

HOUSE BILL No. 1009

DIGEST OF INTRODUCED BILL

Citations Affected: IC 33-38-9-11; IC 34-30-2-146.4; IC 35-31.5-2; IC 35-33-5; IC 35-38-2.5-3; IC 35-46.

Synopsis: Search warrants and privacy. Prohibits the use of unmanned aerial vehicles and tracking devices to conduct warrantless searches, with certain exceptions. Prohibits the placement of cameras or electronic surveillance equipment on private property to conduct warrantless searches, with certain exceptions. Establishes additional requirements that must be met in order for a search warrant authorizing the use of a tracking device to be issued. Provides that, except for a law enforcement officer acting under a warrant and certain other persons under certain circumstances, a person who uses a tracking device without the consent of the person who is the object of the use commits a Class A misdemeanor. Provides that 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 written consent of the owner or tenant of the private property commits a Class A misdemeanor. Requires a search warrant to conduct a search of an electronic device or compel disclosure of an electronic communication service or electronic user data. Requires a search warrant to obtain geolocation information. Requires a governmental entity to issue notice to a user if the user's electronic device or geolocation information was obtained in a search. Requires a governmental entity to pay for electronic user data. Requires the clerk of a court that issues or denies a warrant to report each warrant to the judicial center. Requires the judicial center to submit to the legislative council a report concerning search warrants issued for electronic devices. Requires the judicial center to post the report on its Internet web site. Provides immunity from civil and criminal liability for certain entities that provide information pursuant to certain warrants. Makes a technical correction.

Effective: July 1, 2014.

Koch

January 7, 2014, read first time and referred to Committee on Courts and Criminal Code.



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 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 33-38-9-11 IS ADDED TO THE INDIANA CODE
2 AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 2014]: **Sec. 11. Beginning in 2016, the Indiana judicial center**
4 **shall submit a report to the legislative council by December 1 of**
5 **each year concerning the status of warrants issued under**
6 **IC 35-33-5-13. Each report shall contain the following statistics**
7 **based on reports required under IC 35-33-5-16. Each report shall**
8 **be published on the Indiana judicial center's Internet web site.**
9 SECTION 2. IC 34-30-2-146.4 IS ADDED TO THE INDIANA
10 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2014]: **Sec. 146.4. IC 35-33-5-18 (Concerning**
12 **electronic communications services, remote computing services,**
13 **and geolocation information services for compliance with warrant**
14 **laws).**
15 SECTION 3. IC 35-31.5-2-9.5 IS ADDED TO THE INDIANA
16 CODE AS A **NEW** SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2014]: **Sec. 9.5. "Adverse result", for**
2 **purposes of IC 35-33-5, has the meaning set forth in**
3 **IC 35-33-5-0.5(1).**

4 SECTION 4. IC 35-31.5-2-27.7 IS ADDED TO THE INDIANA
5 CODE AS A NEW SECTION TO READ AS FOLLOWS
6 [EFFECTIVE JULY 1, 2014]: **Sec. 27.7. "Biometric information**
7 **system", for purposes of IC 35-33-5, has the meaning set forth in**
8 **IC 35-33-5-0.5(2).**

9 SECTION 5. IC 35-31.5-2-68.5 IS ADDED TO THE INDIANA
10 CODE AS A NEW SECTION TO READ AS FOLLOWS
11 [EFFECTIVE JULY 1, 2014]: **Sec. 68.5. "Covered service", for**
12 **purposes of IC 35-33-5, has the meaning set forth in**
13 **IC 35-33-5-0.5(3).**

14 SECTION 6. IC 35-31.5-2-110.5 IS ADDED TO THE INDIANA
15 CODE AS A NEW SECTION TO READ AS FOLLOWS
16 [EFFECTIVE JULY 1, 2014]: **Sec. 110.5. "Electronic**
17 **communication service", for purposes of IC 35-33-5 and**
18 **IC 35-46-10, means a service that provides users with the ability to**
19 **send or receive wire or electronic communications.**

20 SECTION 7. IC 35-31.5-2-111.5 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2014]: **Sec. 111.5. "Electronic storage", for**
23 **purposes of IC 35-33-5, has the meaning set forth in**
24 **IC 35-33-5-0.5(5).**

25 SECTION 8. IC 35-31.5-2-112.5 IS ADDED TO THE INDIANA
26 CODE AS A NEW SECTION TO READ AS FOLLOWS
27 [EFFECTIVE JULY 1, 2014]: **Sec. 112.5. "Electronic user data", for**
28 **purposes of IC 35-33-5, has the meaning set forth in**
29 **IC 35-33-5-0.5(6).**

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

38 SECTION 10. IC 35-31.5-2-143.5 IS ADDED TO THE INDIANA
39 CODE AS A NEW SECTION TO READ AS FOLLOWS
40 [EFFECTIVE JULY 1, 2014]: **Sec. 143.5. "Geolocation information**
41 **service" means a person that offers or provides GPS service or**
42 **other mapping, locational, or directional services to the public by**



1 **means of an electronic device, including a cellular telephone, a**
 2 **wireless fidelity (wi-fi) equipped computer, or a GPS navigation or**
 3 **tracking unit.**

4 SECTION 11. IC 35-31.5-2-144, AS ADDED BY P.L.114-2012,
 5 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 6 JULY 1, 2014]: Sec. 144. (a) "Governmental entity" means:

7 (1) the United States or any state, county, township, city, town,
 8 separate municipal corporation, special taxing district, or public
 9 school corporation;

10 (2) any authority, board, bureau, commission, committee,
 11 department, division, hospital, military body, or other
 12 instrumentality of any of those entities; or

13 (3) a state assisted college or state assisted university.

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

17 SECTION 12. IC 35-31.5-2-175.5 IS ADDED TO THE INDIANA
 18 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 19 [EFFECTIVE JULY 1, 2014]: **Sec. 175.5. "Intercept", for purposes**
 20 **of IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(8).**

21 SECTION 13. IC 35-31.5-2-186, AS ADDED BY P.L.114-2012,
 22 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 23 JULY 1, 2014]: Sec. 186. (a) "Lawful detention" means:

24 (1) arrest;

25 (2) custody following surrender in lieu of arrest;

26 (3) detention in a penal facility;

27 (4) detention in a facility for custody of persons alleged or found
 28 to be delinquent children;

29 (5) detention under a law authorizing civil commitment in lieu of
 30 criminal proceedings or authorizing such detention while criminal
 31 proceedings are held in abeyance;

32 (6) detention for extradition or deportation;

33 (7) placement in a community corrections program's residential
 34 facility;

35 (8) electronic monitoring;

36 (9) custody for purposes incident to any of the above including
 37 transportation, medical diagnosis or treatment, court appearances,
 38 work, or recreation; or

39 (10) any other detention for law enforcement purposes.

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



1 **(c) The term does not include electronic monitoring through the**
 2 **use of:**

- 3 **(1) an unmanned aerial vehicle under IC 35-33-5-9; or**
 4 **(2) an electronic tracking device under IC 35-33-5-11.**

5 SECTION 14. IC 35-31.5-2-273.8 IS ADDED TO THE INDIANA
 6 CODE AS A NEW SECTION TO READ AS FOLLOWS
 7 [EFFECTIVE JULY 1, 2014]: **Sec. 273.8. "Remote computing**
 8 **service", for purposes of IC 35-33-5, has the meaning set forth in**
 9 **IC 35-33-5-0.5(9).**

10 SECTION 15. IC 35-31.5-2-337.5 IS ADDED TO THE INDIANA
 11 CODE AS A NEW SECTION TO READ AS FOLLOWS
 12 [EFFECTIVE JULY 1, 2014]: **Sec. 337.5. "Tracking device", for**
 13 **purposes of IC 35-33-5, IC 35-46-10, and this chapter, means an**
 14 **electronic or mechanical device that allows a person to remotely**
 15 **determine or track the position or movement of another person or**
 16 **an object. The term includes the following:**

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

23 SECTION 16. IC 35-31.5-2-342.3 IS ADDED TO THE INDIANA
 24 CODE AS A NEW SECTION TO READ AS FOLLOWS
 25 [EFFECTIVE JULY 1, 2014]: **Sec. 342.3. "Unmanned aerial**
 26 **vehicle", for purposes of IC 35-33-5, has the meaning set forth in**
 27 **IC 35-33-5-0.5(10).**

28 SECTION 17. IC 35-31.5-2-343.5 IS ADDED TO THE INDIANA
 29 CODE AS A NEW SECTION TO READ AS FOLLOWS
 30 [EFFECTIVE JULY 1, 2014]: **Sec. 343.5. "Use of a tracking device",**
 31 **for purposes of IC 35-33-5 and IC 35-46-10, includes the**
 32 **installation, maintenance, and monitoring of a tracking device. The**
 33 **term does not include:**

- 34 **(1) the capture, collection, monitoring, or viewing of images;**
 35 **or**
 36 **(2) the use of a court ordered monitoring device on a person**
 37 **who has been charged with or convicted of a crime.**

38 SECTION 18. IC 35-31.5-2-343.7 IS ADDED TO THE INDIANA
 39 CODE AS A NEW SECTION TO READ AS FOLLOWS
 40 [EFFECTIVE JULY 1, 2014]: **Sec. 343.7. "Use of an unmanned**
 41 **aerial vehicle", for purposes of IC 35-33-5, has the meaning set**
 42 **forth in IC 35-33-5-0.5(11).**



1 SECTION 19. IC 35-31.5-2-343.8 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: **Sec. 343.8. "User", for purposes of**
4 **IC 35-33-5, has the meaning set forth in IC 35-33-5-0.5(12).**

5 SECTION 20. IC 35-31.5-2-355.5 IS ADDED TO THE INDIANA
6 CODE AS A NEW SECTION TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2014]: **Sec. 355.5. "Wireless communication**
8 **device", for purposes of IC 35-33-5, has the meaning in**
9 **IC 35-33-5-0.5(13).**

10 SECTION 21. IC 35-33-5-0.5 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2014]: **Sec. 0.5. The following definitions**
13 **apply throughout this chapter:**

14 (1) "Adverse result" means:

- 15 (A) immediate dangers of death or serious bodily injury;
- 16 (B) flight from prosecution;
- 17 (C) destruction of or tampering with evidence;
- 18 (D) intimidation of a potential witness; or
- 19 (E) substantial jeopardy of a law enforcement
20 investigation.

21 (2) "Biometric information system" means any tool, program,
22 service, or system used to uniquely identify, verify identity of,
23 and track individuals using retina and iris scans, fingerprints,
24 voiceprints, or hand and face geometry, gait patterns, or other
25 automated systems that can uniquely and independently
26 identify an individual.

27 (3) "Covered service" means an electronic communication
28 service, a geolocation information service, or a remote
29 computing service.

30 (4) "Electronic communication service" means a service that
31 provides users with the ability to send or receive wire or
32 electronic communications.

33 (5) "Electronic storage" means any storage of electronic user
34 data on a computer, computer network, or computer system
35 regardless of whether the data is subject to recall, further
36 manipulation, deletion, or transmission. "Electronic storage"
37 includes any storage or electronic communication by an
38 electronic communication service or a remote computing
39 service.

40 (6) "Electronic user data" means any data or records that are
41 in the possession, care, custody, or control of a provider of an
42 electronic communication service, a remote computing



1 service, or any other service or program that stores, uses,
2 collects, or safeguards electronic user data.

3 (7) "Governmental entity" has the meaning set forth in
4 IC 35-31.5-2-144. For purposes of this chapter,
5 "governmental entity" also includes a person authorized to
6 act on behalf of a state or local agency.

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

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

12 (10) "Unmanned aerial vehicle" means an aircraft that:

13 (A) does not carry a human operator; and

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

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

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

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

24 (12) "User" means any person who:

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

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

31 (13) "Wireless communication device" means a device that
32 enables access to, or use of, an electronic communication
33 service or a covered service, if the device uses a radio or other
34 wireless connection to access the system or service.

35 SECTION 22. IC 35-33-5-2, AS AMENDED BY P.L.2-2005,
36 SECTION 117, IS AMENDED TO READ AS FOLLOWS
37 [EFFECTIVE JULY 1, 2014]: Sec. 2. (a) Except as provided in section
38 8 of this chapter, **and subject to the requirements of sections 11 and**
39 **13 of this chapter, if applicable**, no warrant for search or arrest shall
40 be issued until there is filed with the judge an affidavit:

41 (1) particularly describing:

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



1 searched for; or
2 (B) particularly describing the person to be arrested;
3 (2) alleging substantially the offense in relation thereto and that
4 the affiant believes and has good cause to believe that:
5 (A) the things as are to be searched for are there concealed; or
6 (B) the person to be arrested committed the offense; and
7 (3) setting forth the facts then in knowledge of the affiant or
8 information based on hearsay, constituting the probable cause.
9 (b) When based on hearsay, the affidavit must either:
10 (1) contain reliable information establishing the credibility of the
11 source and of each of the declarants of the hearsay and
12 establishing that there is a factual basis for the information
13 furnished; or
14 (2) contain information that establishes that the totality of the
15 circumstances corroborates the hearsay.
16 (c) An affidavit for search substantially in the following form shall
17 be treated as sufficient:
18 STATE OF INDIANA)
19) SS:
20 COUNTY OF _____)
21 A B swears (or affirms, as the case may be) that he believes
22 and has good cause to believe (here set forth the facts and
23 information constituting the probable cause) that (here
24 describe the things to be searched for and the offense in
25 relation thereto) are concealed in or about the (here describe
26 the house or place) of C D, situated in the county of
27 _____, in said state.
28 Subscribed and sworn to before me this ____ day of
29 _____ 20__.

30 SECTION 23. IC 35-33-5-8 IS AMENDED TO READ AS
31 FOLLOWS [EFFECTIVE JULY 1, 2014]: Sec. 8. (a) A judge may
32 issue a search or arrest warrant without the affidavit required under
33 section 2 of this chapter, if the judge receives sworn testimony of the
34 same facts required for an affidavit:
35 (1) in a nonadversarial, recorded hearing before the judge;
36 (2) orally by telephone or radio; or
37 (3) in writing by facsimile transmission (FAX).
38 (b) After reciting the facts required for an affidavit and verifying the
39 facts recited under penalty of perjury, an applicant for a warrant under
40 subsection (a)(2) shall read to the judge from a warrant form on which
41 the applicant enters the information read by the applicant to the judge.
42 The judge may direct the applicant to modify the warrant. If the judge



1 agrees to issue the warrant, the judge shall direct the applicant to sign
 2 the judge's name to the warrant, adding the time of the issuance of the
 3 warrant.

4 (c) After transmitting an affidavit, an applicant for a warrant under
 5 subsection (a)(3) shall transmit to the judge a copy of a warrant form
 6 completed by the applicant. The judge may modify the transmitted
 7 warrant. If the judge agrees to issue the warrant, the judge shall
 8 transmit to the applicant a duplicate of the warrant. The judge shall
 9 then sign the warrant retained by the judge, adding the time of the
 10 issuance of the warrant.

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

16 (e) If a warrant is issued under subsection (a)(3), the judge shall
 17 order the court reporter to ~~the~~ retype or copy the facsimile transmission
 18 for entry in the record. The judge shall certify the transcription or copy
 19 and warrant retained by the judge for entry in the record.

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

25 (g) **This section does not apply to a warrant issued under the**
 26 **following:**

27 (1) **Section 9 of this chapter (concerning the use of an**
 28 **unmanned aerial vehicle).**

29 (2) **Section 11 of this chapter (concerning the use of a tracking**
 30 **device).**

31 SECTION 24. IC 35-33-5-9 IS ADDED TO THE INDIANA CODE
 32 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 33 1, 2014]: **Sec. 9. (a) Except as provided in subsection (b), a law**
 34 **enforcement officer must obtain a search warrant in order to use**
 35 **an unmanned aerial vehicle.**

36 (b) **A law enforcement officer may use an unmanned aerial**
 37 **vehicle without obtaining a search warrant if the law enforcement**
 38 **officer determines that the use of the unmanned aerial vehicle is**
 39 **required due to:**

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

42 (2) **the substantial likelihood of a terrorist attack.**



1 SECTION 25. IC 35-33-5-10 IS ADDED TO THE INDIANA
2 CODE AS A NEW SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2014]: **Sec. 10. The following are not**
4 **admissible as evidence in an administrative or judicial proceeding:**

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

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

10 SECTION 26. IC 35-33-5-11 IS ADDED TO THE INDIANA
11 CODE AS A NEW SECTION TO READ AS FOLLOWS
12 [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) A law enforcement officer**
13 **must obtain a search warrant in order to use a tracking device to**
14 **obtain evidence relevant to the enforcement of statutes, rules, and**
15 **regulations.**

16 (b) An application for a search warrant required under
17 subsection (a) must include an affidavit that contains the following
18 information:

19 (1) The identity and, if known, the location of the object on
20 which the tracking device will be installed.

21 (2) The identity of the owner of the object described in
22 subdivision (1), if known.

23 (3) Material facts that show the existence of probable cause to
24 believe that the information obtained through the use of the
25 tracking device will be evidence relevant to the enforcement
26 of one (1) or more specific statutes, rules, or regulations.

27 (4) Any additional information required under this chapter.

28 (c) A judicial officer may issue a warrant for the use of a
29 tracking device if the judicial officer determines that the
30 application for the warrant satisfies the requirements of subsection
31 (b). The warrant must authorize the collection of tracking data
32 contained in or obtained from the tracking device. The warrant
33 may not authorize the interception of wire, electronic, or oral
34 communications, or the capture, collection, monitoring, or viewing
35 of images.

36 (d) A warrant issued under subsection (c) is valid for the period
37 stated in the warrant, which may not exceed thirty (30) days from
38 the date on which the law enforcement officer begins to obtain
39 evidence through use of the tracking device.

40 SECTION 27. IC 35-33-5-12 IS ADDED TO THE INDIANA
41 CODE AS A NEW SECTION TO READ AS FOLLOWS
42 [EFFECTIVE JULY 1, 2014]: **Sec. 12. (a) Except as provided in**



1 subsection (b), a law enforcement officer must obtain a search
2 warrant in order to place a camera or electronic surveillance
3 equipment that records images or data of any kind while
4 unattended on the private property of another person.

5 (b) A law enforcement officer may place a camera or electronic
6 surveillance equipment that records images or data of any kind
7 while unattended on the private property of another person if the
8 law enforcement officer determines that the use of the camera or
9 electronic surveillance equipment is required due to:

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

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

13 SECTION 28. IC 35-33-5-13 IS ADDED TO THE INDIANA
14 CODE AS A NEW SECTION TO READ AS FOLLOWS
15 [EFFECTIVE JULY 1, 2014]: Sec. 13. (a) Except as provided in
16 subsection (b), a law enforcement officer or governmental entity
17 may not conduct a search of an electronic device or compel
18 disclosure of an electronic communication service or electronic
19 user data that includes the content of a user's communications
20 without a valid search warrant by a judge using search warrant
21 procedures.

22 (b) Information contained or stored in an electronic device is not
23 subject to a search by a governmental entity incident to a lawful
24 custodial arrest without a valid search warrant issued by a judge
25 using search warrant procedures.

26 (c) A governmental entity may not compel a user to provide a
27 passkey, password, or keycode to any electronic communication
28 service, electronic device, or electronic storage, or any form of
29 stored electronic user data, without a valid search warrant issued
30 by a judge using search warrant procedures.

31 (d) A governmental entity may not obtain geolocation
32 information without a valid search warrant issued by a judge using
33 search warrant procedures.

34 (e) A governmental entity may not track, monitor, or observe an
35 individual's electronic communications, electronic habits or
36 routines, or an individual's habits or routines in public using a
37 biometric information system without a valid search warrant
38 issued by a judge using search warrant procedures.

39 (f) A judge may issue a search warrant under this section for
40 electronic user data held in electronic storage, including the
41 records and information related to a wire communication or
42 electronic communication held in electronic storage, by a provider



1 of an electronic communication service or a provider of a remote
 2 computing service regardless of whether the user data is held at a
 3 location in Indiana or at a location in another state.

4 (g) A judge may issue a search warrant under this section on a
 5 service provider that is a corporation or entity that is incorporated
 6 or organized under the laws of Indiana or a company or business
 7 entity doing business in Indiana under a contract or terms of a
 8 service agreement with an Indiana resident. The service provider
 9 shall produce all information sought, as required by the warrant.

10 (h) Any Indiana corporation that provides electronic
 11 communication services or remote computing services to the public
 12 shall comply with a valid warrant issued in another state that is
 13 seeking the information described in this section, if the warrant is
 14 served on the corporation.

15 (i) A judge may issue a warrant under this section for
 16 geolocation information of an electronic device for a period
 17 necessary to achieve the objective of the warrant, up to ten (10)
 18 days. A judge may grant an extension of a warrant under this
 19 section if the judge finds continuing probable cause and a finding
 20 that the extension is necessary to achieve the objective of the
 21 warrant, up to thirty (30) days.

22 SECTION 29. IC 35-33-5-14 IS ADDED TO THE INDIANA
 23 CODE AS A NEW SECTION TO READ AS FOLLOWS
 24 [EFFECTIVE JULY 1, 2014]: **Sec. 14. (a) Except as provided in**
 25 **subsection (b), a governmental entity must provide a user notice**
 26 **that the user's electronic device was searched or the user's**
 27 **geolocation information or electronic user data was obtained by a**
 28 **government entity within three (3) days of the search or date the**
 29 **data was obtained. The notice must:**

- 30 (1) be delivered to the user by registered mail, return receipt
 31 requested;
 32 (2) contain the nature of the law enforcement inquiry with
 33 reasonable specificity;
 34 (3) contain the geolocation information or electronic user data
 35 of the user that was supplied to or requested by a
 36 governmental entity;
 37 (4) contain the date the information was provided to a
 38 governmental entity;
 39 (5) contain the name of the governmental entity that was
 40 provided the information;
 41 (6) contain the name of any third parties that provided
 42 geolocation information or electronic user data of the user;



1 **and**

2 **(7) indicate whether the notification was delayed under**
 3 **subsection (b), and if so, the court that ordered the delay and**
 4 **the reasons for granting the delay.**

5 **(b) A governmental entity that requests a search warrant under**
 6 **section 13 of this chapter may request a court to delay a notice**
 7 **under this section for a period up to ninety (90) days if an adverse**
 8 **result could reasonably occur. If a notice is delayed under this**
 9 **subsection, the court shall issue its order explaining its finding that**
 10 **an adverse result could occur. At the expiration of the period that**
 11 **the notice is delayed, the governmental entity requesting the search**
 12 **shall provide the user with a copy of the warrant with the court's**
 13 **order under this subsection.**

14 **(c) A governmental entity that requests a search warrant under**
 15 **section 13 of this chapter may request a court to direct an order**
 16 **requiring a provider of electronic communication service or**
 17 **geolocation information to not notify a user of the existence of a**
 18 **warrant for a period of not more than ninety (90) days. The court**
 19 **shall issue an order under this subsection if the court makes a**
 20 **finding that the notification of the existence of the warrant may**
 21 **have an adverse result.**

22 **(d) A court may grant one (1) extension to delay a notification**
 23 **under subsection (b) or (c) for an additional ninety (90) days if the**
 24 **court makes a finding that an adverse result could occur if the**
 25 **extension is not granted.**

26 **SECTION 30. IC 35-33-5-15 IS ADDED TO THE INDIANA**
 27 **CODE AS A NEW SECTION TO READ AS FOLLOWS**
 28 **[EFFECTIVE JULY 1, 2014]: Sec. 15. (a) A provider of geolocation**
 29 **information service, electronic communication service, or remote**
 30 **computing services may disclose geolocation information of a user**
 31 **to a governmental entity if the provider believes that an emergency**
 32 **involving danger of death or serious bodily injury to any person**
 33 **may be prevented.**

34 **(b) Within forty-eight (48) hours of the disclosure of**
 35 **information under subsection (a), the governmental entity that**
 36 **received the information must provide notice to the user. This**
 37 **notice must:**

38 **(1) be delivered to the user by registered mail, return receipt**
 39 **requested;**

40 **(2) contain the nature of the information disclosed with**
 41 **reasonable specificity;**

42 **(3) contain the date the information was disclosed to the**



1 governmental entity;

2 (4) contain the name of the governmental entity to which the
3 information was disclosed; and

4 (5) contain the name of any third parties that provided
5 geolocation information or electronic user data of the user.

6 SECTION 31. IC 35-33-5-16 IS ADDED TO THE INDIANA
7 CODE AS A NEW SECTION TO READ AS FOLLOWS
8 [EFFECTIVE JULY 1, 2014]: **Sec. 16. Not later than July 1 of each**
9 **year, the clerk of a court that issues or denies a search warrant**
10 **under section 13 of this chapter during the preceding calendar year**
11 **must report each warrant to the Indiana judicial center. The**
12 **report must include the following information:**

13 (1) Whether a warrant was applied for.

14 (2) The identity of each governmental entity that made the
15 application.

16 (3) The offense specified in the warrant or warrant
17 application.

18 (4) The technique by which geolocation information or
19 electronic user data was to be obtained.

20 (5) The number of electronic devices searched.

21 (6) The type of geolocation information that was sought.

22 (7) Whether the warrant was granted as applied for, was
23 modified, or denied.

24 (8) The period of disclosures authorized by the warrant and
25 the number and durations of any extensions for the warrant.

26 SECTION 32. IC 35-33-5-17 IS ADDED TO THE INDIANA
27 CODE AS A NEW SECTION TO READ AS FOLLOWS
28 [EFFECTIVE JULY 1, 2014]: **Sec. 17. (a) Any electronic user data**
29 **or geolocation information obtained in violation of section 13 of**
30 **this chapter is not admissible as evidence in a civil, criminal, or**
31 **administrative proceeding.**

32 (b) Except as provided in subsection (c), electronic user data or
33 geolocation information obtained under sections 13 and 14 of this
34 chapter are admissible in a criminal, civil, or administrative action
35 if each party before the trial, hearing, or procedure was furnished
36 with the application for the search warrant and the subsequent
37 court orders.

38 (c) If a party will not be prejudiced by not having the search
39 warrant and subsequent court orders prior to the trial, hearing, or
40 proceeding, and the warrant and orders are not available, a court
41 may order that the requirement of subsection (b) be waived.

42 SECTION 33. IC 35-33-5-18 IS ADDED TO THE INDIANA



1 CODE AS A NEW SECTION TO READ AS FOLLOWS
 2 [EFFECTIVE JULY 1, 2014]: **Sec. 18. An electronic communication**
 3 **service, remote computing service, and geolocation information**
 4 **service are immune from civil or criminal liability for providing**
 5 **information or evidence as required by a search warrant under**
 6 **this chapter.**

7 SECTION 34. IC 35-33-5-19 IS ADDED TO THE INDIANA
 8 CODE AS A NEW SECTION TO READ AS FOLLOWS
 9 [EFFECTIVE JULY 1, 2014]: **Sec. 19. (a) A governmental entity**
 10 **obtaining electronic user data under this chapter shall pay to the**
 11 **person or entity providing the information a reasonable fee. The**
 12 **fee shall include the costs of disrupting the person's or entity's**
 13 **normal operations.**

14 **(b) If the governmental entity and person or entity cannot agree**
 15 **on a reasonable fee under subsection (a), the court that issued the**
 16 **search warrant may determine the fee.**

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

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

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

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

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

- 30 (A) a visual image;
 31 (B) an electronic communication or any sound; or
 32 (C) information regarding the offender's activities while inside
 33 the offender's home; and

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

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

41 **(c) The term does not include the following:**

- 42 **(1) An electronic tracking device (as defined in**



1 **IC 35-31.5-2-337.5).**

2 **(2) An unmanned aerial vehicle (as defined in**
3 **IC 35-31.5-2-342.3).**

4 SECTION 36. IC 35-46-8.5 IS ADDED TO THE INDIANA CODE
5 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
6 JULY 1, 2014]:

7 **Chapter 8.5. Unlawful Photography and Surveillance on Private**
8 **Property**

9 **Sec. 1. (a) This section does not apply to a law enforcement**
10 **officer who has obtained a search warrant under IC 35-33-5-12 to**
11 **place a camera or electronic surveillance equipment on private**
12 **property.**

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

18 SECTION 37. IC 35-46-10 IS ADDED TO THE INDIANA CODE
19 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
20 JULY 1, 2014]:

21 **Chapter 10. Unlawful Use of a Tracking Device**

22 **Sec. 1. (a) This chapter does not apply to the following:**

23 **(1) Geolocation information obtained by means of a search**
24 **warrant.**

25 **(2) Geolocation information obtained or disclosed in the**
26 **normal course of business by an officer, employee, or agent of**
27 **an electronic communication service or a geolocation**
28 **information service while engaged in an activity that is a**
29 **necessary incident for the provision of service or the**
30 **protection of the rights or property of the service provider.**

31 **(3) Geolocation information obtained by an officer, employee,**
32 **or agent of the United States while lawfully conducting**
33 **electronic surveillance under the Federal Foreign Intelligence**
34 **Surveillance Act.**

35 **(4) Geolocation information relating to another person that is**
36 **intercepted or disclosed with the consent of the other person.**

37 **(5) Geolocation information relating to a child if the**
38 **information is intercepted or disclosed by or with the consent**
39 **of the child's parent, guardian, or custodian.**

40 **(6) Geolocation information relating to another person that is**
41 **available through a system that is configured to make the**
42 **information readily available to the general public.**



- 1 **(7) Geolocation information relating to another person that is**
- 2 **intercepted or disclosed by a law enforcement officer or**
- 3 **emergency services provider if the information is used:**
- 4 **(A) to respond to a request for assistance by the person; or**
- 5 **(B) to assist the person under circumstances in which it is**
- 6 **reasonable to believe that the life or safety of the person is**
- 7 **threatened.**
- 8 **(8) Geolocation information relating to another person if the**
- 9 **person intercepting or disclosing the information has a**
- 10 **reasonable belief that the other person has unlawfully taken**
- 11 **the device transmitting the geolocation information.**
- 12 **(9) The parent or legal guardian of a minor when tracking the**
- 13 **minor, or an authorized caretaker of the minor when the**
- 14 **minor is under the sole care of the authorized caretaker.**
- 15 **(10) A legally authorized representative of an incapacitated**
- 16 **adult.**
- 17 **(11) The owner of fleet vehicles, if the tracking device is used**
- 18 **for the sole purpose of tracking the vehicles.**
- 19 **(12) A communications service provider (as defined in**
- 20 **IC 8-1-32.5-4), if the communications service provider**
- 21 **discloses the use of the tracking device in plain language to the**
- 22 **customer.**
- 23 **(13) The owner of property, if the tracking device is used for**
- 24 **the sole purpose of tracking the property.**
- 25 **(b) A person who intentionally uses, or causes to be used, a**
- 26 **tracking device without the consent of the person who is the object**
- 27 **of the use commits a Class A misdemeanor.**

