

# SENATE BILL No. 458

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-31.5-2-110; IC 35-33; IC 35-33.5.

**Synopsis:** Electronic communications. Provides that the definition of "electronic communication" includes metadata that relates to an electronic communication. Requires that the search or seizure of an electronic communication be specifically authorized by state law or a court order based on probable cause, even if the electronic communication is in the custody of a third party, and makes it a Level 5 felony to violate these requirements. Prohibits the state, state agencies, political subdivisions, and local units of government from: (1) assisting a federal agency that collects an electronic communication unless authorized by state law or a court order based on probable cause; and (2) using information that relates to an electronic communication in an investigation or a criminal prosecution if the information was obtained from a federal agency that collected the electronic communication without authorization from state law or a court order based on probable cause. Makes knowingly or intentionally: (1) assisting a federal agency that collects electronic communications without authorization from state law or a court order based on probable cause; or (2) using information obtained from a federal agency that collects electronic communications without authorization from state law or a court order based on probable cause in a criminal investigation or prosecution; a Level 5 felony. Prohibits a law enforcement agency or governmental entity from using a real-time tracking device unless: (1) use of the device is required as a condition of bail or court ordered supervision; (2) the owner of the tracking device consents; (3) use of the device is authorized by a court order based on probable cause; or (4) exigent circumstances exist.

**Effective:** July 1, 2015.

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January 14, 2015, read first time and referred to Committee on Judiciary.

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First Regular Session 119th General Assembly (2015)

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 2014 Regular Session and 2014 Second Regular Technical Session of the General Assembly.

## SENATE BILL No. 458

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A BILL FOR AN ACT to amend the Indiana Code concerning public safety.

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

1 SECTION 1. IC 35-31.5-2-110, AS ADDED BY P.L.114-2012,  
2 SECTION 67, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2015]: Sec. 110. (a) **"Electronic communication", for  
4 purposes of IC 35-33-5, means any sign, signal, writing, image,  
5 sound, data, oral communication, or digital information that is  
6 stored in whole or in part:**  
7 (1) **on a computer server, system, or network;**  
8 (2) **on any type of electronic or solid state storage medium or  
9 device; or**  
10 (3) **by any electromagnetic, photoelectronic, or photo-optical  
11 system.**  
12 **The term includes metadata that relates to an electronic  
13 communication.**  
14 (b) "Electronic communication", for purposes of IC 35-33.5, means  
15 any transfer of signs, signals, writing, images, sounds, data, oral  
16 communication, digital information, or intelligence of any nature



1 transmitted in whole or in part by a wire, a radio, or an electromagnetic,  
2 a photoelectronic, or a photo-optical system. **The term includes**  
3 **metadata that relates to an electronic communication.**

4 SECTION 2. IC 35-33-5-0.2 IS ADDED TO THE INDIANA CODE  
5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
6 1, 2015]: **Sec. 0.2. (a) The general assembly finds that it is against**  
7 **public policy for any law enforcement agency, state agency, or**  
8 **political subdivision to collect electronic communications or**  
9 **metadata of any person lawfully residing in Indiana, unless the**  
10 **collection is specifically authorized by state law or a court order**  
11 **based on probable cause.**

12 **(b) The general assembly finds that it is against public policy to**  
13 **provide material support, participation, or assistance to any**  
14 **federal agency that collects, attempts to collect, or intends to collect**  
15 **electronic communications or metadata of any person lawfully**  
16 **residing in Indiana without the consent of the person, unless the**  
17 **collection is specifically authorized by state law or a court order**  
18 **based on probable cause.**

19 SECTION 3. IC 35-33-5-7.5 IS ADDED TO THE INDIANA CODE  
20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
21 1, 2015]: **Sec. 7.5. (a) Except as provided in subsection (b), the**  
22 **search or seizure of an electronic communication may be**  
23 **conducted only if specifically authorized by state law or a court**  
24 **order based on probable cause.**

25 **(b) An electronic communication may be searched or seized**  
26 **without a court order based on probable cause or specific**  
27 **authorization from state law if one (1) or more of the following**  
28 **apply:**

29 **(1) The electronic communication is stored in a foreign**  
30 **country.**

31 **(2) The owner of the system or device on which the electronic**  
32 **communication is stored consents to the search or seizure.**

33 **(3) A person who created or is the subject of the electronic**  
34 **communication (including the user of a social media web site**  
35 **or a customer of an online merchant) authorizes a search or**  
36 **seizure of the electronic communication. This subdivision is**  
37 **limited to an electronic communication that directly relates to**  
38 **the person who created or is the subject of the electronic**  
39 **communication.**

40 **(c) The provisions of this section apply to the search or seizure**  
41 **of any electronic communication, even if the electronic**  
42 **communication is in the custody of a third party.**



1           **(d) A person who knowingly or intentionally searches or seizes**  
 2 **an electronic communication in violation of this section commits a**  
 3 **Level 5 felony.**

4           SECTION 4. IC 35-33-5-8.5 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 6 1, 2015]: **Sec. 8.5. (a) This section applies to:**

- 7           **(1) the state;**  
 8           **(2) a state agency;**  
 9           **(3) a political subdivision;**  
 10           **(4) a unit; and**  
 11           **(5) an employee of an entity described in subdivisions (1)**  
 12 **through (4).**

13           **(b) An individual or entity described in subsection (a) may not**  
 14 **do any of the following:**

15           **(1) Provide material support, participation, services, or**  
 16 **assistance in any form to any federal agency or employee of**  
 17 **a federal agency that the individual or entity knows or has**  
 18 **reason to believe searches, seizes, or intercepts an electronic**  
 19 **communication:**

20           **(A) in violation of the law; or**

21           **(B) without substantially complying with the procedural**  
 22 **and substantive requirements described in IC 35-33-5-7.5.**

23           **(2) Use any:**

24           **(A) electronic communication; or**

25           **(B) information derived, directly or indirectly, from an**  
 26 **electronic communication;**

27           **in a criminal investigation or prosecution if the electronic**  
 28 **communication was obtained in violation of the law, or was**  
 29 **not obtained in substantial compliance with the procedural**  
 30 **and substantive requirements described in IC 35-33-5-7.5.**

31           **(c) A person who knowingly or intentionally violates subsection**  
 32 **(b) commits a Level 5 felony.**

33           SECTION 5. IC 35-33-5.5 IS ADDED TO THE INDIANA CODE  
 34 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
 35 JULY 1, 2015]:

36           **Chapter 5.5. Electronic tracking**

37           **Sec. 1. As used in this chapter, "exigent circumstances" means**  
 38 **an imminent risk to a person's life or personal safety.**

39           **Sec. 2. A state law enforcement agency, federal law enforcement**  
 40 **agency, state agency, federal agency, or political subdivision may**  
 41 **not use a real time tracking tool capable of geolocating a cellular**  
 42 **device, or device connected to a cellular network, unless one (1) or**



- 1 **more of the following apply:**  
 2 **(1) The person being tracked has been ordered to wear a GPS**  
 3 **tracking device as:**  
 4 **(A) a condition of bail;**  
 5 **(B) part of court ordered supervision imposed as a**  
 6 **condition of probation, parole, or community corrections;**  
 7 **(C) a requirement of sex offender registration; or**  
 8 **(D) part of a sentence imposed for a crime.**  
 9 **(2) The person who owns the cellular device or device**  
 10 **connected to a cellular network has requested the tracking.**  
 11 **(3) The tracking is authorized by a court order based on**  
 12 **probable cause.**  
 13 **(4) Exigent circumstances apply.**  
 14 SECTION 6. IC 35-33.5-2-6 IS ADDED TO THE INDIANA CODE  
 15 AS A **NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY**  
 16 **1, 2015]: Sec. 6. Authorization under state law or a court order**  
 17 **based on probable cause is required for the interception of an**  
 18 **electronic communication, even if the electronic communication is**  
 19 **in the custody of a third party.**  
 20 SECTION 7. IC 35-33.5-5-5, AS AMENDED BY P.L.158-2013,  
 21 SECTION 388, IS AMENDED TO READ AS FOLLOWS  
 22 [EFFECTIVE JULY 1, 2015]: Sec. 5. ~~(a) This section does not apply~~  
 23 ~~to a person who makes an interception authorized under federal law.~~  
 24 ~~(b) (a)~~ A person who knowingly or intentionally intercepts a  
 25 communication, **including an electronic communication**, in violation  
 26 of this article commits unlawful interception, a Level 5 felony.  
 27 ~~(c)~~ ~~(b)~~ A person who, by virtue of the person's employment or  
 28 official capacity in the criminal justice system, knowingly or  
 29 intentionally uses or discloses the contents of an interception,  
 30 **including an electronic communication**, in violation of this article  
 31 commits unlawful use or disclosure of an interception, a Level 5 felony.

