



February 24, 2017

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## SENATE BILL No. 8

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DIGEST OF SB 8 (Updated February 21, 2017 2:37 pm - DI 106)

**Citations Affected:** IC 34-24; IC 35-33.

**Synopsis:** Forfeiture. Establishes a new procedure for civil forfeiture, and treats seized property in which a person asserts an ownership interest differently from seized property that is abandoned or unclaimed. Permits seized property that is not abandoned or unclaimed to be forfeited to the state only if the person who owned or used the property has been convicted of a criminal offense. Establishes procedures by which a property owner may regain custody of seized property pending a final determination of the forfeiture action. 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.

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**Boots, Young M, Kruse,  
Randolph Lonnie M**

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January 3, 2017, read first time and referred to Committee on Corrections and Criminal Law.  
February 23, 2017, amended, reported favorably — Do Pass.

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SB 8—LS 6060/DI 106





February 24, 2017

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. 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 34-24-1-0.5 IS ADDED TO THE INDIANA CODE  
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
3 1, 2017]: **Sec. 0.5. The following definitions apply throughout this**  
4 **chapter:**

5 (1) "Abandoned or unclaimed property" means property with  
6 respect to which no person claims a primary ownership  
7 interest, subject to section 2.1 of this chapter.

8 (2) "Contested forfeiture" means a forfeiture proceeding  
9 involving property that is not abandoned or unclaimed.

10 (3) "Owner" means a person having an ownership interest in  
11 property. The term does not include a person with a third  
12 party interest unless otherwise expressly indicated.

13 (4) "Ownership interest" means the right to exercise control  
14 over the property, including the right to exclude other persons  
15 from exercising control over the property. The term does not  
16 include a person whose only interest is that of a lienholder. An  
17 ownership interest exists even if the person having the interest

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may not alienate or otherwise dispose of the property until a lien is satisfied. More than one (1) person may have an ownership interest.

(5) "Reasonable attempts to notify the owner" includes:

(A) if there is an owner of record, at least three (3) attempts to contact the owner of record at the owner's address of record; and

(B) notice by publication in a manner that complies with Indiana trial rule 4.13.

(6) "Third party interest" means an interest in property that is not an ownership interest. The term includes the interest of a lienholder or a secured creditor.

(7) "Uncontested forfeiture" means a forfeiture proceeding involving property that is abandoned or unclaimed.

SECTION 2. IC 34-24-1-2 IS REPEALED [EFFECTIVE JULY 1, 2017]. 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) When property is seized under subsection (a), the law 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.

(c) 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 3. IC 34-24-1-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.1. (a) This section applies only to an uncontested forfeiture.

(b) Property is considered abandoned or unclaimed property if:

(1) at least sixty (60) days have elapsed since the property was



1 seized; and

2 (2) the state, or the state and a unit (if applicable), have made  
3 reasonable attempts to notify the owner and no person has  
4 claimed an ownership interest in the property.

5 (c) Unclaimed or abandoned property may be forfeited under  
6 this chapter if the state, or the state and the unit (if applicable),  
7 proves by a preponderance of the evidence that the property is  
8 subject to seizure under section 1 of this chapter.

9 SECTION 4. IC 34-24-1-2.2 IS ADDED TO THE INDIANA CODE  
10 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
11 1, 2017]: Sec. 2.2. (a) This section applies only to a contested  
12 forfeiture.

13 (b) A person's property may be forfeited under this chapter only  
14 if the state, or the state and the unit (if applicable), proves by clear  
15 and convincing evidence that:

16 (1) the property is subject to seizure under section 1 of this  
17 chapter;

18 (2) the related criminal prosecution of the person who  
19 possessed or used the seized property resulted in a conviction;

20 (3) if the owner of the property is not the person described in  
21 subdivision (2), the owner knew or reasonably should have  
22 known that the person described in subdivision (2) intended  
23 to use the property to commit the related criminal offense;

24 (4) the value of the property to be forfeited does not  
25 unreasonably exceed the:

26 (A) pecuniary:

27 (i) gain derived or sought to be derived by the crime; or

28 (ii) loss caused or sought to be caused by the crime; and

29 (B) value of the owner's interest in the property; and

30 (5) forfeiture of the property is not disproportionate when  
31 compared to the related criminal act.

32 (c) Following a person's conviction for an offense permitting  
33 seizure of the property under section 1 of this chapter, and proof  
34 by clear and convincing evidence of the matters described in  
35 subsection (b), a court may order the forfeiture of property  
36 described in section 1 of this chapter that:

37 (1) the person acquired through commission of the offense;

38 (2) is directly traceable to property acquired through  
39 commission of the offense; or

40 (3) is an instrumentality used to commit the offense.

41 SECTION 5. IC 34-24-1-2.3 IS ADDED TO THE INDIANA CODE  
42 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY



1, 2017]: Sec. 2.3. (a) At the request of the state, or the state and the unit (if applicable), a court may issue an ex parte preliminary order to seize property described in section 1 of this chapter. Before issuing an order under this subsection, the court must find that:

(1) there is a reasonable likelihood that:

(A) the property is subject to seizure;

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

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

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

(b) Property may be seized under this chapter by a law enforcement officer only if:

(1) the seizure is incident to a lawful:

(A) arrest; or

(B) search;

and the law enforcement officer conducting the arrest or search has probable cause to believe that the property is subject to seizure;

(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

(3) a court issues an order to seize the property after making an ex parte determination that:

(A) there is a reasonable likelihood that:

(i) the property is subject to seizure;

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

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

(B) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming an ownership interest or a third party interest in the property.

(c) When property is seized under this section, the law



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) Property that is seized under this section is considered to be in the custody of the law enforcement agency making the seizure.

SECTION 6. IC 34-24-1-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.4. (a) The owner of seized property may regain custody of the property, pending a final forfeiture determination, under this section or section 2.5 of this chapter.

(b) The owner of seized property may bring an action for the release of seized property that has not been forfeited by filing a petition for release in the court in which the related criminal matter is pending. The petition for release and any related proceedings are a civil matter. If the owner prevails in an action for release, the court shall issue a preliminary order of possession and the property shall be returned to the owner pending final resolution of the forfeiture action described in section 4.1 of this chapter. If the property is ordered forfeited under section 4.1 of this chapter, the court shall dissolve the preliminary order of possession and the appropriate law enforcement agency, or another person as ordered by the court, may take possession of the property. If the property is not ordered forfeited, the court shall issue a final order of possession in favor of the owner.

(c) In a civil proceeding under this section, the state bears the burden of proving by a preponderance of the evidence that:

- (1) there is a reasonable likelihood that:
  - (A) the property is subject to seizure;
  - (B) the state, or the state and the unit (if applicable), will prevail on the issue of forfeiture; and
  - (C) failure to enter the order will result in the property being destroyed, removed from Indiana, or otherwise made unavailable for forfeiture; and
- (2) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming an ownership interest or third party interest in the property.

(d) If the court orders property returned to the owner under this section, the court may place reasonable restrictions on the



owner's possession, use, and disposal of the property, including authorization for the state to place a lien on the property.

SECTION 7. IC 34-24-1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.5. (a) As used in this section, "owner" includes a person with a third party interest in the property.

(b) The owner of property seized under this chapter may file a motion for hardship release of the property at any time after the property is seized. The owner shall file the motion in:

- (1) the court having jurisdiction over the related criminal action, if a related criminal action has been filed; or
- (2) any court having jurisdiction.

The motion for hardship release and any related proceedings are a civil matter, even if filed in the court having jurisdiction over the related criminal action.

(c) If a motion for hardship release of the property is filed, the court shall conduct a hearing not more than ten (10) days after the date the court receives the motion.

(d) After the hearing, the court shall order the property released to the owner pending final disposition of the property, if the owner establishes the following by a preponderance of the evidence:

- (1) The owner has an interest in the property.
- (2) Continued possession by the law enforcement agency pending the final disposition of the forfeiture proceedings will cause a substantial hardship to the owner, including the following:
  - (A) Preventing the functioning of a legitimate business.
  - (B) Preventing an individual from working.
  - (C) Preventing a child from attending school.
  - (D) Preventing or hindering an individual from receiving necessary medical care.
  - (E) Hindering the care of an elderly individual or a disabled dependent child or adult.
  - (F) Leaving an individual homeless.
  - (G) Any other condition presented to the court by the owner or putative interest holder that the court determines causes a substantial hardship.
- (3) The hardship from the continued possession of the property by the law enforcement agency that seized the property outweighs the risk that the property will be:
  - (A) unlawfully used;
  - (B) destroyed;





(C) removed from the jurisdiction of the court; or  
 (D) otherwise made unavailable for forfeiture;  
 if the property is returned to the owner during the pendency  
 of the forfeiture determination.

(e) A person may seek both release under section 2.4 of this chapter and hardship release under this section, if applicable.

(f) If the court orders property returned to the owner under this section, the court may place reasonable restrictions on the owner's possession, use, and disposal of the property, including authorization for the state to place a lien on the property.

SECTION 8. IC 34-24-1-3, AS AMENDED BY P.L.201-2011, SECTION 108, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 3. (a) **This subsection applies only to a contested forfeiture.** The prosecuting attorney for the county in which the seizure occurs may, within ninety (90) days after receiving written notice from the owner demanding return of the seized property or within one hundred eighty (180) days after the property is seized, whichever occurs first, cause an action for reimbursement of law enforcement costs and forfeiture to be brought by filing a complaint in the circuit or superior court in the jurisdiction where the seizure occurred. The action must be brought:

(1) in the name of the state or the state and the unit that employed the law enforcement officers who made the seizure if the state was not the employer; and

(2) within the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure.

Not later than thirty (30) days after property is seized under this chapter, or at the time the information is filed against the person who owned or used the property, whichever occurs earlier, the prosecuting attorney shall:

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

(2) return the property to the owner.

The defendant in the related criminal case and the person who owns the property (if the owner is not the defendant in the related criminal case) shall be named as defendants in the forfeiture action. A civil action for forfeiture filed in a court having criminal jurisdiction remains a civil action for all purposes, but shall be adjudicated by the court having jurisdiction over the related criminal case to promote judicial economy.

(b) This subsection applies only to an uncontested forfeiture. At



any time:

(1) after property is determined to be abandoned or unclaimed property under section 2.1 of this chapter; and

(2) before the expiration of the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure;

the prosecuting attorney may file a civil action for forfeiture and reimbursement of law enforcement costs in any court of competent jurisdiction in the county in which the seizure occurred.

(c) A civil action for forfeiture shall be brought in the name of the state, or in the name of the state and the unit that employed the law enforcement officer who made the seizure, if the state was not the employer. If the prosecuting attorney returns the property to the owner, the owner is not liable for any costs or fees incurred in storing, transporting, or maintaining the property.

(d) If the property seized was a vehicle or real property, the prosecuting attorney shall serve, under the Indiana Rules of Trial Procedure, a copy of the civil complaint for forfeiture 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.

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

(f) If, at the end of the time allotted for an answer, there is no answer on file, the court, upon motion, shall enter a default judgment in favor of the state, or the state and the unit (if appropriate) on the issue of forfeiture. Upon conviction of the person who used or possessed the property, the court shall issue an order for reimbursement of law enforcement costs and shall order the property disposed of in accordance with section 4 of this chapter, with no further process.

(g) Law enforcement costs recoverable under this section include only those expenses directly incurred in:

(1) arresting the person who possessed or used the property;

(2) investigating the person who possessed or used the property;

(3) investigating the offense with respect to which the property was used or possessed, and investigating any other offense related to the commission of that offense; and



**(4) prosecuting the civil forfeiture action.**

**However, law enforcement costs incurred in the arrest of a person other than the person who possessed or used the property, in the investigation of a person other than the person who possessed or used the property, or in the prosecution of a civil forfeiture action against a person other than the person who possessed or used the property are recoverable if the arrest, investigation, or forfeiture action is related to the offense committed by the person who possessed or used the property that is the subject of the civil forfeiture action.**

SECTION 9. IC 34-24-1-4 IS REPEALED [EFFECTIVE JULY 1, 2017]. Sec. 4: (a) At the hearing, the prosecuting attorney must show by a preponderance of the evidence that the property was within the definition of property subject to seizure under section 1 of this chapter. If the property seized was a vehicle, the prosecuting attorney must also show by a preponderance of the evidence that a person who has an ownership interest of record in the bureau of motor vehicles knew or had reason to know that the vehicle was being used in the commission of the offense.

(b) If the prosecuting attorney fails to meet the burden of proof, the court shall order the property released to the owner.

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

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

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

(2) order that:

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

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

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



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

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

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

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

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

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

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

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

SECTION 10. IC 34-24-1-4.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 4.1. (a) This section does not apply:**

(1) if the court has entered a default judgment under section 3(f) of this chapter; or

(2) to an uncontested forfeiture.

(b) The civil forfeiture proceeding shall be held immediately after the trier of fact returns its verdict in the related criminal matter.

(c) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the civil forfeiture proceeding. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the



1 civil forfeiture hearing.

2 (d) If the trier of fact finds that the state, or the state and a unit,  
3 has proved by clear and convincing evidence that:

4 (1) the property is subject to seizure under section 1 of this  
5 chapter;

6 (2) the related criminal prosecution of the person who  
7 possessed or used the seized property resulted in a conviction;

8 (3) if the owner of the property is not the person described in  
9 subdivision (2), the owner knew or reasonably should have  
10 known that the person described in subdivision (2) intended  
11 to use the property to commit the related criminal offense;

12 (4) the value of the property to be forfeited does not  
13 unreasonably exceed the:

14 (A) pecuniary:

15 (i) gain derived or sought to be derived by the crime; or

16 (ii) loss caused or sought to be caused by the crime; and

17 (B) value of the owner's interest in the property; and

18 (5) forfeiture of the property is not disproportionate when  
19 compared to:

20 (A) the related criminal act; and

21 (B) if the owner is not the person who possessed or used the  
22 property, the owner's complicity in the related criminal  
23 act;

24 the trier of fact shall enter a judgment of forfeiture. The trier of  
25 fact may enter a partial order of forfeiture and order that only  
26 some of the seized property be forfeited.

27 (e) In determining whether the value of property subject to  
28 forfeiture unreasonably exceeds the amounts described in  
29 subsection (d)(4), the trier of fact shall consider all relevant factors,  
30 including the:

31 (1) fair market value of the property;

32 (2) value of the property to the owner, including any hardship  
33 that the owner will suffer if the property is forfeited; and

34 (3) hardship from the loss of a primary residence, motor  
35 vehicle, or other property to the defendant's family members  
36 or others if the property is forfeited.

37 In making its determination under this subsection, the trier of fact  
38 may not consider the value of the property to the state, or the state  
39 and the unit (if applicable).

40 (f) If the owner of the property is a person who was represented  
41 by a public defender in the related criminal case, the public  
42 defender may represent the person in the forfeiture proceeding.



1 (g) Discovery in a forfeiture proceeding is subject to the Indiana  
2 rules of trial procedure and shall be conducted in the same manner  
3 as in other civil actions.

4 (h) A person with an ownership interest in the property who is  
5 not named in the forfeiture action may intervene as in other civil  
6 cases.

7 (i) A court may not accept a plea agreement in which a  
8 defendant agrees to donate property otherwise subject to forfeiture  
9 to a person, charity, or other organization.

10 (j) A person is not jointly and severally liable for an order of  
11 forfeiture. If property owned by more than one (1) person is  
12 subject to forfeiture, the trier of fact shall, subject to section 5 of  
13 this chapter, order each owner to forfeit the person's share of the  
14 property on a pro rata basis or by another equitable means.

15 SECTION 11. IC 34-24-1-4.2 IS ADDED TO THE INDIANA  
16 CODE AS A NEW SECTION TO READ AS FOLLOWS  
17 [EFFECTIVE JULY 1, 2017]: Sec. 4.2. (a) If the trier of fact enters  
18 judgment in favor of the state, or the state and a unit (if  
19 applicable), the court, subject to section 5 of this chapter, shall  
20 order delivery of the property to the law enforcement agency that  
21 seized the property. The court's order may permit the agency to  
22 use the property for a period not to exceed three (3) years.  
23 However, the order must require that, after the period specified by  
24 the court, the law enforcement agency deliver the property to the  
25 county sheriff for public sale.

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

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

31 (2) order that:

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

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

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

41 (i) deposited in the general fund of the state, or the unit  
42 that employed the law enforcement officers that seized



the property; or

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

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

Property transferred to the general fund of the state or a unit may be disbursed only pursuant to an appropriation, and may only be used for law enforcement expenses.

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

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

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

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

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

SECTION 12. IC 34-24-1-4.5, AS ADDED BY P.L.237-2015, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 4.5. (a) After a court enters a judgment in favor of the state or **the state and** a unit under ~~section 4~~ **section 4.1** of this chapter, the prosecuting attorney shall report the:

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

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

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



(b) After a court, upon motion of the prosecuting attorney under IC 35-33-5-5(j) **(as in effect before July 1, 2017, and before the repeal of IC 34-24-1-9)**, 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.

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

SECTION 13. IC 34-24-1-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 5. (a) If:

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

(2) a person:

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

(B) who is a co-owner of the property; did not know of the illegal use;

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

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

(1) agreement between the secured party or the co-owner and the prosecuting attorney; or

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

(c) If the amount:

(1) due to the secured party; or

(2) of the co-owner's interest;

is equal to or greater than the appraised value of the property, the court shall order the property released to the secured party or the co-owner.

(d) If the amount:

(1) due the secured party; or

(2) of the co-owner's interest;

is less than the appraised value of the property, the holder of the interest or the co-owner may pay into the court an amount equal to the owner's equity, which shall be the difference between the appraised value and the amount of the lien, mortgage, security interest, interest





1 under a conditional sales contract, or co-owner's interest. Upon such  
 2 payment, the state or unit, or both, shall relinquish all claims to the  
 3 property, and the court shall order the payment deposited as provided  
 4 in ~~section 4(d)~~ **section 4.2(b)** of this chapter.

5 (e) If the seized property is a vehicle and if the security holder or the  
 6 co-owner elects not to make payment as stated in subsection (d), the  
 7 vehicle shall be disposed of in accordance with ~~section 4(c)~~ **section**  
 8 **4.2(a)** of this chapter.

9 SECTION 14. IC 34-24-1-6 IS AMENDED TO READ AS  
 10 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 6. (a) Where  
 11 disposition of property is to be made at a public sale, notice of sale  
 12 shall be published in accordance with IC 34-55-6.

13 (b) When property is sold at a public sale under this chapter, the  
 14 proceeds shall be distributed in the following order:

15 (1) First, to the sheriff of the county for all expenditures made or  
 16 incurred in connection with the sale, including storage,  
 17 transportation, and necessary repair.

18 (2) Second, to any person:

19 (A) holding a valid lien, mortgage, land contract, or interest  
 20 under a conditional sales contract or the holder of other such  
 21 interest; or

22 (B) who is a co-owner and has an ownership interest;  
 23 up to the amount of that person's interest as determined by the  
 24 court.

25 (3) The remainder, if any, shall be transferred by the sheriff to the  
 26 appropriate fund as ordered by the court in ~~section 4(d)~~ **section**  
 27 **4.2(b)** of this chapter.

28 SECTION 15. IC 34-24-1-9 IS REPEALED [EFFECTIVE JULY 1,  
 29 2017]. Sec. 9: (a) ~~Upon motion of a prosecuting attorney under~~  
 30 ~~IC 35-33-5-5(j), property seized under this chapter must be transferred,~~  
 31 ~~subject to the perfected liens or other security interests of any person~~  
 32 ~~in the property, to the appropriate federal authority for disposition~~  
 33 ~~under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any~~  
 34 ~~related regulations adopted by the United States Department of Justice.~~

35 (b) Money received by a law enforcement agency as a result of a  
 36 forfeiture under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C.  
 37 881(e) and any related regulations adopted by the United States  
 38 Department of Justice must be deposited into a nonreverting fund and  
 39 may be expended only with the approval of:

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

42 (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 16. 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.

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

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

(i) 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) 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.~~



## COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred Senate Bill No. 8, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 1, delete lines 1 through 17, begin a new paragraph and insert:

"SECTION 1. IC 34-24-1-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 0.5. The following definitions apply throughout this chapter:**

(1) "Abandoned or unclaimed property" means property with respect to which no person claims a primary ownership interest, subject to section 2.1 of this chapter.

(2) "Contested forfeiture" means a forfeiture proceeding involving property that is not abandoned or unclaimed.

(3) "Owner" means a person having an ownership interest in property. The term does not include a person with a third party interest unless otherwise expressly indicated.

(4) "Ownership interest" means the right to exercise control over the property, including the right to exclude other persons from exercising control over the property. The term does not include a person whose only interest is that of a lienholder. An ownership interest exists even if the person having the interest may not alienate or otherwise dispose of the property until a lien is satisfied. More than one (1) person may have an ownership interest.

(5) "Reasonable attempts to notify the owner" includes:

(A) if there is an owner of record, at least three (3) attempts to contact the owner of record at the owner's address of record; and

(B) notice by publication in a manner that complies with Indiana trial rule 4.13.

(6) "Third party interest" means an interest in property that is not an ownership interest. The term includes the interest of a lienholder or a secured creditor.

(7) "Uncontested forfeiture" means a forfeiture proceeding involving property that is abandoned or unclaimed.

SECTION 2. IC 34-24-1-2 IS REPEALED [EFFECTIVE JULY 1, 2017]. **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) When property is seized under subsection (a), the law 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.
- (c) 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 3. IC 34-24-1-2.1 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 2.1. (a) This section applies only to an uncontested forfeiture.**

- (b) Property is considered abandoned or unclaimed property if:
  - (1) at least sixty (60) days have elapsed since the property was seized; and
  - (2) the state, or the state and a unit (if applicable), have made reasonable attempts to notify the owner and no person has claimed an ownership interest in the property.
- (c) Unclaimed or abandoned property may be forfeited under this chapter if the state, or the state and the unit (if applicable), proves by a preponderance of the evidence that the property is subject to seizure under section 1 of this chapter.

SECTION 4. IC 34-24-1-2.2 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: **Sec. 2.2. (a) This section applies only to a contested forfeiture.**

- (b) A person's property may be forfeited under this chapter only if the state, or the state and the unit (if applicable), proves by clear and convincing evidence that:
  - (1) the property is subject to seizure under section 1 of this chapter;
  - (2) the related criminal prosecution of the person who



possessed or used the seized property resulted in a conviction;  
 (3) if the owner of the property is not the person described in subdivision (2), the owner knew or reasonably should have known that the person described in subdivision (2) intended to use the property to commit the related criminal offense;  
 (4) the value of the property to be forfeited does not unreasonably exceed the:

(A) pecuniary:

- (i) gain derived or sought to be derived by the crime; or
- (ii) loss caused or sought to be caused by the crime; and

(B) value of the owner's interest in the property; and

(5) forfeiture of the property is not disproportionate when compared to the related criminal act.

(c) Following a person's conviction for an offense permitting seizure of the property under section 1 of this chapter, and proof by clear and convincing evidence of the matters described in subsection (b), a court may order the forfeiture of property described in section 1 of this chapter that:

- (1) the person acquired through commission of the offense;
- (2) is directly traceable to property acquired through commission of the offense; or
- (3) is an instrumentality used to commit the offense.

SECTION 5. IC 34-24-1-2.3 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.3. (a) At the request of the state, or the state and the unit (if applicable), a court may issue an ex parte preliminary order to seize property described in section 1 of this chapter. Before issuing an order under this subsection, the court must find that:

- (1) there is a reasonable likelihood that:
  - (A) the property is subject to seizure;
  - (B) the state, or the state and the unit (if applicable), will prevail on the issue of forfeiture; and
  - (C) failure to enter the order will result in the property being destroyed, removed from Indiana, or otherwise made unavailable for forfeiture; and
- (2) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming an interest in the property.

(b) Property may be seized under this chapter by a law enforcement officer only if:



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

**(A) arrest; or**

**(B) search;**

**and the law enforcement officer conducting the arrest or search has probable cause to believe that the property is subject to seizure;**

**(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**

**(3) a court issues an order to seize the property after making an ex parte determination that:**

**(A) there is a reasonable likelihood that:**

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

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

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

**(B) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming an ownership interest or a third party interest in the property.**

**(c) When property is seized under this section, the law 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) Property that is seized under this section is considered to be in the custody of the law enforcement agency making the seizure.**

**SECTION 6. IC 34-24-1-2.4 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.4. (a) The owner of seized property may regain custody of the property, pending a final forfeiture determination, under this section or section 2.5 of this chapter.**

**(b) The owner of seized property may bring an action for the release of seized property that has not been forfeited by filing a petition for release in the court in which the related criminal matter is pending. The petition for release and any related proceedings are a civil matter. If the owner prevails in an action**



for release, the court shall issue a preliminary order of possession and the property shall be returned to the owner pending final resolution of the forfeiture action described in section 4.1 of this chapter. If the property is ordered forfeited under section 4.1 of this chapter, the court shall dissolve the preliminary order of possession and the appropriate law enforcement agency, or another person as ordered by the court, may take possession of the property. If the property is not ordered forfeited, the court shall issue a final order of possession in favor of the owner.

(c) In a civil proceeding under this section, the state bears the burden of proving by a preponderance of the evidence that:

- (1) there is a reasonable likelihood that:
  - (A) the property is subject to seizure;
  - (B) the state, or the state and the unit (if applicable), will prevail on the issue of forfeiture; and
  - (C) failure to enter the order will result in the property being destroyed, removed from Indiana, or otherwise made unavailable for forfeiture; and
- (2) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship to the owner and other parties known to be claiming an ownership interest or third party interest in the property.

(d) If the court orders property returned to the owner under this section, the court may place reasonable restrictions on the owner's possession, use, and disposal of the property, including authorization for the state to place a lien on the property.

SECTION 7. IC 34-24-1-2.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2.5. (a) As used in this section, "owner" includes a person with a third party interest in the property.

(b) The owner of property seized under this chapter may file a motion for hardship release of the property at any time after the property is seized. The owner shall file the motion in:

- (1) the court having jurisdiction over the related criminal action, if a related criminal action has been filed; or
- (2) any court having jurisdiction.

The motion for hardship release and any related proceedings are a civil matter, even if filed in the court having jurisdiction over the related criminal action.

(c) If a motion for hardship release of the property is filed, the court shall conduct a hearing not more than ten (10) days after the date the court receives the motion.





(d) After the hearing, the court shall order the property released to the owner pending final disposition of the property, if the owner establishes the following by a preponderance of the evidence:

- (1) The owner has an interest in the property.
- (2) Continued possession by the law enforcement agency pending the final disposition of the forfeiture proceedings will cause a substantial hardship to the owner, including the following:
  - (A) Preventing the functioning of a legitimate business.
  - (B) Preventing an individual from working.
  - (C) Preventing a child from attending school.
  - (D) Preventing or hindering an individual from receiving necessary medical care.
  - (E) Hindering the care of an elderly individual or a disabled dependent child or adult.
  - (F) Leaving an individual homeless.
  - (G) Any other condition presented to the court by the owner or putative interest holder that the court determines causes a substantial hardship.
- (3) The hardship from the continued possession of the property by the law enforcement agency that seized the property outweighs the risk that the property will be:
  - (A) unlawfully used;
  - (B) destroyed;
  - (C) removed from the jurisdiction of the court; or
  - (D) otherwise made unavailable for forfeiture;
 if the property is returned to the owner during the pendency of the forfeiture determination.

(e) A person may seek both release under section 2.4 of this chapter and hardship release under this section, if applicable.

(f) If the court orders property returned to the owner under this section, the court may place reasonable restrictions on the owner's possession, use, and disposal of the property, including authorization for the state to place a lien on the property."

Delete page 2.

Page 3, delete lines 1 through 23.

Page 3, line 26, after "(a)" insert "**This subsection applies only to a contested forfeiture.**".

Page 3, line 40, delete "owner of" and insert "**person who owned or used**".

Page 4, line 1, delete "an" and insert "**a civil**".

Page 4, delete lines 5 through 10, begin a new line blocked left and



insert:

**"The defendant in the related criminal case and the person who owns the property (if the owner is not the defendant in the related criminal case) shall be named as defendants in the forfeiture action. A civil action for forfeiture filed in a court having criminal jurisdiction remains a civil action for all purposes, but shall be adjudicated by the court having jurisdiction over the related criminal case to promote judicial economy.**

**(b) This subsection applies only to an uncontested forfeiture. At any time:**

- (1) after property is determined to be abandoned or unclaimed property under section 2.1 of this chapter; and**
- (2) before the expiration of the period that a prosecution may be commenced under IC 35-41-4-2 for the offense that is the basis for the seizure;**

**the prosecuting attorney may file a civil action for forfeiture and reimbursement of law enforcement costs in any court of competent jurisdiction in the county in which the seizure occurred.**

**(c) A civil action for forfeiture shall be brought in the name of the state, or in the name of the state and the unit that employed the law enforcement officer who made the seizure, if the state was not the employer. If the prosecuting attorney returns the property to the owner, the owner is not liable for any costs or fees incurred in storing, transporting, or maintaining the property."**

Page 4, line 11, strike "(b)" and insert "(d)".

Page 4, line 13, after "the" insert "**civil**".

Page 4, line 13, reset in roman "complaint".

Page 4, line 13, delete "action".

Page 4, line 17, strike "(c)" and insert "(e)".

Page 4, line 19, after "of the" insert "**civil**".

Page 4, line 19, reset in roman "complaint".

Page 4, line 19, delete "action".

Page 4, line 20, reset in roman "complaint".

Page 4, line 21, delete "action and" and insert "and".

Page 4, line 22, after "(d)" insert "**(f)**".

Page 4, line 22, reset in roman "If, at the end of the time allotted for an answer, there is no".

Page 4, line 23, reset in roman "answer on file, the court, upon motion, shall enter".

Page 4, line 23, after "enter" insert "**a default**".

Page 4, line 23, reset in roman "judgment in favor of".

Page 4, line 24, reset in roman "the state".



Page 4, line 24, after "state" insert ", **or the state**".

Page 4, line 24, reset in roman "and the unit (if appropriate)".

Page 4, line 24, after "appropriate)" insert "**on the issue of forfeiture. Upon conviction of the person who used or possessed the property, the court shall issue an order**".

Page 4, line 24, reset in roman "for reimbursement of law".

Page 4, reset in roman line 25.

Page 4, line 26, reset in roman "accordance with".

Page 4, line 26, reset in roman "this".

Page 4, line 26, delete "chapter." and insert "chapter, **with no further process.**".

Page 4, line 27, delete "(d)" and insert "(g)".

Page 4, delete lines 29 through 37, begin a new line block indented and insert:

- "(1) arresting the person who possessed or used the property;**
- (2) investigating the person who possessed or used the property;**
- (3) investigating the offense with respect to which the property was used or possessed, and investigating any other offense related to the commission of that offense; and**
- (4) prosecuting the civil forfeiture action.**

**However, law enforcement costs incurred in the arrest of a person other than the person who possessed or used the property, in the investigation of a person other than the person who possessed or used the property, or in the prosecution of a civil forfeiture action against a person other than the person who possessed or used the property are recoverable if the arrest, investigation, or forfeiture action is related to the offense committed by the person who possessed or used the property that is the subject of the civil forfeiture action."**

Page 6, line 16, delete "A forfeiture proceeding:" and insert "**This section does not apply:**

- (1) if the court has entered a default judgment under section 3(f) of this chapter; or**
- (2) to an uncontested forfeiture.**

**(b) The civil forfeiture proceeding shall be held immediately after the trier of fact returns its verdict in the related criminal matter.**

**(c) If the person was convicted of the offense in a jury trial, the jury shall reconvene to hear evidence in the civil forfeiture proceeding. If the trial was to the court, or the judgment was entered on a guilty plea, the court alone shall hear evidence in the**



civil forfeiture hearing.

(d) If the trier of fact finds that the state, or the state and a unit, has proved by clear and convincing evidence that:

- (1) the property is subject to seizure under section 1 of this chapter;
- (2) the related criminal prosecution of the person who possessed or used the seized property resulted in a conviction;
- (3) if the owner of the property is not the person described in subdivision (2), the owner knew or reasonably should have known that the person described in subdivision (2) intended to use the property to commit the related criminal offense;
- (4) the value of the property to be forfeited does not unreasonably exceed the:
  - (A) pecuniary:
    - (i) gain derived or sought to be derived by the crime; or
    - (ii) loss caused or sought to be caused by the crime; and
  - (B) value of the owner's interest in the property; and
- (5) forfeiture of the property is not disproportionate when compared to:
  - (A) the related criminal act; and
  - (B) if the owner is not the person who possessed or used the property, the owner's complicity in the related criminal act;

the trier of fact shall enter a judgment of forfeiture. The trier of fact may enter a partial order of forfeiture and order that only some of the seized property be forfeited.

(e) In determining whether the value of property subject to forfeiture unreasonably exceeds the amounts described in subsection (d)(4), the trier of fact shall consider all relevant factors, including the:

- (1) fair market value of the property;
- (2) value of the property to the owner, including any hardship that the owner will suffer if the property is forfeited; and
- (3) hardship from the loss of a primary residence, motor vehicle, or other property to the defendant's family members or others if the property is forfeited.

In making its determination under this subsection, the trier of fact may not consider the value of the property to the state, or the state and the unit (if applicable).

(f) If the owner of the property is a person who was represented by a public defender in the related criminal case, the public defender may represent the person in the forfeiture proceeding.



(g) **Discovery in a forfeiture proceeding is subject to the Indiana rules of trial procedure and shall be conducted in the same manner as in other civil actions.**

(h) **A person with an ownership interest in the property who is not named in the forfeiture action may intervene as in other civil cases.**

(i) **A court may not accept a plea agreement in which a defendant agrees to donate property otherwise subject to forfeiture to a person, charity, or other organization.**

(j) **A person is not jointly and severally liable for an order of forfeiture. If property owned by more than one (1) person is subject to forfeiture, the trier of fact shall, subject to section 5 of this chapter, order each owner to forfeit the person's share of the property on a pro rata basis or by another equitable means."**

Page 6, delete lines 17 through 42.

Page 7, delete lines 1 through 36.

Page 7, line 39, delete "court" and insert "**trier of fact**".

Page 8, between lines 31 and 32, begin a new line block indented and insert:

**"Property transferred to the general fund of the state or a unit may be disbursed only pursuant to an appropriation, and may only be used for law enforcement expenses."**

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to SB 8 as introduced.)

YOUNG M, Chairperson

Committee Vote: Yeas 8, Nays 1.

