

Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

HOUSE ENROLLED ACT No. 1009

AN ACT to amend the Indiana Code concerning criminal law and procedure.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 34-30-2-146.4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2014]: **Sec. 146.4. IC 35-33-5-13 (Concerning electronic communications services, remote computing services, and geolocation information services for compliance with warrant laws).**

SECTION 2. IC 35-31.5-2-110.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2014]: **Sec. 110.5. "Electronic communication service", for purposes of IC 35-33-5, means a service that provides users with the ability to send or receive wire or electronic communications.**

SECTION 3. IC 35-31.5-2-111.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2014]: **Sec. 111.5. "Electronic storage", for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(2).**

SECTION 4. IC 35-31.5-2-112.5 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2014]: **Sec. 112.5. "Electronic user data", for purposes of IC 35-33-5, has the meaning set forth in**

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IC 35-33-5-0.5(3).

SECTION 5. IC 35-31.5-2-143.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 143.3. "Geolocation information" means data generated by an electronic device that can be used to determine the location of the device or the owner of the device. The term includes a cellular telephone, a wireless fidelity (wi-fi) equipped computer, or a GPS navigation or tracking unit. The term does not include the content of a communication.**

SECTION 6. IC 35-31.5-2-143.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 143.5. "Geolocation information service" means a person that offers or provides GPS service or other mapping, locational, or directional services to the public by means of an electronic device, including a cellular telephone, a wireless fidelity (wi-fi) equipped computer, or a GPS navigation or tracking unit.**

SECTION 7. IC 35-31.5-2-144, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 144. (a) "Governmental entity" means:**

- (1) the United States or any state, county, township, city, town, separate municipal corporation, special taxing district, or public school corporation;
- (2) any authority, board, bureau, commission, committee, department, division, hospital, military body, or other instrumentality of any of those entities; or
- (3) a state assisted college or state assisted university.

(b) For purposes of IC 35-33-5, "governmental entity" also includes a person authorized to act on behalf of a state or local agency.

SECTION 8. IC 35-31.5-2-175.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 175.5. "Intercept", for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(5).**

SECTION 9. IC 35-31.5-2-186, AS ADDED BY P.L.114-2012, SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 186. (a) "Lawful detention" means:**

- (1) arrest;
- (2) custody following surrender in lieu of arrest;
- (3) detention in a penal facility;
- (4) detention in a facility for custody of persons alleged or found to be delinquent children;

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- (5) detention under a law authorizing civil commitment in lieu of criminal proceedings or authorizing such detention while criminal proceedings are held in abeyance;
- (6) detention for extradition or deportation;
- (7) placement in a community corrections program's residential facility;
- (8) electronic monitoring;
- (9) custody for purposes incident to any of the above including transportation, medical diagnosis or treatment, court appearances, work, or recreation; or
- (10) any other detention for law enforcement purposes.

(b) Except as provided in subsection (a)(7) and (a)(8), the term does not include supervision of a person on probation or parole or constraint incidental to release with or without bail.

(c) The term does not include electronic monitoring through the use of an unmanned aerial vehicle under IC 35-33-5-9.

SECTION 10. IC 35-31.5-2-273.8 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 273.8. "Remote computing service", for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(6).**

SECTION 11. IC 35-31.5-2-337.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 337.5. "Tracking device", for purposes of IC 35-33-5 and this chapter, means an electronic or mechanical device that allows a person to remotely determine or track the position or movement of another person or an object. The term includes the following:**

- (1) A device that stores geographic data for subsequent access or analysis.**
- (2) A device that allows real-time monitoring or movement.**
- (3) An unmanned aerial vehicle.**
- (4) A cellular telephone or other wireless or cellular communications device.**

SECTION 12. IC 35-31.5-2-342.3 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 342.3. "Unmanned aerial vehicle", for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(7).**

SECTION 13. IC 35-31.5-2-343.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 343.5. "Use of a tracking device",**



for purposes of IC 35-33-5, includes the installation, maintenance, and monitoring of a tracking device. The term does not include:

- (1) the capture, collection, monitoring, or viewing of images; or
- (2) the use of a monitoring device with respect to a person required to be tracked or monitored:
 - (A) as a condition of bail;
 - (B) as a condition of probation, parole, or community corrections;
 - (C) as a requirement of sex offender registration; or
 - (D) as part of a sentence imposed for a crime.

SECTION 14. IC 35-31.5-2-343.7 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 343.7. "Use of an unmanned aerial vehicle", for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(8).**

SECTION 15. IC 35-31.5-2-343.8 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 343.8. "User", for purposes of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(9).**

SECTION 16. IC 35-33-5-0.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 0.5. The following definitions apply throughout this chapter:**

- (1) "Electronic communication service" means a service that provides users with the ability to send or receive wire or electronic communications.
- (2) "Electronic storage" means any storage of electronic user data on a computer, computer network, or computer system regardless of whether the data is subject to recall, further manipulation, deletion, or transmission. "Electronic storage" includes any storage or electronic communication by an electronic communication service or a remote computing service.
- (3) "Electronic user data" means any data or records that are in the possession, care, custody, or control of a provider of an electronic communication service, a remote computing service, or any other service or program that stores, uses, collects, or safeguards electronic user data.
- (4) "Governmental entity" has the meaning set forth in IC 35-31.5-2-144. For purposes of this chapter, "governmental entity" also includes a person authorized to



act on behalf of a state or local agency.

(5) "Intercept" means to acquire geolocation data through the use of an electronic device, mechanical device, or other device.

(6) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication service.

(7) "Unmanned aerial vehicle" means an aircraft that:

(A) does not carry a human operator; and

(B) is capable of flight under remote control or autonomous programming.

(8) "Use of an unmanned aerial vehicle" means the use of an unmanned aerial vehicle by a law enforcement officer to obtain evidence relevant to the enforcement of statutes, rules, or regulations. The term includes:

(A) the interception of wire, electronic, or oral communications; and

(B) the capture, collection, monitoring, or viewing of images.

(9) "User" means any person who:

(A) uses an electronic communication service, remote computing service, geolocation information service, or an electronic device; and

(B) may or may not be the person or entity having legal title, claim, or right to the electronic device or electronic user data.

SECTION 17. IC 35-33-5-2, AS AMENDED BY P.L.2-2005, SECTION 117, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Except as provided in section 8 of this chapter, **and subject to the requirements of section 11 of this chapter, if applicable**, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:

(1) particularly describing:

(A) the house or place to be searched and the things to be searched for; or

(B) particularly describing the person to be arrested;

(2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:

(A) the things ~~as are to be searched for are there concealed;~~ **sought are concealed there;** or

(B) the person to be arrested committed the offense; and

(3) setting forth the facts ~~then in knowledge of~~ **known to** the affiant **through personal knowledge** or ~~information~~ based on



hearsay, constituting the probable cause.

(b) When based on hearsay, the affidavit must either:

(1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and establishing that there is a factual basis for the information furnished; or

(2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

(c) An affidavit for search substantially in the following form shall be treated as sufficient:

STATE OF INDIANA)
) SS:
COUNTY OF _____)

A B swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the county of _____, in said state.

Subscribed and sworn to before me this _____ day of _____ 20__.

In accordance with Indiana Trial Rule 11, I affirm under the penalties for perjury that the foregoing representations are true.

(Signed) Affiant Date

SECTION 18. IC 35-33-5-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) A judge may issue a search or arrest warrant without the affidavit required under section 2 of this chapter, if the judge receives ~~sworn~~ testimony **subject to the penalties for perjury** of the same facts required for an affidavit:

- (1) in a nonadversarial, recorded hearing before the judge;
- (2) orally by telephone or radio; ~~or~~
- (3) in writing by facsimile transmission (FAX); ~~or~~
- (4) in writing by electronic mail or other electronic transmission.**

(b) If a warrant is issued under subsection (a)(1), the judge shall order the court reporter to type or transcribe the testimony from the hearing for entry in the record. The judge shall then certify the transcript.

~~(b)~~ (c) After reciting the facts required for an affidavit and verifying



the facts recited under penalty of perjury, an applicant for a warrant under subsection (a)(2) shall read to the judge from a warrant form on which the applicant enters the information read by the applicant to the judge. The judge may direct the applicant to modify the warrant. If the judge agrees to issue the warrant, the judge shall direct the applicant to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

~~(e)~~ **(d)** After transmitting an affidavit, an applicant for a warrant under subsection (a)(3) **or (a)(4)** shall transmit to the judge a copy of a warrant form completed by the applicant. The judge may modify the transmitted warrant. If the judge agrees to issue the warrant, the judge shall **sign, affix the date and time, and** transmit to the applicant a duplicate of the warrant. ~~The judge shall then sign the warrant retained by the judge, adding the time of the issuance of the warrant.~~

~~(d)~~ **(e)** If a warrant is issued under subsection (a)(2), the judge shall record the conversation on audio tape and order the court reporter to type or transcribe the recording for entry in the record. The judge shall certify the audio tape, the transcription, and the warrant retained by the judge for entry in the record.

~~(e)~~ **(f)** If a warrant is issued under subsection (a)(3), ~~the judge shall~~ **the facsimile copy of the affidavit and warrant sent to the judge shall be retained as if they were the originals. If a warrant is issued under subsection (a)(4), the electronically transmitted copy of the affidavit and warrant sent to the judge shall be printed and retained as if they were the originals.** ~~order the court reporter to retype or copy the facsimile transmission for entry in the record. The judge shall certify the transcription or copy and warrant retained by the judge for entry in the record.~~

~~(f)~~ **(g)** The court reporter shall notify the applicant who received a warrant under subsection **(a)(1) or (a)(2) or (a)(3)** when the transcription ~~or copy~~ required under this section is entered in the record. The applicant shall sign the ~~typed, transcribed or copied~~ entry upon receiving notice from the court reporter.

(h) The affiant and the judge may use an electronic signature on the affidavit and warrant. An electronic signature may be indicated by "s/Affiant's Name" or "s/Judge's Name" or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed.

SECTION 19. IC 35-33-5-9 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 9. (a) Except as provided in subsection (b), a law**



enforcement officer must obtain a search warrant in order to use an unmanned aerial vehicle.

(b) A law enforcement officer or governmental entity may use an unmanned aerial vehicle without obtaining a search warrant if the law enforcement officer determines that the use of the unmanned aerial vehicle:

(1) is required due to:

(A) the existence of exigent circumstances necessitating a warrantless search;

(B) the substantial likelihood of a terrorist attack;

(C) the need to conduct a search and rescue or recovery operation;

(D) the need to conduct efforts:

(i) in response to; or

(ii) to mitigate;

the results of a natural disaster or any other disaster; or

(E) the need to perform a geographical, an environmental, or any other survey for a purpose that is not a criminal justice purpose; or

(2) will be conducted with the consent of any affected property owner.

SECTION 20. IC 35-33-5-10 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 10. The following are not admissible as evidence in an administrative or judicial proceeding:**

(1) A communication or an image that is obtained through the use of an unmanned aerial vehicle in violation of section 9 of this chapter.

(2) Evidence derived from a communication or an image described in subdivision (1).

SECTION 21. IC 35-33-5-11 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) This subsection does not apply to electronic or video toll collection facilities or activities authorized under any of the following:**

(1) IC 8-15-2.

(2) IC 8-15-3.

(3) IC 8-15.5.

(4) IC 8-15.7.

(5) IC 8-16.

(6) IC 9-21-3.5.

A law enforcement officer may not compel a user to provide a



passkey, password, or keycode to any electronic communication service, electronic device, or electronic storage, or any form of stored electronic user data, without a valid search warrant issued by a judge using search warrant procedures.

(b) A judge may issue a court order under this section for electronic user data held in electronic storage, including the records and information related to a wire communication or electronic communication held in electronic storage, by a provider of an electronic communication service or a provider of a remote computing service regardless of whether the user data is held at a location in Indiana or at a location in another state.

(c) A judge may issue a court order under this section on a service provider that is a corporation or entity that is incorporated or organized under the laws of Indiana or a company or business entity doing business in Indiana under a contract or terms of a service agreement with an Indiana resident. The service provider shall produce all information sought, as required by the court order.

(d) Any Indiana corporation that provides electronic communication services or remote computing services to the public shall comply with a valid court order issued in another state that is seeking the information described in this section, if the court order is served on the corporation.

SECTION 22. IC 35-33-5-12 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 12. (a) A law enforcement officer or law enforcement agency may not use a real time tracking instrument that is capable of obtaining geolocation information concerning a cellular device or a device connected to a cellular network unless:

- (1) the law enforcement officer or law enforcement agency has obtained an order issued by a court based upon a finding of probable cause to use the tracking instrument; or
- (2) exigent circumstances exist that necessitate using the tracking instrument without first obtaining a court order.

(b) If a law enforcement officer or law enforcement agency uses a real time tracking instrument described in subsection (a) based upon the existence of exigent circumstances, the law enforcement officer or law enforcement agency shall seek to obtain an order issued by a court based upon a finding of probable cause not later than seventy-two (72) hours after the initial use of the real time tracking instrument.



SECTION 23. IC 35-33-5-13 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 13. An electronic communication service, remote computing service, and geolocation information service are immune from civil or criminal liability for providing information or evidence as required by a court order under this chapter.**

SECTION 24. IC 35-33-5-14 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 14. (a) For purposes of IC 34-46-4 (Journalist's Privilege Against Disclosure of Information Source) and subject to subsection (b), if:**

(1) a governmental entity requests that a court issue a search warrant to a provider of:

(A) electronic communication service; or

(B) remote computing service; and

(2) the search warrant seeks information or communications concerning a news media entity or a person otherwise described in IC 34-46-4-1;

the news media entity or person described in IC 34-46-4-1 shall be given reasonable and timely notice of the search warrant request and shall be given an opportunity to be heard by the court concerning the issuance of the search warrant before the search warrant is issued.

(b) If:

(1) the search warrant that would be issued to a provider described in subsection (a)(1) concerns a criminal investigation in which the news media entity or person described in IC 34-46-4-1 is a target of the criminal investigation; and

(2) the notice that would be provided to the news media entity or person described in IC 34-46-4-1 under subsection (a) would pose a clear and substantial threat to the integrity of the criminal investigation;

the governmental entity shall certify the threat to the court and notice of the search warrant shall be given to the news media entity or person described in IC 34-46-4-1 as soon as the court determines that the notice no longer poses a clear and substantial threat to the integrity of the criminal investigation.

SECTION 25. IC 35-38-2.5-3, AS AMENDED BY P.L.31-2005, SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 3. (a) As used in this chapter, "monitoring device"**



means an electronic device that:

- (1) can record or transmit information twenty-four (24) hours each day regarding an offender's:
 - (A) presence or absence from the offender's home; or
 - (B) precise location;
- (2) is minimally intrusive upon the privacy of the offender or other persons residing in the offender's home;
- (3) with the written consent of the offender and with the written consent of other persons residing in the home at the time an order for home detention is entered, may record or transmit:
 - (A) a visual image;
 - (B) an electronic communication or any sound; or
 - (C) information regarding the offender's activities while inside the offender's home; and
- (4) can notify a probation department, a community corrections program, or a contract agency if the offender violates the terms of a home detention order.

(b) The term includes any device that can reliably determine the location of an offender and track the locations where the offender has been, including a device that uses a global positioning system satellite service.

(c) The term does not include an unmanned aerial vehicle (as defined in IC 35-31.5-2-342.3).

SECTION 26. IC 35-46-8.5 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]:

Chapter 8.5. Unlawful Photography and Surveillance on Private Property

Sec. 1. (a) This section does not apply to any of the following:

- (1) **Electronic or video toll collection facilities or activities authorized under any of the following:**
 - (A) IC 8-15-2.
 - (B) IC 8-15-3.
 - (C) IC 8-15.5.
 - (D) IC 8-15.7.
 - (E) IC 8-16.
 - (F) IC 9-21-3.5.
- (2) **A law enforcement officer who has obtained:**
 - (A) a search warrant; or
 - (B) the consent of the owner or private property;**to place a camera or electronic surveillance equipment on private property.**



(b) A person who knowingly or intentionally places a camera or electronic surveillance equipment that records images or data of any kind while unattended on the private property of another person without the consent of the owner or tenant of the private property commits a Class A misdemeanor.

SECTION 27. [EFFECTIVE JULY 1, 2014] (a) The general assembly urges the legislative council to assign to a study committee during the 2014 legislative interim the topic of digital privacy, including:

(1) issues related to:

(A) searches of electronic devices;

(B) compelling the disclosure of electronic user data;

(C) the collection and use of geolocation information; and

(D) the collection and use of biometric information;

by government agencies; and

(2) any other issue concerning digital privacy and related subjects.

(b) If a study committee is assigned the topic described in subsection (a), the study committee shall issue to the legislative council a final report containing the study committee's findings and recommendations, including any recommended legislation concerning the topic, in an electronic format under IC 5-14-6 not later than November 1, 2014.

(c) This SECTION expires January 1, 2015.



Speaker of the House of Representatives

President of the Senate

President Pro Tempore

Governor of the State of Indiana

Date: _____ Time: _____

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