

SENATE BILL No. 254

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-32-2-1; IC 35-43-4-2.

Synopsis: Organized retail theft. Makes theft a Level 6 felony if a person: (1) knowingly or intentionally exerts unauthorized control over property and the person uses the Internet to sell, deliver, or distribute the property; or (2) knowingly or intentionally exerts unauthorized control over retail property having a value of less than \$750 and certain other conditions apply. Makes theft a Level 5 felony if: (1) the value of the retail property is at least \$750 and less than \$2,500 and certain other conditions apply; (2) the retail property is a firearm; (3) the retail property is exchanged for cash, a gift card, a merchandise card, or other item of value; or (4) the person has a prior unrelated conviction for theft or criminal conversion. Makes theft a Level 4 felony if the value of the retail property is at least \$2,500 and certain other conditions apply. Provides that, in determining the value of the property, acts of theft committed in a single episode of criminal conduct may be charged in a single count. Provides that theft of retail property that occurs in more than one county over a six month period may be tried in any county where the theft occurred.

Effective: July 1, 2019.

Ruckelshaus

January 3, 2019, read first time and referred to Committee on Corrections and Criminal Law.



First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

SENATE BILL No. 254

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 35-31.5-2-279.2 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2019]: **Sec. 279.2. "Retail merchant", for**
4 **purposes of IC 35-43-4-2, has the meaning set forth in IC 6-2.5-1-8.**
5 SECTION 2. IC 35-31.5-2-279.3 IS ADDED TO THE INDIANA
6 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2019]: **Sec. 279.3. "Retail property", for**
8 **purposes of IC 35-43-4-2, means property offered for sale by a**
9 **retail merchant.**
10 SECTION 3. IC 35-32-2-1, AS AMENDED BY P.L.115-2005,
11 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
12 JULY 1, 2019]: Sec. 1. (a) Criminal actions shall be tried in the county
13 where the offense was committed, except as otherwise provided by law.
14 (b) If a person committing an offense upon the person of another is
15 located in one (1) county and the person's victim is located in another
16 county at the time of the commission of the offense, the trial may be in
17 either of the counties.



1 (c) If the offense involves killing or causing the death of another
2 human being, the trial may be in the county in which the:

- 3 (1) cause of death is inflicted;
4 (2) death occurs; or
5 (3) victim's body is found.

6 (d) If an offense is committed in Indiana and it cannot readily be
7 determined in which county the offense was committed, trial may be in
8 any county in which an act was committed in furtherance of the
9 offense.

10 (e) If an offense is commenced outside Indiana and completed
11 within Indiana, the offender may be tried in any county where any act
12 in furtherance of the offense occurred.

13 (f) If an offense commenced inside Indiana is completed outside
14 Indiana, the offender shall be tried in any county where an act in
15 furtherance of the offense occurred.

16 (g) If an offense is committed on the portions of the Ohio or Wabash
17 Rivers where they form a part of the boundaries of this state, trial may
18 be in the county that is adjacent to the river and whose boundaries, if
19 projected across the river, would include the place where the offense
20 was committed.

21 (h) If an offense is committed at a place which is on or near a
22 common boundary which is shared by two (2) or more counties and it
23 cannot be readily determined where the offense was committed, then
24 the trial may be in any county sharing the common boundary.

25 (i) If an offense is committed on a public highway (as defined in
26 IC 9-25-2-4) that runs on and along a common boundary shared by two
27 (2) or more counties, the trial may be held in any county sharing the
28 common boundary.

29 (j) If an offense is committed by use of the Internet or another
30 computer network (as defined in IC 35-43-2-3), the trial may be held
31 in any county:

- 32 (1) from which or to which access to the Internet or other
33 computer network was made; or
34 (2) in which any computer, computer data, computer software, or
35 computer network that was used to access the Internet or other
36 computer network is located.

37 (k) If an offense:

- 38 (1) is committed by use of:
39 (A) the Internet or another computer network (as defined in
40 IC 35-43-2-3); or
41 (B) another form of electronic communication; and
42 (2) occurs outside Indiana and the victim of the offense resides in



1 Indiana at the time of the offense;
 2 the trial may be held in the county where the victim resides at the time
 3 of the offense.

4 **(I) If an offense involves the theft of retail property (as defined**
 5 **in IC 35-31.5-2-279.3) committed by an individual or group of**
 6 **individuals over a period of six (6) months, the trial may be held in**
 7 **any county in which a theft occurred.**

8 SECTION 4. IC 35-43-4-2, AS AMENDED BY P.L.176-2018,
 9 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 10 JULY 1, 2019]: Sec. 2. (a) A person who knowingly or intentionally
 11 exerts unauthorized control over property of another person, with intent
 12 to deprive the other person of any part of its value or use, commits
 13 theft, a Class A misdemeanor. However, the offense is:

14 (1) a Level 6 felony if:

15 (A) the value of the property is at least seven hundred fifty
 16 dollars (\$750) and less than fifty thousand dollars (\$50,000);

17 (B) the property is a:

18 (i) firearm;

19 (ii) motor vehicle (as defined in IC 9-13-2-105(a)); or

20 (iii) component part (as defined in IC 9-13-2-34) of a motor
 21 vehicle; ~~or~~

22 **(C) the person exerts unauthorized control over property,**
 23 **and then uses the Internet to sell, deliver, or distribute the**
 24 **property to another person;**

25 ~~(D)~~ (D) the person has a prior unrelated conviction for:

26 (i) theft under this section; or

27 (ii) criminal conversion under section 3 of this chapter; ~~and~~

28 **(E) the property is retail property having a value of less**
 29 **than seven hundred fifty dollars (\$750), taken from a retail**
 30 **merchant, and the person exerted unauthorized control**
 31 **over the retail property with the intent to sell, deliver, or**
 32 **distribute the merchandise to another person; or**

33 **(F) the property is retail property having a value of less**
 34 **than seven hundred fifty dollars (\$750), taken from a retail**
 35 **merchant, and the person uses an artifice, an instrument,**
 36 **a container, a device, or other article to facilitate the**
 37 **exertion of unauthorized control over the retail property;**

38 (2) a Level 5 felony if:

39 (A) the value of the property is at least fifty thousand dollars
 40 (\$50,000);

41 (B) the property that is the subject of the theft is a valuable
 42 metal (as defined in IC 25-37.5-1-1) and:



- 1 (i) relates to transportation safety;
 2 (ii) relates to public safety; or
 3 (iii) is taken from a hospital or other health care facility,
 4 telecommunications provider, public utility (as defined in
 5 IC 32-24-1-5.9(a)), or key facility;
 6 and the absence of the property creates a substantial risk of
 7 bodily injury to a person; ~~or~~
 8 (C) the property is a:
 9 (i) motor vehicle (as defined in IC 9-13-2-105(a)); or
 10 (ii) component part (as defined in IC 9-13-2-34) of a motor
 11 vehicle; and
 12 the person has a prior unrelated conviction for theft of a motor
 13 vehicle (as defined in IC 9-13-2-105(a)) or theft of a
 14 component part (as defined in IC 9-13-2-34); ~~or~~
 15 (D) the:
 16 (i) **property is retail property having a value of at least**
 17 **seven hundred fifty dollars (\$750) and less than two**
 18 **thousand five hundred dollars (\$2,500), taken from a**
 19 **retail merchant, and the person exerted unauthorized**
 20 **control over the retail property with the intent to sell,**
 21 **deliver, or distribute the retail property to another**
 22 **person;**
 23 (ii) **property is retail property having a value of at least**
 24 **seven hundred fifty dollars (\$750) and less than two**
 25 **thousand five hundred dollars (\$2,500), taken from a**
 26 **retail merchant, and the person uses an artifice, an**
 27 **instrument, a container, a device, or other article to**
 28 **facilitate the exertion of unauthorized control over the**
 29 **retail property;**
 30 (iii) **property is a firearm taken from a retail merchant;**
 31 (iv) **person exchanged the retail property for cash, a gift**
 32 **card, a merchandise card, or other item of value,**
 33 **knowing or being aware of a high probability that the**
 34 **retail property was stolen; or**
 35 (v) **person has a prior unrelated conviction for theft**
 36 **under this section, criminal conversion under section 3**
 37 **of this chapter, auto theft under IC 35-43-4-2.5(b)**
 38 **(before its repeal), or receiving stolen property under**
 39 **IC 35-43-4-2.5(c) (before its repeal); and**
 40 (3) **a Level 4 felony if the:**
 41 (A) **property is retail property having a value of at least**
 42 **two thousand five hundred dollars (\$2,500), taken from a**



1 **retail merchant, and the person exerted unauthorized**
 2 **control over the retail property with the intent to sell,**
 3 **deliver, or distribute the retail property to another person;**
 4 **or**
 5 **(B) property is retail property having a value of at least**
 6 **two thousand five hundred dollars (\$2,500), taken from a**
 7 **retail merchant, and the person uses an artifice, an**
 8 **instrument, a container, a device, or other article to**
 9 **facilitate the exertion of unauthorized control over the**
 10 **retail property.**

11 **(b) In determining the value of the property under subsection**
 12 **(a), acts of theft committed in a single episode of criminal conduct**
 13 **(as defined in IC 35-50-1-2(b)) may be charged in a single count.**

14 ~~(b)~~ (c) For purposes of this section, "the value of property" means:
 15 (1) the fair market value of the property at the time and place the
 16 offense was committed; or
 17 (2) if the fair market value of the property cannot be satisfactorily
 18 determined, the cost to replace the property within a reasonable
 19 time after the offense was committed.

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

