basis for the forfeiture action.

**Sec. 2.** If property returned under section 1 of this chapter has been damaged, the owner may bring an action for the damages to the seized property against the agency that seized the property.

**Sec. 3.** The state, law enforcement agency, or other agency is responsible for any storage fees and related costs applicable to property returned under this chapter.

**Sec. 4.** If a person described in section 1 of this chapter has a partial ownership interest in real property, the state is entitled to hold a lien on that part of the property that is subject to forfeiture but may not foreclose on the lien to force an involuntary sale of the real property.

#### **Chapter 11. Penalties**

**Sec. 1.** Any person acting under color of law, official title, or position who takes any action intending to conceal, transfer, withhold, retain, divert, or otherwise prevent any proceeds, conveyances, real property, or any things of value forfeited under the law of Indiana or the United States from being applied, deposited, used, or returned to the owner in accordance with this chapter is subject to a civil penalty in an amount of three (3) times the value of the forfeited property concealed, transferred, withheld, retained, or diverted.



1       **Sec. 2. Any Indiana taxpayer has standing to bring an action**  
 2       **under this chapter or to challenge a violation of this article.**

3       **Chapter 12. Interactions With the Federal Government**

4       **Sec. 1. A:**

5           (1) prosecuting attorney; and  
 6           (2) law enforcement agency;  
 7       may not transfer a criminal investigation or proceeding to the  
 8       federal government to circumvent the provisions of this article.

9       **Sec. 2. A prosecuting attorney or law enforcement agency may**  
 10       **transfer a criminal investigation or proceeding that includes**  
 11       **forfeiture to the federal government only if a court affirmatively**  
 12       **authorizes the transfer, after finding that:**

- 13           (1) the suspected criminal activity giving rise to the forfeiture  
 14           is interstate in nature and sufficiently complex to justify the  
 15           transfer; or  
 16           (2) the seized property is forfeitable only as a violation of  
 17           federal law.

18       **Sec. 3. (a) Except as provided in subsection (b), all funds from**  
 19       **forfeited property paid to a prosecuting attorney or a law**  
 20       **enforcement agency by the federal government must be deposited**  
 21       **into the common school fund.**

22       (b) The prosecuting attorney and law enforcement agency may  
 23       retain from funds received from the federal government under  
 24       subsection (a) money sufficient to reimburse the prosecuting  
 25       attorney or law enforcement agency for investigation costs,  
 26       excluding salaries, that the prosecuting attorney or law  
 27       enforcement agency incurred in connection with the seizure of the  
 28       forfeited property. The remaining balance shall be deposited in the  
 29       common school fund.

30       **Sec. 4. If federal law prohibits the prosecuting attorney or a law**  
 31       **enforcement agency from complying with section 3 of this chapter,**  
 32       **the prosecuting attorney or law enforcement agency may not**  
 33       **accept funds derived from forfeited property from the federal**  
 34       **government.**

35       **Sec. 5. The prosecuting attorney or law enforcement agency**  
 36       **shall report every transfer to the federal government of an**  
 37       **investigation or criminal proceeding that involves seized property**  
 38       **or property subject to forfeiture to the Indiana prosecuting**  
 39       **attorneys council in accordance with IC 35-53-9.**

40       **Chapter 13. Attorney's Fees**

41       **Sec. 1. In any forfeiture proceeding under this article in which**  
 42       **the claimant prevails, the prosecuting attorney, law enforcement**



agency, or other agency is liable for:

- (1) reasonable attorney's fees and other litigation costs reasonably incurred by the claimant;
- (2) postjudgment interest; and
- (3) in cases involving currency, other negotiable instruments, or the proceeds of an interlocutory sale:
  - (A) interest actually paid from the date of seizure of the property that resulted from the investment of the property in an interest bearing account or instrument; or
  - (B) an imputed amount of interest that the currency, instruments, or proceeds would have earned at the rate applicable to the thirty (30) day United States Treasury Bill, for any period during which no interest was paid (not including any period when the property reasonably was in use as evidence in an official proceeding or in conducting scientific tests for the purpose of collecting evidence), beginning fifteen (15) days after the property was seized.

#### Chapter 14. Property Subject to Forfeiture

**Sec. 1.** Proceeds and property a person derived directly from the commission of a crime are subject to forfeiture following a conviction in accordance with this article.

**Sec. 2.** Proceeds and property directly traceable to proceeds and property derived directly from the commission of a crime are subject to forfeiture following a conviction in accordance with this article.

**Sec. 3.** An instrumentality used in the commission of the following crimes is subject to forfeiture following a conviction in accordance with this article:

- (1) Murder (IC 35-42-1-1).
- (2) Kidnapping (IC 35-42-3-2).
- (3) Criminal confinement (IC 35-42-3-3).
- (4) Rape (IC 35-42-4-1).
- (5) A felony under IC 35-42-4 (sex offenses and offenses relating to sex offenders).
- (6) An offense under IC 35-47 if the offense is committed as part of or in furtherance of an act of terrorism.
- (7) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).
- (8) Dealing in methamphetamine (IC 35-48-4-1.1).
- (9) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).
- (10) Dealing in a schedule IV controlled substance



- (IC 35-48-4-3) as a felony.
- (11) Dealing in a schedule V controlled substance (IC 35-48-4-4) as a felony.
- (12) Dealing in a counterfeit substance (IC 35-48-4-5).
- (13) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
- (14) Possession of methamphetamine (IC 35-48-4-6.1).
- (15) Dealing in paraphernalia (IC 35-48-4-8.5) as a felony.
- (16) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10) as a felony.
- (17) Dealing in a synthetic drug or synthetic drug lookalike substance as a felony (IC 35-48-4-10.5, or IC 35-48-4-10 before its amendment in 2013).
- (18) Theft (IC 35-43-4-2) as a felony.
- (19) A hazardous waste crime (IC 13-30-10-1.5) as a felony.
- (20) Fraud under IC 35-43-5-4(10).
- (21) Corrupt business influence (IC 35-45-6-2).
- (22) Unauthorized use of telecommunications services as a felony (IC 35-45-13).
- (23) A violation of IC 35-47.5-5 (offenses related to regulated explosives) as a felony.
- (24) A violation of IC 35-43-5-2 (counterfeiting, forgery, fraud, and other deceptions) as a felony.
- (25) Unlawful wholesale distribution of a legend drug (IC 25-26-14-26(b)).
- (26) Legend drug deception (IC 35-43-10-3) or legend drug deception resulting in death (IC 35-43-10-4).
- (27) Operating while intoxicated (IC 9-30-5-1 through IC 9-30-5-5) if in the previous five (5) years the person has two (2) or more prior unrelated convictions:
- (A) for operating a motor vehicle while intoxicated in violation of IC 9-30-5-1 through IC 9-30-5-5; or
  - (B) for an offense that is substantially similar to IC 9-30-5-1 through IC 9-30-5-5 in another jurisdiction.
- If a court orders the seizure of a vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a vehicle to be registered in the name of the person whose vehicle was seized until the person possesses a current driving license (as defined in IC 9-13-2-41).
- (28) Misuse of a cemetery fund (IC 23-14-48-9) as a felony, misuse of certain cemetery trusts (IC 30-2-9-7(b)), misuse of certain other cemetery trusts (IC 30-2-10-9(b)), or misuse of



1 **funeral trusts or escrow accounts (IC 30-2-13-38(f)).**

2 **(29) Human trafficking (IC 35-42-3.5-1).**

3 **(30) Promoting prostitution (IC 35-45-4-4).**

4 SECTION 25. IC 36-1-17-2, AS ADDED BY P.L.128-2005,  
5 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
6 JULY 1, 2017]: Sec. 2. Except as provided in section 3 of this chapter,  
7 a unit or municipal corporation may not pay the legal expenses incurred  
8 by an officer or employee of the unit or the municipal corporation:

9 (1) in defending against:

10 (A) a criminal action;

11 (B) a civil action brought by the attorney general of the United  
12 States, a United States attorney, the attorney general of  
13 Indiana, or an Indiana prosecuting attorney under:

14 (i) ~~IC 34-24-1~~; **IC 35-53**;

15 (ii) IC 34-24-2;

16 (iii) IC 34-24-3;

17 (iv) IC 5-11-5;

18 (v) IC 5-11-6;

19 (vi) IC 5-13-6;

20 (vii) IC 5-13-14-3; or

21 (viii) 18 U.S.C. 1964; or

22 (C) a proceeding to enforce an ordinance or a statute defining  
23 an infraction; or

24 (2) who is the target of a grand jury investigation, if the scope of  
25 the investigation includes a claim that the officer or employee  
26 committed a criminal act.

