

Second Regular Session of the 122nd General Assembly (2022)

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 2021 Regular Session of the General Assembly.

## SENATE ENROLLED ACT No. 263

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

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

SECTION 1. IC 34-24-1-2, AS AMENDED BY P.L.47-2018, SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 2. (a) Property may be seized under this chapter by a law enforcement officer only if:

(1) the seizure is incident to a lawful:

(A) arrest;

(B) search; or

(C) administrative inspection;

(2) the property has been the subject of a prior judgment in favor of the state or unit in a proceeding under this chapter (or IC 34-4-30.1 before its repeal); or

(3) a court, after making an ex parte determination that there is probable cause to believe the property is subject to seizure under this chapter, issues an order for seizure.

(b) If property is seized under subsection (a)(1), the prosecuting attorney shall file an affidavit of probable cause with a circuit or superior court in the county in which the seizure occurred not later than seven (7) days after the date of the seizure. If the court does not find probable cause to believe the property is subject to seizure under this chapter, it shall order the property returned to the owner of record.

(c) When property is seized under subsection (a), the law

**SEA 263 — Concur**



enforcement agency making the seizure may, pending final disposition:

- (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.

(d) If property seized under subsection (a)(1) or (a)(3) is real property or a vehicle operated or possessed at the time of its seizure by a person who is not an owner of the real property or vehicle, the owner of the real property or vehicle may file a verified petition for provisional release pending final forfeiture determination, requesting the court to grant the owner possession of the real property or vehicle while the forfeiture action is pending.

(e) A petition for provisional release under this section must:

- (1) be in writing;
- (2) be verified by the petitioner;
- (3) state the grounds for relief;
- (4) be filed in a circuit or superior court in the county in which the seizure occurred; and
- (5) be served on the prosecuting attorney.

(f) At the hearing on the petition for provisional release under this section, the petitioner must establish that the:

- (1) petitioner is an owner of record;
- (2) petitioner or the petitioner's family benefits from the use of the vehicle or the real property;
- (3) petitioner has insured the property against loss from accident and casualty; and
- (4) petitioner had no reason to believe that the vehicle or real property would be used for illegal activity.

(g) At the hearing on the petition for provisional release under this section, the prosecuting attorney may present evidence that returning the property to the owner would likely result in:

- (1) damage to the property or diminution of the value of the property beyond ordinary wear and tear; or
- (2) continued use of the property in connection with illegal activity.

(h) If the court grants the petition for provisional release under this section, the court shall require the owner to:

- (1) maintain the property; and
- (2) refrain from selling or otherwise conveying the property without the permission of the prosecuting attorney.

(i) If the court grants the petition for provisional release under this section, it may place reasonable restrictions on the use of the property,



including one (1) or more of the following:

- (1) Requiring the owner to post a cash bond.
- (2) Placing mileage limitations on the use of a vehicle.
- (3) Imposing reasonable limits on the use of the property.
- (4) Prohibiting certain persons from the possession, occupation, or use of the property.
- (5) Requiring payment of all taxes, registration, and other fees, if applicable.
- (6) Maintaining property, casualty, and accident insurance.

(j) A court may not grant a petition for provisional release under this section if the prosecuting attorney has filed a motion under section 9 of this chapter or ~~IC 35-33-5-5(j)~~. **IC 35-33-5-5(k)**.

(k) The prosecuting attorney shall notify the owner of record of a vehicle or real property of the right to file a petition for provisional release under this section not later than seven (7) days after probable cause has been determined under subsection (b).

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

SECTION 2. IC 34-24-1-4.5, AS AMENDED BY P.L.47-2018, SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 4.5. (a) After a prosecuting attorney files a forfeiture action, the prosecuting attorney shall report the following to the Indiana prosecuting attorneys council:

- (1) The date the property was seized.
- (2) Whether the property seized was cash, a vehicle, real property, or other personal property.
- (3) Whether the forfeiture was filed in state court or through federal adoptive seizure.

This subsection applies even if the prosecuting attorney has retained an attorney to bring the forfeiture action.

(b) After a court enters a judgment in favor of the state or a unit under section 4 of this chapter, the prosecuting attorney shall report the following to the Indiana prosecuting attorneys council:

- (1) The amount of money or property that is the subject of the judgment.
- (2) The law enforcement agency to which the money or property is ordered to be transferred.
- (3) Whether the forfeiture was contested.
- (4) Whether an innocent owner made a claim to the property.
- (5) Whether the final disposition of the property resulted in the property being returned, destroyed, forfeited, retained, or



distributed by settlement.

(6) The date of the final disposition.

This subsection applies even if the prosecuting attorney has retained an attorney to bring an action under this chapter.

(c) After a court, upon motion of the prosecuting attorney under ~~IC 35-33-5-5(j)~~, **IC 35-33-5-5(k)**, orders property transferred to a federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e), and any related regulations adopted by the United States Department of Justice, the prosecuting attorney shall report to the Indiana prosecuting attorneys council the amount of money or property transferred. This subsection applies even if the prosecuting attorney has retained an attorney to bring an action under this chapter.

(d) A report made to the Indiana prosecuting attorneys council under this section must be in a format approved by the prosecuting attorneys council. A prosecuting attorney with no forfeitures to report shall file a report with the Indiana prosecuting attorneys council.

SECTION 3. IC 34-24-1-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 9. (a) Upon motion of a prosecuting attorney under ~~IC 35-33-5-5(j)~~, **IC 35-33-5-5(k)**, property seized under this chapter must be transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

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

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

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

SECTION 4. IC 35-33-5-5, AS AMENDED BY P.L.1-2007, SECTION 225, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2022]: 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.

(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) 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) **Except as provided in subsection (g)**, if any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with 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 drug manufacturing site that accurately depict the presence and quantity of chemicals, controlled substances, and chemically contaminated equipment.

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

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

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

**(g) All evidence for a violent offense (as defined in IC 11-12-3.7-6) in the law enforcement agency's possession or control that could be subjected to DNA testing and analysis shall be preserved by the law enforcement agency for the later of the following:**

**(1) Twenty (20) years from the date the defendant's conviction becomes final.**

**(2) The period of the defendant's incarceration.**

**In cases where an investigation did not result in a conviction, the evidence shall be preserved until the expiration of the statute of limitations for the alleged offense. If the preservation of the evidence is impracticable, the law enforcement agency shall remove portions of the material evidence likely to contain biological evidence related to the offense, in a quantity sufficient to permit future DNA testing before returning or disposing of the physical evidence. At subsequent hearings or trials, all records, notes, identification numbers, photographs, and other documentation relating to the preservation of biological evidence shall be admissible into evidence.**

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



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

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

~~(j)~~ (k) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

**(l) The law enforcement agency responsible for disposing of property under subsection (g), shall do the following:**

- (1) Maintain a record of the preserved evidence.**
- (2) Schedule a disposal date for the preserved evidence.**
- (3) Provide notice to the last known address of the defendant and the defendant's attorney:**
  - (A) when the preserved evidence is removed from its secure location; or**
  - (B) of the date the preserved evidence has been marked for disposal.**

**The defendant or the defendant's attorney must provide the most current address of the defendant or the defendant's attorney to the law enforcement agency responsible for disposing of property in order to effectively receive proper notice. If the law enforcement agency responsible for disposing of property does not have the defendant's or the defendant's attorney's most current address on file, then the notice requirement is deemed waived.**

**(m) Failure of a law enforcement agency to follow the procedures described in this section may constitute contempt of court. However, failure to follow the procedures described in this section shall not be grounds for reversal of a conviction unless the defendant proves a violation of the defendant's due process rights.**

**(n) Nothing in subsection (g) shall preclude a law enforcement agency from submitting biological evidence to forensic DNA testing or analysis, at its own initiative or at the request of a prosecuting attorney, if such testing will not consume the remainder of the evidence. If such testing would consume the remainder of the evidence, the prosecuting attorney may seek a court order allowing such testing under IC 35-38-7-17.**

SECTION 5. IC 35-38-7-14 IS AMENDED TO READ AS

SEA 263 — Concur



FOLLOWS [EFFECTIVE JULY 1, 2022]: Sec. 14. (a) If a petition for DNA testing and analysis is filed under this chapter:

(1) **except as provided in IC 35-33-5-5(g)**, the court shall order the state to preserve during the pendency of the proceeding all evidence in the state's possession or control that could be subjected to DNA testing and analysis **for the later of:**

**(A) twenty (20) years from the date of the defendant's conviction; or**

**(B) the period of the defendant's incarceration.**

(2) the state shall:

(A) prepare an inventory of the evidence in the possession or control of the state that could be subjected to DNA testing and analysis; and

(B) submit a copy of the inventory to defense counsel and the court; and

(3) if evidence is intentionally destroyed after the court orders its preservation, the court may impose appropriate sanctions.

**(b) In the event that DNA testing and analysis required under this chapter results in a vacated conviction, all biological evidence shall continue to be preserved in accordance with IC 35-33-5-5(g), and for the latest of the following:**

**(1) Twenty (20) years from the date the conviction was vacated.**

**(2) The period of time the defendant is incarcerated for a subsequent conviction.**

**(3) The remainder of the statute of limitations for the offense.**

**However, the obligation to preserve biological evidence does not apply to a DNA sample taken from the defendant whose conviction was vacated.**



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President of the Senate

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President Pro Tempore

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Speaker of the House of Representatives

\_\_\_\_\_  
Governor of the State of Indiana

Date: \_\_\_\_\_ Time: \_\_\_\_\_

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