

ORDINANCE NO: 2016-08-(07-13)

AN ORDINANCE CREATING THE HENRY COUNTY
PROSECUTOR'S OFFICE FORFEITURE NON-REVERTING FUND

WHEREAS, the Henry County Prosecutor from time to time commences actions in the Henry Circuit Courts to forfeit property from individuals committing certain crimes pursuant to IC 34-24-1 *et seq*; and

WHEREAS, the property that can be ordered forfeited can be personal property, real property, and currency; and


WHEREAS, the property forfeited can be shared between law enforcement agencies including the prosecutor's office; and

WHEREAS, the Henry County Prosecutor requests the Henry County Commissioners to create a Henry County Prosecutor's Office Forfeiture Non-Reverting Fund to deposit the forfeiture funds forfeited pursuant to IC 34-24-1 *et seq*.

NOW THEREFORE, BE IT ORDAINED by the Commissioners of Henry County that there is now established a Henry County Prosecutor's Office Forfeiture Non-Reverting Fund and pursuant to IC 34-24-1-4(d) if the court enters judgment in favor of the state the proceeds of the sale or money allocated by court order to the Henry County Prosecutor's Office be deposited in the Henry County Prosecutor's Office Forfeiture Non-Reverting Fund and that any excess in value of the proceeds or the money the law enforcement costs be forfeited and be transferred to the treasurer of the state for deposit in the common school fund.

Adopted by a vote of 3 in favor and 0 opposed this 13th day of July, 2016.

Board of Commissioners of Henry County



Ed Yanos, President

Attest:

A handwritten signature in cursive script, reading "Patricia A. French", written over a horizontal line.

Patricia A. French, Henry County Auditor

IC 34-24

**ARTICLE 24. CIVIL PROCEEDINGS RELATED TO
CRIMINAL ACTIVITIES**

IC 34-24-1

**Chapter 1. Forfeiture of Property Used in Violation of Certain
Criminal Statutes**

IC 34-24-1-0.1

Repealed

*(As added by P.L.220-2011, SEC.559. Repealed by P.L.63-2012,
SEC.40.)*

IC 34-24-1-1

**Seizure of vehicles and property commonly used as consideration
for controlled substances offenses; seizure of tobacco products and
personal property owned and used to facilitate violation**

Sec. 1. (a) The following may be seized:

(1) All vehicles (as defined by IC 35-31.5-2-346), if they are used or are intended for use by the person or persons in possession of them to transport or in any manner to facilitate the transportation of the following:

(A) A controlled substance for the purpose of committing, attempting to commit, or conspiring to commit any of the following:

(i) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(ii) Dealing in methamphetamine (IC 35-48-4-1.1).

(iii) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(iv) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(v) Dealing in a schedule V controlled substance (IC 35-48-4-4).

(vi) Dealing in a counterfeit substance (IC 35-48-4-5).

(vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).

(viii) Possession of methamphetamine (IC 35-48-4-6.1).

(ix) Dealing in paraphernalia (IC 35-48-4-8.5).

(x) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).

(xi) Dealing in a synthetic drug or synthetic drug lookalike substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its amendment in 2013).

(B) Any stolen (IC 35-43-4-2) or converted property (IC 35-43-4-3) if the retail or repurchase value of that property is one hundred dollars (\$100) or more.

(C) Any hazardous waste in violation of IC 13-30-10-1.5.

(D) A bomb (as defined in IC 35-31.5-2-31) or weapon of mass destruction (as defined in IC 35-31.5-2-354) used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism (as defined by IC 35-31.5-2-329).

(2) All money, negotiable instruments, securities, weapons, communications devices, or any property used to commit, used in an attempt to commit, or used in a conspiracy to commit an offense under IC 35-47 as part of or in furtherance of an act of terrorism or commonly used as consideration for a violation of IC 35-48-4 (other than items subject to forfeiture under IC 16-42-20-5 or IC 16-6-8.5-5.1, before its repeal):

(A) furnished or intended to be furnished by any person in exchange for an act that is in violation of a criminal statute;

(B) used to facilitate any violation of a criminal statute; or

(C) traceable as proceeds of the violation of a criminal statute.

(3) Any portion of real or personal property purchased with money that is traceable as a proceed of a violation of a criminal statute.

(4) A vehicle that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense under IC 35-47 as part of or in furtherance of an act of terrorism.

(5) Real property owned by a person who uses it to commit any of the following as a Level 1, Level 2, Level 3, Level 4, or Level 5 felony:

(A) Dealing in or manufacturing cocaine or a narcotic drug (IC 35-48-4-1).

(B) Dealing in methamphetamine (IC 35-48-4-1.1).

(C) Dealing in a schedule I, II, or III controlled substance (IC 35-48-4-2).

(D) Dealing in a schedule IV controlled substance (IC 35-48-4-3).

(E) Dealing in marijuana, hash oil, hashish, or salvia (IC 35-48-4-10).

(F) Dealing in a synthetic drug or synthetic drug lookalike substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its amendment in 2013).

(6) Equipment and recordings used by a person to commit fraud under IC 35-43-5-4(10).

(7) Recordings sold, rented, transported, or possessed by a

person in violation of IC 24-4-10.

(8) Property (as defined by IC 35-31.5-2-253) or an enterprise (as defined by IC 35-45-6-1) that is the object of a corrupt business influence violation (IC 35-45-6-2).

(9) Unlawful telecommunications devices (as defined in IC 35-45-13-6) and plans, instructions, or publications used to commit an offense under IC 35-45-13.

(10) Any equipment, including computer equipment and cellular telephones, used for or intended for use in preparing, photographing, recording, videotaping, digitizing, printing, copying, or disseminating matter in violation of IC 35-42-4.

(11) Destructive devices used, possessed, transported, or sold in violation of IC 35-47.5.

(12) Tobacco products that are sold in violation of IC 24-3-5, tobacco products that a person attempts to sell in violation of IC 24-3-5, and other personal property owned and used by a person to facilitate a violation of IC 24-3-5.

(13) Property used by a person to commit counterfeiting or forgery in violation of IC 35-43-5-2.

(14) After December 31, 2005, if a person is convicted of an offense specified in IC 25-26-14-26(b) or IC 35-43-10, the following real or personal property:

(A) Property used or intended to be used to commit, facilitate, or promote the commission of the offense.

(B) Property constituting, derived from, or traceable to the gross proceeds that the person obtained directly or indirectly as a result of the offense.

(15) Except as provided in subsection (e), a vehicle used by a person who operates the vehicle:

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

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

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

(B) on a highway while the person's driving privileges are suspended in violation of IC 9-24-19-2 through IC 9-24-19-3, if in the previous five (5) years the person has two (2) or more prior unrelated convictions:

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

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

If a court orders the seizure of a vehicle under this subdivision, the court shall transmit an order to the bureau of motor vehicles recommending that the bureau not permit a vehicle to be registered in the name of the person whose vehicle was seized

until the person possesses a current driving license (as defined in IC 9-13-2-41).

(16) The following real or personal property:

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

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

(17) An automated sales suppression device (as defined in IC 35-43-5-4.6(a)(1) or phantom-ware (as defined in IC 35-43-5-4.6(a)(3)).

(18) Real or personal property, including a vehicle, that is used by a person to:

(A) commit, attempt to commit, or conspire to commit;

(B) facilitate the commission of; or

(C) escape from the commission of;

a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4 (promoting prostitution).

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

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

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

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

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

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

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

(5) IC 35-48-4-4 (dealing in a schedule V controlled substance) as a Level 4 felony.

(6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a Level 3, Level 4, or Level 5 felony.

(7) IC 35-48-4-6.1 (possession of methamphetamine) as a Level 3, Level 4, or Level 5 felony.

(8) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, or salvia) as a Level 5 felony.

(9) IC 35-48-4-10.5 (dealing in a synthetic drug or synthetic drug lookalike substance) as a Level 5 felony or Level 6 felony (or as a Class C felony or Class D felony under IC 35-48-4-10 before its amendment in 2013).

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

(1) an owner of the vehicle; or

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

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

As added by P.L. 1-1998, SEC.19. Amended by P.L. 17-2001, SEC.9; P.L. 3-2002, SEC.1; P.L. 123-2002, SEC.30; P.L. 117-2003, SEC.2; P.L. 253-2003, SEC.2; P.L. 45-2005, SEC.1; P.L. 160-2005, SEC.17; P.L. 181-2005, SEC.4; P.L. 212-2005, SEC.75; P.L. 1-2006, SEC.518; P.L. 94-2006, SEC.11; P.L. 151-2006, SEC.13; P.L. 137-2007, SEC.34; P.L. 114-2008, SEC.27; P.L. 119-2008, SEC.13; P.L. 1-2009, SEC.162; P.L. 143-2009, SEC.44; P.L. 138-2011, SEC.8; P.L. 182-2011, SEC.8; P.L. 114-2012, SEC.64; P.L. 125-2012, SEC.411; P.L. 196-2013, SEC.15; P.L. 293-2013(ts), SEC.42; P.L. 158-2013, SEC.349; P.L. 217-2014, SEC.187; P.L. 237-2015, SEC.8.

IC 34-24-1-2

Seizure procedure; custody

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.

As added by P.L.1-1998, SEC.19.

IC 34-24-1-3

Action for reimbursement of law enforcement costs and forfeiture; procedure

Sec. 3. (a) 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.

(b) 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 complaint 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.

(c) The owner of the seized property, or any person whose right, title, or interest is of record may, within twenty (20) days after service of the complaint under the Indiana Rules of Trial Procedure, file an answer to the complaint and may appear at the hearing on the action.

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

As added by P.L.1-1998, SEC.19. Amended by P.L.201-2011, SEC.108.

IC 34-24-1-4

Hearing; burden of proof; disposition of seized property

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.

As added by P.L.1-1998, SEC.19. Amended by P.L.123-2002, SEC.31.

IC 34-24-1-4.5

Prosecuting attorney reports concerning transferred property

Sec. 4.5. (a) After a court enters a judgment in favor of the state or a unit under section 4 of this chapter, the prosecuting attorney shall report the:

(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), 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.

As added by P.L.237-2015, SEC.9.

IC 34-24-1-5

Determination of secured interest and appraised value; disposition of property; payment

Sec. 5. (a) If:

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

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

As added by P.L.1-1998, SEC.19.

IC 34-24-1-6

Public sale of property; publication of notice; proceeds

Sec. 6. (a) Where disposition of property is to be made at a public sale, notice of sale shall be published in accordance with IC 34-55-6.

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

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

(2) Second, to any person:

(A) holding a valid lien, mortgage, land contract, or interest

under a conditional sales contract or the holder of other such interest; or

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

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

As added by P.L.1-1998, SEC.19.

IC 34-24-1-7

Court order; filing; effect

Sec. 7. (a) If the property seized was a vehicle, a copy of the court's order under this chapter (or IC 34-4-30.1-7 before its repeal):

(1) shall be filed with the department of motor vehicles or other appropriate agency; and

(2) constitutes authority for the issuance of clear title to that vehicle in the name of the person or purchaser to whom the order authorizes delivery.

(b) If the property seized was real property, a copy of the court's order under this chapter (or IC 34-4-30.1-7 before its repeal):

(1) shall be filed with the county recorder; and

(2) constitutes authority for:

(A) the sale of the property in the manner provided under IC 34-55-6; and

(B) the issuance of clear title to a bona fide purchaser for value who acquires the real property at the sale.

As added by P.L.1-1998, SEC.19.

IC 34-24-1-8

Retention of attorney to bring action

Sec. 8. (a) A prosecuting attorney may retain an attorney to bring an action under this chapter.

(b) An attorney retained under this section is not required to be a deputy prosecuting attorney but must be admitted to the practice of law in Indiana.

As added by P.L.1-1998, SEC.19.

IC 34-24-1-9

Disposition of seized property; expenditures of money

Sec. 9. (a) Upon motion of a prosecuting attorney under IC 35-33-5-5(j), property seized under this chapter must be transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

(b) Money received by a law enforcement agency as a result of a

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

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

The money received under this subsection must be used solely for the benefit of any agency directly participating in the seizure or forfeiture for purposes consistent with federal laws and regulations. *As added by P.L.174-1999, SEC.1. Amended by P.L.97-2004, SEC.115.*