



February 21, 2014

ENGROSSED HOUSE BILL No. 1009

DIGEST OF HB 1009 (Updated February 19, 2014 2:08 pm - DI 106)

Citations Affected: IC 34-30; IC 35-31.5; IC 35-33; IC 35-38;
IC 35-46; noncode.

Synopsis: Surveillance and privacy. Requires a law enforcement officer to obtain a search warrant in order to use an unmanned aerial vehicle, with certain exceptions. Exempts electronic or video toll collection activities and facilities from certain restrictions relating to video and electronic surveillance and data collection. Provides that a law enforcement officer may not compel a person 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. Prohibits a law enforcement officer or law enforcement agency from using 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.

(Continued next page)

Effective: July 1, 2014.

Koch, Pierce

(SENATE SPONSORS — STEELE, TOMES, WATERMAN)

January 7, 2014, read first time and referred to Committee on Courts and Criminal Code.
January 28, 2014, amended, reported — Do Pass.
January 30, 2014, read second time, amended, ordered engrossed.
January 31, 2014, engrossed.
February 3, 2014, read third time, passed. Yeas 85, nays 11.

SENATE ACTION

February 11, 2014, read first time and referred to Committee on Judiciary.
February 20, 2014, amended, reported favorably — Do Pass.

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instrument without first obtaining a court order. Provides that, except for a law enforcement officer or governmental entity who has obtained a search warrant, 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. Establishes a procedure to use electronic mail to apply for a warrant. Provides immunity from civil and criminal liability for certain entities that provide information pursuant to certain court orders. Provides certain procedures for the issuance of search warrants concerning electronic communication service or remote computing service that affect the law concerning a journalist's privilege against disclosure of an information source. 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 searches of electronic devices, compelling the disclosure of electronic user data, the collection and use of geolocation information, and the collection and use of biometric information by government agencies; and (2) any other issue concerning digital privacy and related subjects.

EH 1009—LS 6285/DI 107



February 21, 2014

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.

ENGROSSED HOUSE BILL No. 1009

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

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

13 SECTION 3. IC 35-31.5-2-111.5 IS ADDED TO THE INDIANA
14 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2014]: **Sec. 111.5. "Electronic storage", for**

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1 purposes of IC 35-33-5, has the meaning set forth in
2 IC 35-33-5-0.5(2).

3 SECTION 4. IC 35-31.5-2-112.5 IS ADDED TO THE INDIANA
4 CODE AS A NEW SECTION TO READ AS FOLLOWS
5 [EFFECTIVE JULY 1, 2014]: **Sec. 112.5. "Electronic user data", for**
6 **purposes of IC 35-33-5, has the meaning set forth in**
7 **IC 35-33-5-0.5(3).**

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

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

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

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

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

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

41 SECTION 9. IC 35-31.5-2-186, AS ADDED BY P.L.114-2012,
42 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



- 1 JULY 1, 2014]; Sec. 186. (a) "Lawful detention" means:
 2 (1) arrest;
 3 (2) custody following surrender in lieu of arrest;
 4 (3) detention in a penal facility;
 5 (4) detention in a facility for custody of persons alleged or found
 6 to be delinquent children;
 7 (5) detention under a law authorizing civil commitment in lieu of
 8 criminal proceedings or authorizing such detention while criminal
 9 proceedings are held in abeyance;
 10 (6) detention for extradition or deportation;
 11 (7) placement in a community corrections program's residential
 12 facility;
 13 (8) electronic monitoring;
 14 (9) custody for purposes incident to any of the above including
 15 transportation, medical diagnosis or treatment, court appearances,
 16 work, or recreation; or
 17 (10) any other detention for law enforcement purposes.

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

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

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

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

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

41 SECTION 12. IC 35-31.5-2-342.3 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2014]: **Sec. 342.3. "Unmanned aerial**
 2 **vehicle", for purposes of IC 35-33-5, has the meaning set forth in**
 3 **IC 35-33-5-0.5(7).**

4 SECTION 13. IC 35-31.5-2-343.5 IS ADDED TO THE INDIANA
 5 CODE AS A NEW SECTION TO READ AS FOLLOWS
 6 [EFFECTIVE JULY 1, 2014]: **Sec. 343.5. "Use of a tracking device",**
 7 **for purposes of IC 35-33-5, includes the installation, maintenance,**
 8 **and monitoring of a tracking device. The term does not include:**

9 (1) **the capture, collection, monitoring, or viewing of images;**

10 **or**

11 (2) **the use of a court ordered monitoring device on a person**
 12 **who has been charged with or convicted of a crime.**

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

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

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

26 (1) **"Electronic communication service" means a service that**
 27 **provides users with the ability to send or receive wire or**
 28 **electronic communications.**

29 (2) **"Electronic storage" means any storage of electronic user**
 30 **data on a computer, computer network, or computer system**
 31 **regardless of whether the data is subject to recall, further**
 32 **manipulation, deletion, or transmission. "Electronic storage"**
 33 **includes any storage or electronic communication by an**
 34 **electronic communication service or a remote computing**
 35 **service.**

36 (3) **"Electronic user data" means any data or records that are**
 37 **in the possession, care, custody, or control of a provider of an**
 38 **electronic communication service, a remote computing**
 39 **service, or any other service or program that stores, uses,**
 40 **collects, or safeguards electronic user data.**

41 (4) **"Governmental entity" has the meaning set forth in**
 42 **IC 35-31.5-2-144. For purposes of this chapter,**



- 1 "governmental entity" also includes a person authorized to
 2 act on behalf of a state or local agency.
- 3 (5) "Intercept" means to acquire geolocation data through the
 4 use of an electronic device, mechanical device, or other device.
- 5 (6) "Remote computing service" means the provision to the
 6 public of computer storage or processing services by means of
 7 an electronic communication service.
- 8 (7) "Unmanned aerial vehicle" means an aircraft that:
 9 (A) does not carry a human operator; and
 10 (B) is capable of flight under remote control or
 11 autonomous programming.
- 12 (8) "Use of an unmanned aerial vehicle" means the use of an
 13 unmanned aerial vehicle by a law enforcement officer to
 14 obtain evidence relevant to the enforcement of statutes, rules,
 15 or regulations. The term includes:
 16 (A) the interception of wire, electronic, or oral
 17 communications; and
 18 (B) the capture, collection, monitoring, or viewing of
 19 images.
- 20 (9) "User" means any person who:
 21 (A) uses an electronic communication service, remote
 22 computing service, geolocation information service, or an
 23 electronic device; and
 24 (B) may or may not be the person or entity having legal
 25 title, claim, or right to the electronic device or electronic
 26 user data.
- 27 SECTION 17. IC 35-33-5-2, AS AMENDED BY P.L.2-2005,
 28 SECTION 117, IS AMENDED TO READ AS FOLLOWS
 29 [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Except as provided in section
 30 8 of this chapter, **and subject to the requirements of section 11 of**
 31 **this chapter, if applicable**, no warrant for search or arrest shall be
 32 issued until there is filed with the judge an affidavit:
 33 (1) particularly describing:
 34 (A) the house or place to be searched and the things to be
 35 searched for; or
 36 (B) particularly describing the person to be arrested;
 37 (2) alleging substantially the offense in relation thereto and that
 38 the affiant believes and has good cause to believe that:
 39 (A) the things as are to be searched for are there concealed;
 40 **sought are concealed there;** or
 41 (B) the person to be arrested committed the offense; and
 42 (3) setting forth the facts ~~then in knowledge of~~ **known to the**



1 ~~(b)~~ **(c)** After reciting the facts required for an affidavit and verifying
 2 the facts recited under penalty of perjury, an applicant for a warrant
 3 under subsection (a)(2) shall read to the judge from a warrant form on
 4 which the applicant enters the information read by the applicant to the
 5 judge. The judge may direct the applicant to modify the warrant. If the
 6 judge agrees to issue the warrant, the judge shall direct the applicant to
 7 sign the judge's name to the warrant, adding the time of the issuance of
 8 the warrant.

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

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

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

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

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

41 SECTION 19. IC 35-33-5-9 IS ADDED TO THE INDIANA CODE
 42 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.



1 A law enforcement officer may not compel a user to provide a
2 passkey, password, or keycode to any electronic communication
3 service, electronic device, or electronic storage, or any form of
4 stored electronic user data, without a valid search warrant issued
5 by a judge using search warrant procedures.

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

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

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

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

32 (1) the law enforcement officer or law enforcement agency has
33 obtained an order issued by a court based upon a finding of
34 probable cause to use the tracking instrument; or

35 (2) exigent circumstances exist that necessitate using the
36 tracking instrument without first obtaining a court order.

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



1 **tracking instrument.**

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

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

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

16 (A) electronic communication service; or

17 (B) remote computing service; and

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

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

26 (b) If:

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

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

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

41 SECTION 25. IC 35-38-2.5-3, AS AMENDED BY P.L.31-2005,
42 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE



1 JULY 1, 2014]: Sec. 3. (a) As used in this chapter, "monitoring device"
2 means an electronic device that:

3 (1) can record or transmit information twenty-four (24) hours
4 each day regarding an offender's:

- 5 (A) presence or absence from the offender's home; or
6 (B) precise location;

7 (2) is minimally intrusive upon the privacy of the offender or
8 other persons residing in the offender's home;

9 (3) with the written consent of the offender and with the written
10 consent of other persons residing in the home at the time an order
11 for home detention is entered, may record or transmit:

- 12 (A) a visual image;
13 (B) an electronic communication or any sound; or
14 (C) information regarding the offender's activities while inside
15 the offender's home; and

16 (4) can notify a probation department, a community corrections
17 program, or a contract agency if the offender violates the terms of
18 a home detention order.

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

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

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

28 **Chapter 8.5. Unlawful Photography and Surveillance on Private
29 Property**

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

31 **(1) Electronic or video toll collection facilities or activities
32 authorized under any of the following:**

- 33 **(A) IC 8-15-2.**
34 **(B) IC 8-15-3.**
35 **(C) IC 8-15.5.**
36 **(D) IC 8-15.7.**
37 **(E) IC 8-16.**
38 **(F) IC 9-21-3.5.**

39 **(2) A law enforcement officer who has obtained:**

- 40 **(A) a search warrant; or**
41 **(B) the consent of the owner or private property;**

42 **to place a camera or electronic surveillance equipment on**



- 1 **private property.**
- 2 **(b) A person who knowingly or intentionally places a camera or**
- 3 **electronic surveillance equipment that records images or data of**
- 4 **any kind while unattended on the private property of another**
- 5 **person without the consent of the owner or tenant of the private**
- 6 **property commits a Class A misdemeanor.**
- 7 **SECTION 27. [EFFECTIVE JULY 1, 2014] (a) The general**
- 8 **assembly urges the legislative council to assign to a study**
- 9 **committee during the 2014 legislative interim the topic of digital**
- 10 **privacy, including:**
- 11 **(1) issues related to:**
- 12 **(A) searches of electronic devices;**
- 13 **(B) compelling the disclosure of electronic user data;**
- 14 **(C) the collection and use of geolocation information; and**
- 15 **(D) the collection and use of biometric information;**
- 16 **by government agencies; and**
- 17 **(2) any other issue concerning digital privacy and related**
- 18 **subjects.**
- 19 **(b) If a study committee is assigned the topic described in**
- 20 **subsection (a), the study committee shall issue to the legislative**
- 21 **council a final report containing the study committee's findings**
- 22 **and recommendations, including any recommended legislation**
- 23 **concerning the topic, in an electronic format under IC 5-14-6 not**
- 24 **later than November 1, 2014.**
- 25 **(c) This SECTION expires January 1, 2015.**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1009, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 1, delete lines 1 through 8.

Page 1, line 11, delete "35-33-5-18" and insert "**35-33-5-15**".

Page 9, line 12, delete "A" and insert "**Except as provided in subsection (e), a**".

Page 9, between lines 39 and 40, begin a new paragraph and insert:

"(e) A law enforcement officer may use a tracking device without a warrant to obtain evidence relevant to the enforcement of statutes, rules, and regulations if the law enforcement officer determines that the use of the tracking device is required due to:

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

(2) the substantial likelihood of a terrorist attack."

Page 10, line 4, delete "person." and insert "**person if the law enforcement officer does not have the consent of the other person to place the camera or electronic surveillance equipment on the other person's private property.**".

Page 10, line 33, after "procedures." insert "**However, a law enforcement officer may use a tracking device without a warrant if the law enforcement officer determines that the use of the tracking device is required due to:**

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

(2) the substantial likelihood of a terrorist attack."

Page 11, delete lines 22 through 42.

Delete page 12.

Page 13, delete lines 1 through 25.

Page 13, line 26, delete "35-33-5-17" and insert "35-33-5-14".

Page 13, line 28, delete "17." and insert "**14.**".

Page 13, line 28, delete "Any" and insert "**Except as provided in subsection (d), any**".

Page 13, line 32, delete "(c)," and insert "**(c) or (d),**".

Page 13, line 33, delete "sections 13 and 14" and insert "**section 13**".

Page 13, between lines 41 and 42, begin a new paragraph and insert:

"(d) Electronic mail owned, controlled, or used by the state and obtained by the office of inspector general or an investigator for the inspector general is admissible in an administrative proceeding



even if the electronic mail is obtained or admitted in violation of:

- (1) subsection (b); or
- (2) section 13 of this chapter."

Page 13, line 42, delete "35-33-5-18" and insert "35-33-5-15".

Page 14, line 2, delete "18." and insert "15."

Page 14, delete lines 7 through 16, begin a new paragraph and insert:

"SECTION 30. IC 35-33-5-16 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2014]: **Sec. 16. (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."

Page 15, line 10, after "warrant" insert "or the consent of the owner of private property as provided".

Page 16, line 17, after "vehicles," insert "including a governmental



entity,".

Page 16, line 23, after "property," insert **"including a governmental entity,"**.

Page 16, between lines 24 and 25, begin a new line block indented and insert:

"(14) A law enforcement officer, if the law enforcement officer determines that the use of the tracking device is required due to:

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

(B) the substantial likelihood of a terrorist attack."

Page 16, after line 27, begin a new paragraph and insert:

"SECTION 34. [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 issues related to:

- (1) searches of electronic devices;**
- (2) compelling the disclosure of electronic user data;**
- (3) the collection and use of geolocation information; and**
- (4) the collection and use of biometric information;**

by government agencies.

(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."

Renumber all SECTIONS consecutively.

and when so amended that said bill do pass.

(Reference is to HB 1009 as introduced.)

MCMILLIN, Chair

Committee Vote: yeas 6, nays 1.



HOUSE MOTION

Mr. Speaker: I move that House Bill 1009 be amended to read as follows:

Page 1, line 3, delete "35-33-5-15" and insert "**35-33-5-13**".

Page 1, delete lines 7 through 16.

Page 2, delete lines 1 through 5.

Page 2, line 9, delete "and" and insert ",".

Page 2, line 10, delete "IC 35-46-10,".

Page 2, line 16, delete "35-33-5-0.5(5)." and insert "**35-33-5-0.5(2)**".

Page 2, line 21, delete "35-33-5-0.5(6)." and insert "**35-33-5-0.5(3)**".

Page 3, line 12, delete "35-33-5-0.5(8)." and insert "**35-33-5-0.5(5)**".

Page 3, delete lines 35 through 38, begin a new paragraph and insert:

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

Page 4, line 1, delete "35-33-5-0.5(9)." and insert "**35-33-5-0.5(6)**".

Page 4, line 5, delete ", IC 35-46-10,".

Page 4, line 19, delete "35-33-5-0.5(10)." and insert "**35-33-5-0.5(7)**".

Page 4, line 23, delete "and IC 35-46-10," and insert ",".

Page 4, line 34, delete "35-33-5-0.5(11)." and insert "**35-33-5-0.5(8)**".

Page 4, line 38, delete "35-33-5-0.5(12)." and insert "**35-33-5-0.5(9)**".

Page 4, delete lines 39 through 42.

Page 5, delete line 1.

Page 5, delete lines 6 through 42, begin a new line block indented and insert:

"(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."

Page 6, delete lines 1 through 26.

Page 6, line 30, delete "sections 11 and" and insert "**section 11**".

Page 6, line 31, delete "13".

Page 7, line 28, strike "or".

Page 7, line 29, delete "(FAX)." and insert "(FAX); or

(4) in writing by electronic mail when signed by the affiant.".

Page 7, line 39, after "(a)(3)" insert "**or (a)(4)**".

Page 8, delete lines 17 through 22.

Page 8, line 28, after "officer" insert "**or governmental entity**".

Page 8, line 30, delete "is" and insert ":".



Page 8, delete lines 31 through 34, begin a new line block indented and insert:

"(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 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."

Page 9, delete lines 2 through 42, begin a new paragraph and insert:

"SECTION 25. 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) 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 26. 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 office 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 as soon as is reasonably possible but not later than ninety-six (96) hours after the initial use of the real time tracking instrument."

Delete pages 10 and 11.

Page 12, delete lines 1 through 9.

Page 12, line 10, delete "35-33-5-15" and insert "35-33-5-13".

Page 12, line 12, delete "15." and insert "13."

Page 12, line 15, delete "search warrant" and insert "**court order**".

Page 12, line 17, delete "35-33-5-16" and insert "35-33-5-14".

Page 12, line 19, delete "16." and insert "14."

Page 13, delete lines 31 through 35, begin a new paragraph and insert:

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

Page 14, line 1, delete "as provided under IC 35-33-5-12".

Page 14, line 7, delete "written".

Page 14, delete lines 9 through 42.

Page 15, delete lines 1 through 26.

Page 15, line 30, delete "issues related to:" and insert ":

(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;



Page 7, line 1, after "shall" insert "**sign, affix the date and time, and**".

Page 7, line 1, strike "The judge".

Page 7, strike lines 2 through 3.

Page 7, line 4, strike "(d)" and insert "(e)".

Page 7, line 9, strike "(e)" and insert "(f)".

Page 7, line 9, strike "the judge shall" and insert "**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.**".

Page 7, line 10, strike "order the court reporter to".

Page 7, line 10, strike "retype or copy the facsimile transmission".

Page 7, strike lines 11 through 12.

Page 7, line 13, strike "(f)" and insert "(g)".

Page 7, line 14, after "subsection" insert "**(a)(1) or**".

Page 7, line 14, strike "or (a)(3)".

Page 7, line 14, strike "or copy".

Page 7, line 16, strike "typed,".

Page 7, line 16, delete "transcribed," and insert "transcribed".

Page 7, line 16, strike "or copied".

Page 7, between lines 17 and 18, begin a new paragraph and insert:

"(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."

Page 7, line 31, after "rescue" insert "**or recovery**".

Page 8, line 10, delete "A law enforcement officer" and insert "**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".

Page 9, line 5, delete "office" and insert "**officer**".

Page 9, line 9, delete "as soon as".



Page 9, line 10, delete "is reasonably possible but".

Page 9, line 10, delete "ninety-six (96)" and insert "**seventy-two (72)**".

Page 10, line 40, delete "a law enforcement" and insert "**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."

Page 10, delete lines 41 through 42.

Page 11, delete line 1.

Page 11, line 17, delete "piracy" and insert "**privacy**".

and when so amended that said bill do pass.

(Reference is to HB 1009 as reprinted January 31, 2014.)

STEELE, Chairperson

Committee Vote: Yeas 8, Nays 0.

