



Reprinted
January 31, 2014

HOUSE BILL No. 1009

DIGEST OF HB 1009 (Updated January 30, 2014 12:30 pm - DI 69)

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. 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 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. Provides immunity from civil and criminal liability for certain entities that provide information pursuant to certain court orders. Provides
(Continued next page)

Effective: July 1, 2014.

Koch, Pierce

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.

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Digest Continued

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. Allows a judge to issue a search warrant or arrest warrant if the judge receives sworn testimony of the same facts required for an affidavit in writing by electronic mail when signed by the affiant. 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.



Reprinted
January 31, 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.

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; or

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

41 (3) setting forth the facts then in knowledge of the affiant or
42 information based on hearsay, constituting the probable cause.



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- (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__.

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 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 when signed by the affiant.**

(b) 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.

(c) 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



1 shall transmit to the applicant a duplicate of the warrant. The judge
 2 shall then sign the warrant retained by the judge, adding the time of the
 3 issuance of the warrant.

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

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

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

18 SECTION 19. IC 35-33-5-9 IS ADDED TO THE INDIANA CODE
 19 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 20 1, 2014]: **Sec. 9. (a) Except as provided in subsection (b), a law
 21 enforcement officer must obtain a search warrant in order to use
 22 an unmanned aerial vehicle.**

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

27 **(1) is required due to:**

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

30 **(B) the substantial likelihood of a terrorist attack;**

31 **(C) the need to conduct a search and rescue operation;**

32 **(D) the need to conduct efforts:**

33 **(i) in response to; or**

34 **(ii) to mitigate;**

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

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

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

41 SECTION 20. IC 35-33-5-10 IS ADDED TO THE INDIANA
 42 CODE AS A NEW SECTION TO READ AS FOLLOWS



1 [EFFECTIVE JULY 1, 2014]: **Sec. 10. The following are not**
 2 **admissible as evidence in an administrative or judicial proceeding:**

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

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

8 SECTION 21. IC 35-33-5-11 IS ADDED TO THE INDIANA
 9 CODE AS A NEW SECTION TO READ AS FOLLOWS
 10 [EFFECTIVE JULY 1, 2014]: **Sec. 11. (a) A law enforcement officer**
 11 **may not compel a user to provide a passkey, password, or keycode**
 12 **to any electronic communication service, electronic device, or**
 13 **electronic storage, or any form of stored electronic user data,**
 14 **without a valid search warrant issued by a judge using search**
 15 **warrant procedures.**

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

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

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

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

42 **(1) the law enforcement officer or law enforcement agency has**



1 obtained an order issued by a court based upon a finding of
2 probable cause to use the tracking instrument; or

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

5 (b) If a law enforcement office or law enforcement agency uses
6 a real time tracking instrument described in subsection (a) based
7 upon the existence of exigent circumstances, the law enforcement
8 officer or law enforcement agency shall seek to obtain an order
9 issued by a court based upon a finding of probable cause as soon as
10 is reasonably possible but not later than ninety-six (96) hours after
11 the initial use of the real time tracking instrument.

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

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

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

26 (A) electronic communication service; or

27 (B) remote computing service; and

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

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

36 (b) If:

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

42 (2) the notice that would be provided to the news media entity



1 or person described in IC 34-46-4-1 under subsection (a)
 2 would pose a clear and substantial threat to the integrity of
 3 the criminal investigation;

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

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

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

15 (A) presence or absence from the offender's home; or

16 (B) precise location;

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

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

22 (A) a visual image;

23 (B) an electronic communication or any sound; or

24 (C) information regarding the offender's activities while inside
 25 the offender's home; and

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

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

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

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

38 **Chapter 8.5. Unlawful Photography and Surveillance on Private**
 39 **Property**

40 **Sec. 1. (a) This section does not apply to a law enforcement**
 41 **officer who has obtained a search warrant or the consent of the**
 42 **owner of private property to place a camera or electronic**



1 surveillance equipment on 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 piracy 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;



**by government agencies; and
(2) any other issue concerning digital piracy and related
subjects."**

Page 15, delete lines 31 through 35.

Renumber all SECTIONS consecutively.

(Reference is to HB 1009 as printed January 28, 2014.)

KOCH

