

# PROPOSED AMENDMENT

## SB 132 # 1

### DIGEST

Constructive trustee. Removes SECTION 1 of the bill concerning certain requirements for a life insurance policy. Provides that a person who has been found guilty, or guilty but mentally ill, on a charge of causing an unlawful death of a decedent is a constructive trustee of certain property acquired or entitled to be received by the culpable person. Makes conforming changes.

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- 1           Page 1, delete lines 1 through 16, and begin a new paragraph and  
2 insert:
- 3           "SECTION 2. IC 29-1-2-12.1, AS AMENDED BY P.L.238-2005,  
4 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
5 JULY 1, 2022]: Sec. 12.1. (a) ~~A person is a constructive trustee of any  
6 property that is acquired by the person or that the person is otherwise  
7 entitled to receive as a result of an individual's death, including  
8 property from a trust, if that person has been found guilty, or guilty but  
9 mentally ill, of murder, causing suicide, or voluntary manslaughter,  
10 because of the individual's death. The following definitions apply  
11 throughout this section:~~
- 12           **(1) "Culpable person" means any of the following:**
- 13           **(A) A person who:**
- 14               **(i) has been charged with causing an unlawful death; and**  
15               **(ii) is found guilty, or guilty but mentally ill, on a charge**  
16               **of causing an unlawful death under a guilty plea or**  
17               **guilty verdict under IC 35-35-1 or IC 35-36-2.**
- 18           **(B) A person who is determined by a preponderance of the**  
19           **evidence in a civil action to have knowingly or intentionally**  
20           **caused an unlawful death.**
- 21           **(C) The estate of a person who:**
- 22               **(i) is described in clause (A) or (B); and**  
23               **(ii) died after causing an unlawful death.**
- 24           **(2) "Decedent" means the victim of an unlawful death.**
- 25           **(3) "Unlawful death" means a death resulting from murder,**  
26           **voluntary manslaughter, or suicide caused by a person other**

1           **than the decedent. The term includes a death resulting from**  
 2           **an offense under IC 35-42-1-1, IC 35-42-1-2, or IC 35-42-1-3.**

3           **(b) A judgment of conviction is conclusive in a subsequent civil**  
 4           **action to have the a culpable person declared a constructive trustee**  
 5           **under subsection (e).**

6           **(c) A culpable person is a constructive trustee of any property**  
 7           **that is acquired by the culpable person or that the culpable person**  
 8           **is entitled to receive as a result of an unlawful death, including the**  
 9           **following:**

10           **(1) Property from a trust.**

11           **(2) Property from a transfer on death transfer under**  
 12           **IC 32-17-14.**

13           **(3) Proceeds under a policy or certificate of life insurance on**  
 14           **the life of the decedent, if the culpable person:**

15           **(A) is a beneficiary; and**

16           **(B) would otherwise be entitled to receive the proceeds;**  
 17           **under the policy or certificate.**

18           **(4) Proceeds under a policy or certificate of life insurance on**  
 19           **the life of the culpable person, if the decedent:**

20           **(A) was a beneficiary; and**

21           **(B) would otherwise be entitled to receive the proceeds;**  
 22           **under the policy or certificate.**

23           **(5) The decedent's interest in joint tenancy property that**  
 24           **would otherwise pass by survivorship to the culpable person**  
 25           **as a result of the decedent's death.**

26           **(6) Property passing under a contractual agreement upon the**  
 27           **decedent's death.**

28           **(d) If a culpable person dies after causing an unlawful death, life**  
 29           **insurance proceeds that would otherwise be subject to a**  
 30           **constructive trust under subsection (c)(3) or (c)(4) may be paid in**  
 31           **the same manner as the life insurance proceeds would be paid if the**  
 32           **culpable person had predeceased the decedent.**

33           **(e) A civil action may be initiated by an interested person to**  
 34           **have a culpable person declared a constructive trustee of property that**  
 35           **is acquired by the culpable person, or that the culpable person is**  
 36           **otherwise entitled to receive including property from a trust, as a result**  
 37           **of an individual's death, if: unlawful death.**

38           **(1) the person has been charged with murder, causing suicide, or**  
 39           **voluntary manslaughter, because of the individual's death; and**

40           **(2) the person has been found not responsible by reason of**

1           ~~insanity at the time of the crime.~~  
2           If a civil action is initiated under this subsection, the court shall declare  
3           that the **culpable** person is a constructive trustee of the property if by  
4           a preponderance of the evidence it is determined that the **culpable**  
5           person ~~killed or caused the suicide of the individual.~~ **unlawful death.**  
6           ~~(e)~~ **(f)** If a constructive trust is established under this section, the  
7           property that is subject to the trust may be used only to benefit those  
8           persons, other than the **culpable person and** constructive trustee,  
9           legally entitled to the property, determined as if the constructive trustee  
10          had died immediately before the decedent. However, if any property  
11          that the constructive trustee acquired as a result of the ~~decedent's~~  
12          **unlawful** death has been sold to an innocent purchaser for value who  
13          acted in good faith, that property is no longer subject to the  
14          constructive trust, but the property received from the purchaser under  
15          the transaction becomes subject to the constructive trust."  
16          Renumber all SECTIONS consecutively.  
            (Reference is to SB 132 as introduced.)