

SENATE BILL No. 8

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-24-1; IC 35-33-5-5.

Synopsis: Forfeiture. Permits seized property to be forfeited to the state only if the owner of the property has been convicted of a criminal offense. Repeals a provision permitting the state to turn over seized property to the federal government. Makes conforming amendments and repeals an obsolete section.

Effective: July 1, 2017.

Boots

January 3, 2017, read first time and referred to Committee on Corrections and Criminal Law.



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. 8

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

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

- 1 SECTION 1. IC 34-24-1-2 IS AMENDED TO READ AS
- 2 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. **(a) A person's**
- 3 **property may be forfeited under this chapter only if the state, or**
- 4 **the state and the unit (if applicable), proves by clear and**
- 5 **convincing evidence that:**
- 6 **(1) the property is subject to seizure under section 1 of this**
- 7 **chapter;**
- 8 **(2) the owner of the property has been convicted of the related**
- 9 **criminal offense permitting seizure of the property; and**
- 10 **(3) all other requirements described in this chapter for**
- 11 **forfeiture of the property have been met.**
- 12 **(b) Following a person's conviction for an offense permitting**
- 13 **seizure of the property under section 1 of this chapter, a court may**
- 14 **order the person to forfeit property described in section 1 of this**
- 15 **chapter that:**
- 16 **(1) the person acquired through commission of the offense;**
- 17 **(2) is directly traceable to property acquired through**



1 **commission of the offense; or**

2 **(3) is an instrumentality of the person used to commit the**
 3 **offense.**

4 **(c) At the request of the state, or the state and the unit (if**
 5 **applicable), a court may issue an ex parte preliminary order to**
 6 **seize property described in section 1 of this chapter. Before issuing**
 7 **an order under this subsection, the court must find that:**

8 **(1) there is a substantial probability that:**

9 **(A) the property is subject to seizure;**

10 **(B) the state, or the state and the unit (if applicable), will**
 11 **prevail on the issue of forfeiture; and**

12 **(C) failure to enter the order will result in the property**
 13 **being destroyed, removed from Indiana, or otherwise**
 14 **made unavailable for forfeiture; and**

15 **(2) the need to preserve the availability of the property**
 16 **through the entry of the requested order outweighs the**
 17 **hardship to the owner and other parties known to be claiming**
 18 **an interest in the property.**

19 ~~(a)~~ **(d) Property may be seized under this chapter by a law**
 20 **enforcement officer only without a court order if:**

21 **(1) the seizure is incident to a lawful:**

22 **(A) arrest; or**

23 **(B) search; or**

24 ~~(C) administrative inspection;~~

25 **and the law enforcement officer conducting the arrest or**
 26 **search has probable cause to believe that the property is**
 27 **subject to seizure and that the subject of the arrest or search**
 28 **warrant is the owner of the property;**

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

32 **(3) a court issues an order to seize the property after making an**
 33 **ex parte determination that: there is probable cause to believe the**
 34 **property is subject to seizure under this chapter; issues an order**
 35 **for seizure.**

36 **(A) there is a substantial probability that:**

37 **(i) the property is subject to seizure;**

38 **(ii) the state, or the state and the unit (if applicable), will**
 39 **prevail on the issue of forfeiture; and**

40 **(iii) failure to enter the order will result in the property**
 41 **being destroyed, removed from Indiana, or otherwise**
 42 **made unavailable for forfeiture; and**



1 **(B) the need to preserve the availability of the property**
 2 **through the entry of the requested order outweighs the**
 3 **hardship to the owner and other parties known to be**
 4 **claiming an interest in the property.**

5 ~~(b)~~ **(e)** When property is seized under subsection (a); **this section,**
 6 the law enforcement agency making the seizure may, pending final
 7 disposition:

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

12 ~~(c)~~ **(f)** Property that is seized under subsection (a) ~~(or~~
 13 ~~IC 34-4-30.1-2(a) before its repeal)~~ **this section** is not, **except as**
 14 **provided in subsection (g),** subject to replevin ~~but~~ **under IC 32-35-2**
 15 **and** is considered to be in the custody of the law enforcement agency
 16 making the seizure. **However, property that has been forfeited**
 17 **under section 4.1 of this chapter is not subject to replevin.**

18 **(g) If the owner prevails in an action for replevin filed under**
 19 **subsection (f), the property shall be returned to the owner pending**
 20 **final resolution of the forfeiture action described in section 4.1 of**
 21 **this chapter. If the property is ordered forfeited, the owner shall**
 22 **return the property to the appropriate law enforcement agency, or**
 23 **to another person as ordered by the court.**

24 SECTION 2. IC 34-24-1-3, AS AMENDED BY P.L.201-2011,
 25 SECTION 108, IS AMENDED TO READ AS FOLLOWS
 26 [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) ~~The prosecuting attorney for~~
 27 ~~the county in which the seizure occurs may, within ninety (90) days~~
 28 ~~after receiving written notice from the owner demanding return of the~~
 29 ~~seized property or within one hundred eighty (180) days after the~~
 30 ~~property is seized; whichever occurs first; cause an action for~~
 31 ~~reimbursement of law enforcement costs and forfeiture to be brought~~
 32 ~~by filing a complaint in the circuit or superior court in the jurisdiction~~
 33 ~~where the seizure occurred. The action must be brought:~~

- 34 (1) in the name of the state or the state and the unit that employed
 35 the law enforcement officers who made the seizure if the state
 36 was not the employer; and
 37 (2) within the period that a prosecution may be commenced under
 38 ~~IC 35-41-4-2~~ for the offense that is the basis for the seizure.

39 **Not later than thirty (30) days after property is seized under this**
 40 **chapter, or at the time the information is filed against the owner of**
 41 **the property, whichever occurs earlier, the prosecuting attorney**
 42 **shall:**



1 (1) file an action for forfeiture and reimbursement of law
2 enforcement costs in the court having jurisdiction over the
3 related criminal case; or

4 (2) return the property to the owner.

5 **An action for forfeiture shall be brought in the name of the state,**
6 **or in the name of the state and the unit that employed the law**
7 **enforcement officer who made the seizure, if the state was not the**
8 **employer. If the prosecuting attorney returns the property to the**
9 **owner, the owner is not liable for any costs or fees incurred in**
10 **storing, transporting, or maintaining the property.**

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

17 (c) The owner of the seized property, or any person whose right,
18 title, or interest is of record may, **within not later than** twenty (20)
19 days after service of the **complaint action for forfeiture** under the
20 Indiana Rules of Trial Procedure, file an answer to the **complaint**
21 **action** and may appear at the hearing on the action.

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

27 **(d) Law enforcement costs recoverable under this section**
28 **include only those expenses directly incurred in:**

29 (1) arresting the owner of the property;

30 (2) investigating the owner of the property; and

31 (3) prosecuting the forfeiture action against the owner of the
32 property.

33 **Law enforcement costs incurred in the arrest of a person other**
34 **than the owner of the property, in the investigation of a person**
35 **other than the owner of the property, or in the prosecution of a**
36 **forfeiture action against a person other than the owner of the**
37 **property are not recoverable.**

38 SECTION 3. IC 34-24-1-4 IS REPEALED [EFFECTIVE JULY 1,
39 2017]. Sec. 4: (a) At the hearing, the prosecuting attorney must show
40 by a preponderance of the evidence that the property was within the
41 definition of property subject to seizure under section 1 of this chapter.
42 If the property seized was a vehicle, the prosecuting attorney must also



1 show by a preponderance of the evidence that a person who has an
 2 ownership interest of record in the bureau of motor vehicles knew or
 3 had reason to know that the vehicle was being used in the commission
 4 of the offense:

5 (b) If the prosecuting attorney fails to meet the burden of proof; the
 6 court shall order the property released to the owner:

7 (c) If the court enters judgment in favor of the state; or the state and
 8 a unit (if appropriate); the court, subject to section 5 of this chapter;
 9 shall order delivery to the law enforcement agency that seized the
 10 property. The court's order may permit the agency to use the property
 11 for a period not to exceed three (3) years. However; the order must
 12 require that; after the period specified by the court; the law
 13 enforcement agency shall deliver the property to the county sheriff for
 14 public sale:

15 (d) If the court enters judgment in favor of the state; or the state and
 16 a unit (if appropriate); the court shall; subject to section 5 of this
 17 chapter:

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

19 (2) order that:

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

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

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

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

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

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

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

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



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

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

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

14 SECTION 4. IC 34-24-1-4.1 IS ADDED TO THE INDIANA CODE
15 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
16 1, 2017]: Sec. 4.1. (a) A forfeiture proceeding:

17 (1) must begin not later than seven (7) days after the
18 conclusion of the trial for the related criminal matter; and

19 (2) may, with the consent of the trial court, be held
20 immediately after the jury returns its verdict, in the same
21 manner as bifurcated trials are held.

22 (b) The proceeding under subsection (a) shall be conducted
23 before the same judge and, if applicable, the same jury.

24 (c) If the owner of the property is a defendant who was
25 represented by a public defender in the related criminal case, the
26 public defender may, if authorized by the chief public defender of
27 the county, represent the defendant in the forfeiture proceeding.

28 (d) Discovery in a forfeiture proceeding is subject to the Indiana
29 rules of criminal procedure.

30 (e) If the state, or the state and the unit (if applicable), fails to
31 prove by clear and convincing evidence that a person whose
32 property is alleged to be subject to forfeiture is an owner of the
33 property:

34 (1) the forfeiture proceeding shall be dismissed and the
35 property shall be delivered to the owner, unless the owner's
36 possession of the property is illegal; and

37 (2) the owner is not subject to any charges for storage of the
38 property or other expenses incurred in the preservation of the
39 property.

40 (f) The court shall order seized property forfeited if the state, or
41 the state and the unit (if applicable), proves by clear and
42 convincing evidence that:



- 1 **(1) the property is subject to seizure under section 1 of this**
 2 **chapter;**
 3 **(2) the related criminal prosecution of the owner of the seized**
 4 **property resulted in a conviction;**
 5 **(3) the value of the property to be forfeited does not**
 6 **unreasonably exceed the:**
 7 **(A) pecuniary:**
 8 **(i) gain derived or sought to be derived by the crime; or**
 9 **(ii) loss caused or sought to be caused by the crime; and**
 10 **(B) value of the convicted owner's interest in the property;**
 11 **and**
 12 **(4) forfeiture of the property is not disproportionate when**
 13 **compared to the criminal act committed by the owner.**
 14 **(g) In determining whether the value of property subject to**
 15 **forfeiture unreasonably exceeds the amounts described in**
 16 **subsection (f)(3), the court shall consider all relevant factors,**
 17 **including the:**
 18 **(1) fair market value of the property;**
 19 **(2) value of the property to the defendant, including any**
 20 **hardship that the defendant will suffer if the property is**
 21 **forfeited; and**
 22 **(3) hardship from the loss of a primary residence, motor**
 23 **vehicle, or other property to the defendant's family members**
 24 **or others if the property is forfeited.**
 25 **In making its determination under this subsection, the court may**
 26 **not consider the value of the property to the state, or the state and**
 27 **the unit (if applicable).**
 28 **(h) A court may not accept a plea agreement in which a**
 29 **defendant agrees to donate property otherwise subject to forfeiture**
 30 **to a person, charity, or other organization.**
 31 **(i) A person is not jointly and severally liable for an order of**
 32 **forfeiture. If property owned by more than one (1) person is**
 33 **subject to forfeiture, the court shall, subject to section 5 of this**
 34 **chapter, order each convicted person to forfeit the person's share**
 35 **of the property on a pro rata basis or by another means the court**
 36 **finds to be equitable.**
 37 **SECTION 5. IC 34-24-1-4.2 IS ADDED TO THE INDIANA CODE**
 38 **AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**
 39 **1, 2017]: Sec. 4.2. (a) If the court enters judgment in favor of the**
 40 **state, or the state and a unit (if applicable), the court, subject to**
 41 **section 5 of this chapter, shall order delivery of the property to the**
 42 **law enforcement agency that seized the property. The court's order**



1 may permit the agency to use the property for a period not to
 2 exceed three (3) years. However, the order must require that, after
 3 the period specified by the court, the law enforcement agency
 4 deliver the property to the county sheriff for public sale.

5 (b) If the court enters judgment in favor of the state, or the state
 6 and a unit (if applicable), the court shall, subject to section 5 of this
 7 chapter:

8 (1) determine the amount of law enforcement costs (as
 9 described in section 3 of this chapter); and

10 (2) order that:

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

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

19 (C) the proceeds of the sale or the money must be:

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

23 (ii) deposited in the general fund of a unit if the property
 24 was seized by a local law enforcement agency of the unit
 25 for an offense, an attempted offense, or a conspiracy to
 26 commit an offense under IC 35-47 as part of or in
 27 furtherance of an act of terrorism; and

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

32 (c) If property that is seized under this chapter is transferred:

33 (1) after its seizure, but before an action for forfeiture is filed
 34 under section 3 of this chapter; or

35 (2) while an action for forfeiture filed under section 3 of this
 36 chapter is pending;

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



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

7 SECTION 6. IC 34-24-1-4.5, AS ADDED BY P.L.237-2015,
 8 SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 9 JULY 1, 2017]: Sec. 4.5. (a) After a court enters a judgment in favor of
 10 the state or **the state and** a unit under ~~section 4~~ **section 4.1** of this
 11 chapter, the prosecuting attorney shall report the:

12 (1) amount of money or property that is the subject of the
 13 judgment; and

14 (2) law enforcement agency to which the money or property is
 15 ordered to be transferred;

16 to the Indiana prosecuting attorneys council. This subsection applies
 17 even if the prosecuting attorney has retained an attorney to bring an
 18 action under this chapter.

19 (b) After a court, upon motion of the prosecuting attorney under
 20 IC 35-33-5-5(j) **(as in effect before July 1, 2017, and before the**
 21 **repeal of IC 34-24-1-9)**, orders property transferred to a federal
 22 authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or
 23 21 U.S.C. 881(e), and any related regulations adopted by the United
 24 States Department of Justice, the prosecuting attorney shall report to
 25 the Indiana prosecuting attorneys council the amount of money or
 26 property transferred. This subsection applies even if the prosecuting
 27 attorney has retained an attorney to bring an action under this chapter.

28 (c) A report made to the Indiana prosecuting attorneys council under
 29 this section must be in a format approved by the prosecuting attorneys
 30 council.

31 SECTION 7. IC 34-24-1-5 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) If:

33 (1) the court has entered judgment in favor of the state **or the**
 34 **state** and a unit (if appropriate) concerning property that is
 35 subject to seizure under this chapter; and

36 (2) a person:

37 (A) holding a valid lien, mortgage, security interest, or interest
 38 under a conditional sales contract; or

39 (B) who is a co-owner of the property;

40 did not know of the illegal use;

41 the court shall determine whether the secured interest or the co-owner's
 42 interest is equal to or in excess of the appraised value of the property.



1 (b) Appraised value is to be determined as of the date of judgment
 2 on a wholesale basis by:
 3 (1) agreement between the secured party or the co-owner and the
 4 prosecuting attorney; or
 5 (2) the inheritance tax appraiser for the county in which the action
 6 is brought.
 7 (c) If the amount:
 8 (1) due to the secured party; or
 9 (2) of the co-owner's interest;
 10 is equal to or greater than the appraised value of the property, the court
 11 shall order the property released to the secured party or the co-owner.
 12 (d) If the amount:
 13 (1) due the secured party; or
 14 (2) of the co-owner's interest;
 15 is less than the appraised value of the property, the holder of the
 16 interest or the co-owner may pay into the court an amount equal to the
 17 owner's equity, which shall be the difference between the appraised
 18 value and the amount of the lien, mortgage, security interest, interest
 19 under a conditional sales contract, or co-owner's interest. Upon such
 20 payment, the state or unit, or both, shall relinquish all claims to the
 21 property, and the court shall order the payment deposited as provided
 22 in ~~section 4(d)~~ **section 4.2(b)** of this chapter.
 23 (e) If the seized property is a vehicle and if the security holder or the
 24 co-owner elects not to make payment as stated in subsection (d), the
 25 vehicle shall be disposed of in accordance with ~~section 4(c)~~ **section**
 26 **4.2(a)** of this chapter.
 27 SECTION 8. IC 34-24-1-6 IS AMENDED TO READ AS
 28 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) Where
 29 disposition of property is to be made at a public sale, notice of sale
 30 shall be published in accordance with IC 34-55-6.
 31 (b) When property is sold at a public sale under this chapter, the
 32 proceeds shall be distributed in the following order:
 33 (1) First, to the sheriff of the county for all expenditures made or
 34 incurred in connection with the sale, including storage,
 35 transportation, and necessary repair.
 36 (2) Second, to any person:
 37 (A) holding a valid lien, mortgage, land contract, or interest
 38 under a conditional sales contract or the holder of other such
 39 interest; or
 40 (B) who is a co-owner and has an ownership interest;
 41 up to the amount of that person's interest as determined by the
 42 court.



1 (3) The remainder, if any, shall be transferred by the sheriff to the
2 appropriate fund as ordered by the court in ~~section 4(d)~~ **section**
3 **4.2(b)** of this chapter.

4 SECTION 9. IC 34-24-1-9 IS REPEALED [EFFECTIVE JULY 1,
5 2017]. Sec. 9: (a) Upon motion of a prosecuting attorney under
6 IC 35-33-5-5(j), property seized under this chapter must be transferred;
7 subject to the perfected liens or other security interests of any person
8 in the property, to the appropriate federal authority for disposition
9 under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any
10 related regulations adopted by the United States Department of Justice.

11 (b) Money received by a law enforcement agency as a result of a
12 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.
13 881(e) and any related regulations adopted by the United States
14 Department of Justice must be deposited into a nonreverting fund and
15 may be expended only with the approval of:

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

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

23 SECTION 10. IC 35-33-5-5, AS AMENDED BY P.L.1-2007,
24 SECTION 225, IS AMENDED TO READ AS FOLLOWS
25 [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) All items of property seized
26 by any law enforcement agency as a result of an arrest, search warrant,
27 or warrantless search, shall be securely held by the law enforcement
28 agency under the order of the court trying the cause, except as provided
29 in this section.

30 (b) Evidence that consists of property obtained unlawfully from its
31 owner may be returned by the law enforcement agency to the owner
32 before trial, in accordance with IC 35-43-4-4(h).

33 (c) Following the final disposition of the cause at trial level or any
34 other final disposition the following shall be done:

35 (1) Property which may be lawfully possessed shall be returned
36 to its rightful owner, if known. If ownership is unknown, a
37 reasonable attempt shall be made by the law enforcement agency
38 holding the property to ascertain ownership of the property. After
39 ninety (90) days from the time:

- 40 (A) the rightful owner has been notified to take possession of
41 the property; or
- 42 (B) a reasonable effort has been made to ascertain ownership



- 1 of the property;
2 the law enforcement agency holding the property shall, at a
3 convenient time, dispose of this property at a public auction. The
4 proceeds of this property shall be paid into the county general
5 fund.
6 (2) Except as provided in subsection (e), property, the possession
7 of which is unlawful, shall be destroyed by the law enforcement
8 agency holding it sixty (60) days after final disposition of the
9 cause.
10 (3) A firearm that has been seized from a person who is
11 dangerous (as defined in IC 35-47-14-1) shall be retained,
12 returned, or disposed of in accordance with IC 35-47-14.
13 (d) If any property described in subsection (c) was admitted into
14 evidence in the cause, the property shall be disposed of in accordance
15 with an order of the court trying the cause.
16 (e) A law enforcement agency may destroy or cause to be destroyed
17 chemicals, controlled substances, or chemically contaminated
18 equipment (including drug paraphernalia as described in
19 IC 35-48-4-8.5) associated with the illegal manufacture of drugs or
20 controlled substances without a court order if all the following
21 conditions are met:
22 (1) The law enforcement agency collects and preserves a
23 sufficient quantity of the chemicals, controlled substances, or
24 chemically contaminated equipment to demonstrate that the
25 chemicals, controlled substances, or chemically contaminated
26 equipment was associated with the illegal manufacture of drugs
27 or controlled substances.
28 (2) The law enforcement agency takes photographs of the illegal
29 drug manufacturing site that accurately depict the presence and
30 quantity of chemicals, controlled substances, and chemically
31 contaminated equipment.
32 (3) The law enforcement agency completes a chemical inventory
33 report that describes the type and quantities of chemicals,
34 controlled substances, and chemically contaminated equipment
35 present at the illegal manufacturing site.
36 The photographs and description of the property shall be admissible
37 into evidence in place of the actual physical evidence.
38 (f) For purposes of preserving the record of any conviction on
39 appeal, a photograph demonstrating the nature of the property, and an
40 adequate description of the property must be obtained before the
41 disposition of the property. In the event of a retrial, the photograph and
42 description of the property shall be admissible into evidence in place



1 of the actual physical evidence. All other rules of law governing the
2 admissibility of evidence shall apply to the photographs.

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

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

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

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

