



Reprinted
February 17, 2017

HOUSE BILL No. 1209

DIGEST OF HB 1209 (Updated February 16, 2017 4:07 pm - DI 128)

Citations Affected: IC 34-24; IC 35-31.5; IC 35-43; IC 35-45.

Synopsis: Organized retail theft. Makes it organized retail theft, a Level 6 felony, for a person to knowingly: (1) take, procure, receive, conceal, or otherwise exercise control over merchandise of a retail merchant; or (2) use an artifice, an instrument, a container, a device, or another article to facilitate taking, procuring, receiving, concealing, or exercising control over merchandise of a retail merchant; without the consent of the retail merchant or without paying the appropriate consideration for the merchandise, and with the intent to sell, deliver, or distribute the merchandise to another person. Makes organized retail theft, in certain circumstances, a Level 5 or Level 4 felony, depending on the value of the property that was stolen. Provides that the value of the property is the fair market value at the time and place the offense was committed. Allows property with a retail or repurchase value of at least \$100 that is stolen during the commission of the crime of organized retail theft to be seized and forfeited under the law concerning forfeiture of property used in violation of certain criminal statutes. Allows a victim of the crime of organized retail theft to receive treble damages in a civil action concerning the crime. Adds organized retail theft to the list of crimes considered racketeering activity under the law concerning racketeer influenced and corrupt organizations.

Effective: July 1, 2017.

Negele, Steuerwald, Lawson L

January 10, 2017, read first time and referred to Committee on Courts and Criminal Code.
February 9, 2017, reported — Do Pass.
February 16, 2017, read second time, amended, ordered engrossed.

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First Regular Session of the 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.

HOUSE BILL No. 1209

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 34-24-1-1, AS AMENDED BY P.L.237-2015,
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2017]: Sec. 1. (a) The following may be seized:
4 (1) All vehicles (as defined by IC 35-31.5-2-346), if they are used
5 or are intended for use by the person or persons in possession of
6 them to transport or in any manner to facilitate the transportation
7 of the following:
8 (A) A controlled substance for the purpose of committing,
9 attempting to commit, or conspiring to commit any of the
10 following:
11 (i) Dealing in or manufacturing cocaine or a narcotic drug
12 (IC 35-48-4-1).
13 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).
14 (iii) Dealing in a schedule I, II, or III controlled substance
15 (IC 35-48-4-2).
16 (iv) Dealing in a schedule IV controlled substance
17 (IC 35-48-4-3).

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- 1 (v) Dealing in a schedule V controlled substance
 2 (IC 35-48-4-4).
 3 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).
 4 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).
 5 (viii) Possession of methamphetamine (IC 35-48-4-6.1).
 6 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).
 7 (x) Dealing in marijuana, hash oil, hashish, or salvia
 8 (IC 35-48-4-10).
 9 (xi) Dealing in a synthetic drug or synthetic drug lookalike
 10 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its
 11 amendment in 2013).
 12 (B) Any stolen (IC 35-43-4-2 **or IC 35-43-4-2.2**) or converted
 13 property (IC 35-43-4-3) if the retail or repurchase value of that
 14 property is one hundred dollars (\$100) or more.
 15 (C) Any hazardous waste in violation of IC 13-30-10-1.5.
 16 (D) A bomb (as defined in IC 35-31.5-2-31) or weapon of
 17 mass destruction (as defined in IC 35-31.5-2-354) used to
 18 commit, used in an attempt to commit, or used in a conspiracy
 19 to commit an offense under IC 35-47 as part of or in
 20 furtherance of an act of terrorism (as defined by
 21 IC 35-31.5-2-329).
 22 (2) All money, negotiable instruments, securities, weapons,
 23 communications devices, or any property used to commit, used in
 24 an attempt to commit, or used in a conspiracy to commit an
 25 offense under IC 35-47 as part of or in furtherance of an act of
 26 terrorism or commonly used as consideration for a violation of
 27 IC 35-48-4 (other than items subject to forfeiture under
 28 IC 16-42-20-5 or IC 16-6-8.5-5.1, before its repeal):
 29 (A) furnished or intended to be furnished by any person in
 30 exchange for an act that is in violation of a criminal statute;
 31 (B) used to facilitate any violation of a criminal statute; or
 32 (C) traceable as proceeds of the violation of a criminal statute.
 33 (3) Any portion of real or personal property purchased with
 34 money that is traceable as a proceed of a violation of a criminal
 35 statute.
 36 (4) A vehicle that is used by a person to:
 37 (A) commit, attempt to commit, or conspire to commit;
 38 (B) facilitate the commission of; or
 39 (C) escape from the commission of;
 40 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal
 41 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting
 42 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense



- 1 under IC 35-47 as part of or in furtherance of an act of terrorism.
 2 (5) Real property owned by a person who uses it to commit any of
 3 the following as a Level 1, Level 2, Level 3, Level 4, or Level 5
 4 felony:
- 5 (A) Dealing in or manufacturing cocaine or a narcotic drug
 6 (IC 35-48-4-1).
 - 7 (B) Dealing in methamphetamine (IC 35-48-4-1.1).
 - 8 (C) Dealing in a schedule I, II, or III controlled substance
 9 (IC 35-48-4-2).
 - 10 (D) Dealing in a schedule IV controlled substance
 11 (IC 35-48-4-3).
 - 12 (E) Dealing in marijuana, hash oil, hashish, or salvia
 13 (IC 35-48-4-10).
 - 14 (F) Dealing in a synthetic drug or synthetic drug lookalike
 15 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its
 16 amendment in 2013).
- 17 (6) Equipment and recordings used by a person to commit fraud
 18 under IC 35-43-5-4(10).
- 19 (7) Recordings sold, rented, transported, or possessed by a person
 20 in violation of IC 24-4-10.
- 21 (8) Property (as defined by IC 35-31.5-2-253) or an enterprise (as
 22 defined by IC 35-45-6-1) that is the object of a corrupt business
 23 influence violation (IC 35-45-6-2).
- 24 (9) Unlawful telecommunications devices (as defined in
 25 IC 35-45-13-6) and plans, instructions, or publications used to
 26 commit an offense under IC 35-45-13.
- 27 (10) Any equipment, including computer equipment and cellular
 28 telephones, used for or intended for use in preparing,
 29 photographing, recording, videotaping, digitizing, printing,
 30 copying, or disseminating matter in violation of IC 35-42-4.
- 31 (11) Destructive devices used, possessed, transported, or sold in
 32 violation of IC 35-47.5.
- 33 (12) Tobacco products that are sold in violation of IC 24-3-5,
 34 tobacco products that a person attempts to sell in violation of
 35 IC 24-3-5, and other personal property owned and used by a
 36 person to facilitate a violation of IC 24-3-5.
- 37 (13) Property used by a person to commit counterfeiting or
 38 forgery in violation of IC 35-43-5-2.
- 39 (14) After December 31, 2005, if a person is convicted of an
 40 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the
 41 following real or personal property:
 42 (A) Property used or intended to be used to commit, facilitate,



- 1 or promote the commission of the offense.
 2 (B) Property constituting, derived from, or traceable to the
 3 gross proceeds that the person obtained directly or indirectly
 4 as a result of the offense.
- 5 (15) Except as provided in subsection (e), a vehicle used by a
 6 person who operates the vehicle:
 7 (A) while intoxicated, in violation of IC 9-30-5-1 through
 8 IC 9-30-5-5, if in the previous five (5) years the person has two
 9 (2) or more prior unrelated convictions:
 10 (i) for operating a motor vehicle while intoxicated in
 11 violation of IC 9-30-5-1 through IC 9-30-5-5; or
 12 (ii) for an offense that is substantially similar to IC 9-30-5-1
 13 through IC 9-30-5-5 in another jurisdiction; or
 14 (B) on a highway while the person's driving privileges are
 15 suspended in violation of IC 9-24-19-2 through IC 9-24-19-3,
 16 if in the previous five (5) years the person has two (2) or more
 17 prior unrelated convictions:
 18 (i) for operating a vehicle while intoxicated in violation of
 19 IC 9-30-5-1 through IC 9-30-5-5; or
 20 (ii) for an offense that is substantially similar to IC 9-30-5-1
 21 through IC 9-30-5-5 in another jurisdiction.
- 22 If a court orders the seizure of a vehicle under this subdivision,
 23 the court shall transmit an order to the bureau of motor vehicles
 24 recommending that the bureau not permit a vehicle to be
 25 registered in the name of the person whose vehicle was seized
 26 until the person possesses a current driving license (as defined in
 27 IC 9-13-2-41).
- 28 (16) The following real or personal property:
 29 (A) Property used or intended to be used to commit, facilitate,
 30 or promote the commission of an offense specified in
 31 IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or
 32 IC 30-2-13-38(f).
 33 (B) Property constituting, derived from, or traceable to the
 34 gross proceeds that a person obtains directly or indirectly as a
 35 result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b),
 36 IC 30-2-10-9(b), or IC 30-2-13-38(f).
- 37 (17) An automated sales suppression device (as defined in
 38 IC 35-43-5-4.6(a)(1) or phantom-ware (as defined in
 39 IC 35-43-5-4.6(a)(3)).
- 40 (18) Real or personal property, including a vehicle, that is used by
 41 a person to:
 42 (A) commit, attempt to commit, or conspire to commit;



- 1 (B) facilitate the commission of; or
 2 (C) escape from the commission of;
 3 a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4
 4 (promoting prostitution).
- 5 (b) A vehicle used by any person as a common or contract carrier in
 6 the transaction of business as a common or contract carrier is not
 7 subject to seizure under this section, unless it can be proven by a
 8 preponderance of the evidence that the owner of the vehicle knowingly
 9 permitted the vehicle to be used to engage in conduct that subjects it to
 10 seizure under subsection (a).
- 11 (c) Equipment under subsection (a)(10) may not be seized unless it
 12 can be proven by a preponderance of the evidence that the owner of the
 13 equipment knowingly permitted the equipment to be used to engage in
 14 conduct that subjects it to seizure under subsection (a)(10).
- 15 (d) Money, negotiable instruments, securities, weapons,
 16 communications devices, or any property commonly used as
 17 consideration for a violation of IC 35-48-4 found near or on a person
 18 who is committing, attempting to commit, or conspiring to commit any
 19 of the following offenses shall be admitted into evidence in an action
 20 under this chapter as prima facie evidence that the money, negotiable
 21 instrument, security, or other thing of value is property that has been
 22 used or was to have been used to facilitate the violation of a criminal
 23 statute or is the proceeds of the violation of a criminal statute:
- 24 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a
 25 narcotic drug).
 26 (2) IC 35-48-4-1.1 (dealing in methamphetamine).
 27 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled
 28 substance).
 29 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).
 30 (5) IC 35-48-4-4 (dealing in a schedule V controlled substance)
 31 as a Level 4 felony.
 32 (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a
 33 Level 3, Level 4, or Level 5 felony.
 34 (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Level
 35 3, Level 4, or Level 5 felony.
 36 (8) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, or
 37 salvia) as a Level 5 felony.
 38 (9) IC 35-48-4-10.5 (dealing in a synthetic drug or synthetic drug
 39 lookalike substance) as a Level 5 felony or Level 6 felony (or as
 40 a Class C felony or Class D felony under IC 35-48-4-10 before its
 41 amendment in 2013).
 42 (e) A vehicle operated by a person who is not:



1 (1) an owner of the vehicle; or
 2 (2) the spouse of the person who owns the vehicle;
 3 is not subject to seizure under subsection (a)(15) unless it can be
 4 proven by a preponderance of the evidence that the owner of the
 5 vehicle knowingly permitted the vehicle to be used to engage in
 6 conduct that subjects it to seizure under subsection (a)(15).

7 SECTION 2. IC 34-24-3-2 IS AMENDED TO READ AS
 8 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. (a) For purposes of
 9 determining the amount of damages recoverable under section 1(1) of
 10 this chapter, there is an irrebuttable presumption that a retailer who
 11 brings a civil action under this chapter (or IC 34-4-30 before its repeal)
 12 as the result of a violation of IC 35-43-4-2 (theft), **IC 35-43-4-2.2**
 13 **(organized retail theft)**, or IC 35-43-4-3 (conversion) suffers a
 14 pecuniary loss in the amount of:

15 (1) one hundred dollars (\$100) regardless of whether:
 16 (A) the property is returned to the retailer; or
 17 (B) the actual retail value of the property is less than one
 18 hundred dollars (\$100); or
 19 (2) the retailer's actual damages;
 20 whichever is greater.

21 (b) An individual found liable in a civil action under this chapter (or
 22 IC 34-4-30 before its repeal) for violating IC 35-43-4-2,
 23 **IC 35-43-4-2.2**, or IC 35-43-4-3 may not be indemnified or insured for
 24 any penalties, damages, or settlement arising from the violation.

25 SECTION 3. IC 35-31.5-2-278.2 IS ADDED TO THE INDIANA
 26 CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 27 **1, 2017]: Sec. 278.2. "Retail merchant", for**
 28 **purposes of IC 35-43-4-2.2, has the meaning set forth in**
 29 **IC 35-43-4-2.2(a).**

30 SECTION 4. IC 35-43-4-2.2 IS ADDED TO THE INDIANA CODE
 31 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY
 32 **1, 2017]: Sec. 2.2. (a) As used in this section, "retail merchant" has**
 33 **the meaning set forth in IC 6-2.5-1-8.**

34 (b) **Except as provided in subsection (c), a person who**
 35 **knowingly takes, procures, receives, conceals, or otherwise exerts**
 36 **control over merchandise of a retail merchant or uses an artifice,**
 37 **an instrument, a container, a device, or another article to facilitate**
 38 **taking, procuring, receiving, concealing, or exercising control over**
 39 **merchandise of a retail merchant:**

40 (1) **without the consent of the retail merchant or without**
 41 **paying the appropriate consideration for the merchandise;**
 42 **and**



1 (2) with the intent to sell, deliver, or distribute the
2 merchandise to another person;
3 commits organized retail theft, a Level 6 felony.

4 (c) The offense is:

5 (1) a Level 5 felony if:

6 (A) the value of the property is at least seven hundred fifty
7 dollars (\$750) and less than two thousand five hundred
8 dollars (\$2500);

9 (B) the property is a firearm; or

10 (C) the person has a prior unrelated conviction for:

11 (i) organized theft under this section;

12 (ii) theft under section 2 of this chapter; or

13 (iii) criminal conversion under section 3 of this chapter;

14 and

15 (2) a Level 4 felony if the value of the property is at least two
16 thousand five hundred dollars (\$2500).

17 (d) In determining the value of the property under this section,
18 acts of organized theft committed in a single episode of criminal
19 conduct (as defined in IC 35-50-1-2(b)) may be charged in a single
20 count.

21 (e) For purposes of this section, "the value of the property"
22 means:

23 (1) the fair market value of the property at the time and place
24 the offense was committed; or

25 (2) if the fair market value of the property cannot be
26 satisfactorily determined, the cost to replace the property
27 within a reasonable time after the offense was committed.

28 A price tag or price marking on property displayed or offered for
29 sale constitutes prima facie evidence of the value of the property.

30 SECTION 5. IC 35-45-6-1, AS AMENDED BY P.L.168-2014,
31 SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
32 JULY 1, 2017]: Sec. 1. (a) The definitions in this section apply
33 throughout this chapter.

34 (b) "Documentary material" means any document, drawing,
35 photograph, recording, or other tangible item containing compiled data
36 from which information can be either obtained or translated into a
37 usable form.

38 (c) "Enterprise" means:

39 (1) a sole proprietorship, corporation, limited liability company,
40 partnership, business trust, or governmental entity; or

41 (2) a union, an association, or a group, whether a legal entity or
42 merely associated in fact.



1 (d) "Pattern of racketeering activity" means engaging in at least two
 2 (2) incidents of racketeering activity that have the same or similar
 3 intent, result, accomplice, victim, or method of commission, or that are
 4 otherwise interrelated by distinguishing characteristics that are not
 5 isolated incidents. However, the incidents are a pattern of racketeering
 6 activity only if at least one (1) of the incidents occurred after August
 7 31, 1980, and if the last of the incidents occurred within five (5) years
 8 after a prior incident of racketeering activity.

9 (e) "Racketeering activity" means to commit, to attempt to commit,
 10 to conspire to commit a violation of, or aiding and abetting in a
 11 violation of any of the following:

- 12 (1) A provision of IC 23-19, or of a rule or order issued under
 13 IC 23-19.
- 14 (2) A violation of IC 35-45-9.
- 15 (3) A violation of IC 35-47.
- 16 (4) A violation of IC 35-49-3.
- 17 (5) Murder (IC 35-42-1-1).
- 18 (6) Battery as a Class C felony before July 1, 2014, or a Level 5
 19 felony after June 30, 2014 (IC 35-42-2-1).
- 20 (7) Kidnapping (IC 35-42-3-2).
- 21 (8) Human and sexual trafficking crimes (IC 35-42-3.5).
- 22 (9) Child exploitation (IC 35-42-4-4).
- 23 (10) Robbery (IC 35-42-5-1).
- 24 (11) Carjacking (IC 35-42-5-2) (before its repeal).
- 25 (12) Arson (IC 35-43-1-1).
- 26 (13) Burglary (IC 35-43-2-1).
- 27 (14) Theft (IC 35-43-4-2).
- 28 (15) Receiving stolen property (IC 35-43-4-2).
- 29 (16) Forgery (IC 35-43-5-2).
- 30 (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- 31 (18) Bribery (IC 35-44.1-1-2).
- 32 (19) Official misconduct (IC 35-44.1-1-1).
- 33 (20) Conflict of interest (IC 35-44.1-1-4).
- 34 (21) Perjury (IC 35-44.1-2-1).
- 35 (22) Obstruction of justice (IC 35-44.1-2-2).
- 36 (23) Intimidation (IC 35-45-2-1).
- 37 (24) Promoting prostitution (IC 35-45-4-4).
- 38 (25) Professional gambling (IC 35-45-5-3).
- 39 (26) Maintaining a professional gambling site
 40 (IC 35-45-5-3.5(b)).
- 41 (27) Promoting professional gambling (IC 35-45-5-4).
- 42 (28) Dealing in or manufacturing cocaine or a narcotic drug



- 1 (IC 35-48-4-1).
2 (29) Dealing in or manufacturing methamphetamine
3 (IC 35-48-4-1.1).
4 (30) Dealing in a schedule I, II, or III controlled substance
5 (IC 35-48-4-2).
6 (31) Dealing in a schedule IV controlled substance
7 (IC 35-48-4-3).
8 (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
9 (33) Dealing in marijuana, hash oil, hashish, or salvia
10 (IC 35-48-4-10).
11 (34) Money laundering (IC 35-45-15-5).
12 (35) A violation of IC 35-47.5-5.
13 (36) A violation of any of the following:
14 (A) IC 23-14-48-9.
15 (B) IC 30-2-9-7(b).
16 (C) IC 30-2-10-9(b).
17 (D) IC 30-2-13-38(f).
18 (37) Practice of law by a person who is not an attorney
19 (IC 33-43-2-1).
20 (38) Dealing in a synthetic drug or synthetic drug lookalike
21 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its
22 amendment in 2013).
23 **(39) Organized retail theft (IC 35-43-4-2.2).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1209, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1209 as introduced.)

WASHBURN

Committee Vote: Yeas 9, Nays 0

 HOUSE MOTION

Mr. Speaker: I move that House Bill 1209 be amended to read as follows:

Page 6, line 34, delete "A" and insert "**Except as provided in subsection (c), a**".

Page 6, line 35, delete "exercises" and insert "**exerts**".

Page 7, line 3, delete "Level 5" and insert "**Level 6**".

Page 7, between lines 3 and 4, begin a new paragraph and insert:

"(c) The offense is:

(1) a Level 5 felony if:

(A) the value of the property is at least seven hundred fifty dollars (\$750) and less than two thousand five hundred dollars (\$2500);

(B) the property is a firearm; or

(C) the person has a prior unrelated conviction for:

(i) organized theft under this section;

(ii) theft under section 2 of this chapter; or

(iii) criminal conversion under section 3 of this chapter;
and

(2) a Level 4 felony if the value of the property is at least two thousand five hundred dollars (\$2500).

(d) In determining the value of the property under this section, acts of organized theft committed in a single episode of criminal conduct (as defined in IC 35-50-1-2(b)) may be charged in a single count.

(e) For purposes of this section, "the value of the property" means:

(1) the fair market value of the property at the time and place the offense was committed; or

(2) if the fair market value of the property cannot be

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satisfactorily determined, the cost to replace the property within a reasonable time after the offense was committed. A price tag or price marking on property displayed or offered for sale constitutes prima facie evidence of the value of the property."

(Reference is to HB 1209 as printed on February 10, 2017.)

NEGELE

