



March 24, 2023

ENGROSSED HOUSE BILL No. 1142

DIGEST OF HB 1142 (Updated March 21, 2023 12:15 pm - DI 106)

Citations Affected: IC 5-14.

Synopsis: Law enforcement recordings. Provides that the direct cost that a state or local agency may charge for providing a copy of a law enforcement recording (recording) includes labor costs incurred to: (1) obscure nondisclosable information in the recording; and (2) perform an administrative review of the recording to determine if all nondisclosable information has been obscured. Specifies that the costs of reviewing and obscuring nondisclosable electronic data may not exceed reasonable attorney's fees if the actions are performed by an attorney. Provides that if a court issues an order for disclosure of a law enforcement recording, any copy of the recording must be made by the public agency. Makes a technical correction.

Effective: July 1, 2023.

Prescott, McNamara, Gore, Bartels

(SENATE SPONSORS — ALEXANDER, SANDLIN, POL JR.)

January 10, 2023, read first time and referred to Committee on Government and Regulatory Reform.

January 31, 2023, reported — Do Pass.

February 2, 2023, read second time, ordered engrossed.

February 3, 2023, engrossed.

February 6, 2023, read third time, passed. Yeas 94, nays 3.

SENATE ACTION

February 27, 2023, read first time and referred to Committee on Corrections and Criminal Law.

March 23, 2023, amended, reported favorably — Do Pass.

EH 1142—LS 6692/DI 87



March 24, 2023

First Regular Session of the 123rd General Assembly (2023)

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 2022 Regular Session of the General Assembly.

ENGROSSED HOUSE BILL No. 1142

A BILL FOR AN ACT to amend the Indiana Code concerning state and local administration.

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

- 1 SECTION 1. IC 5-14-3-2, AS AMENDED BY P.L.64-2020,
2 SECTION 1, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2023]: Sec. 2. (a) The definitions set forth in this section apply
4 throughout this chapter.
5 (b) "Copy" includes transcribing by handwriting, photocopying,
6 xerography, duplicating machine, duplicating electronically stored data
7 onto a disk, tape, drum, or any other medium of electronic data storage,
8 and reproducing by any other means.
9 (c) "Criminal intelligence information" means data that has been
10 evaluated to determine that the data is relevant to:
11 (1) the identification of; and
12 (2) the criminal activity engaged in by;
13 an individual who or organization that is reasonably suspected of
14 involvement in criminal activity.
15 (d) "Direct cost" means one hundred five percent (105%) of the sum
16 of the cost of:
17 (1) the initial development of a program, if any;

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1 (2) the labor required to retrieve electronically stored data; ~~and~~

2 **(3) the labor required to:**

3 **(A) obscure nondisclosable information; and**

4 **(B) perform an administrative review to determine if all**
 5 **nondisclosable information has been obscured;**

6 **in a law enforcement recording; and**

7 ~~(3)~~ **(4) any medium used for electronic output;**

8 for providing a duplicate of electronically stored data onto a disk, tape,
 9 drum, or other medium of electronic data retrieval under section 8(g)
 10 of this chapter, or for reprogramming a computer system under section
 11 6(c) of this chapter. **However, if the labor described in subdivision**
 12 **(3) is performed by an attorney, the cost under subdivision (3) may**
 13 **not exceed reasonable attorney's fees.**

14 (e) "Electronic map" means copyrighted data provided by a public
 15 agency from an electronic geographic information system.

16 (f) "Enhanced access" means the inspection of a public record by a
 17 person other than a governmental entity and that:

18 (1) is by means of an electronic device other than an electronic
 19 device provided by a public agency in the office of the public
 20 agency; or

21 (2) requires the compilation or creation of a list or report that does
 22 not result in the permanent electronic storage of the information.

23 (g) "Facsimile machine" means a machine that electronically
 24 transmits exact images through connection with a telephone network.

25 (h) "Inspect" includes the right to do the following:

26 (1) Manually transcribe and make notes, abstracts, or memoranda.

27 (2) In the case of tape recordings or other aural public records, to
 28 listen and manually transcribe or duplicate, or make notes,
 29 abstracts, or other memoranda from them.

30 (3) In the case of public records available:

31 (A) by enhanced access under section 3.5 of this chapter; or

32 (B) to a governmental entity under section 3(c)(2) of this
 33 chapter;

34 to examine and copy the public records by use of an electronic
 35 device.

36 (4) In the case of electronically stored data, to manually transcribe
 37 and make notes, abstracts, or memoranda or to duplicate the data
 38 onto a disk, tape, drum, or any other medium of electronic
 39 storage.

40 (i) "Investigatory record" means information compiled in the course
 41 of the investigation of a crime.

42 (j) "Law enforcement activity" means:



- 1 (1) a traffic stop;
 2 (2) a pedestrian stop;
 3 (3) an arrest;
 4 (4) a search;
 5 (5) an investigation;
 6 (6) a pursuit;
 7 (7) crowd control;
 8 (8) traffic control; or
 9 (9) any other instance in which a law enforcement officer is
 10 enforcing the law.

11 The term does not include an administrative activity, including the
 12 completion of paperwork related to a law enforcement activity, or a
 13 custodial interrogation conducted in a place of detention as described
 14 in Indiana Evidence Rule 617, regardless of the ultimate admissibility
 15 of a statement made during the custodial interrogation.

16 (k) "Law enforcement recording" means an audio, visual, or
 17 audiovisual recording of a law enforcement activity captured by a
 18 camera or other device that is:

- 19 (1) provided to or used by a law enforcement officer in the scope
 20 of the officer's duties; and
 21 (2) designed to be worn by a law enforcement officer or attached
 22 to the vehicle or transportation of a law enforcement officer.

23 (l) "Offender" means a person confined in a prison, county jail,
 24 detention facility, penal institution, or in a community corrections
 25 program as the result of the person's arrest or conviction for a crime.

26 (m) "Patient" has the meaning set out in IC 16-18-2-272(d).

27 (n) "Person" means an individual, a corporation, a limited liability
 28 company, a partnership, an unincorporated association, or a
 29 governmental entity.

30 (o) "Private university police department" means the police officers
 31 appointed by the governing board of a private university under
 32 IC 21-17-5.

33 (p) "Provider" has the meaning set out in IC 16-18-2-295(b) and
 34 includes employees of the **state Indiana** department of health or local
 35 boards of health who create patient records at the request of another
 36 provider or who are social workers and create records concerning the
 37 family background of children who may need assistance.

38 (q) "Public agency", except as provided in section 2.1 of this
 39 chapter, means the following:

- 40 (1) Any board, commission, department, division, bureau,
 41 committee, agency, office, instrumentality, or authority, by
 42 whatever name designated, exercising any part of the executive,



- 1 administrative, judicial, or legislative power of the state.
 2 (2) Any:
 3 (A) county, township, school corporation, city, or town, or any
 4 board, commission, department, division, bureau, committee,
 5 office, instrumentality, or authority of any county, township,
 6 school corporation, city, or town;
 7 (B) political subdivision (as defined by IC 36-1-2-13); or
 8 (C) other entity, or any office thereof, by whatever name
 9 designated, exercising in a limited geographical area the
 10 executive, administrative, judicial, or legislative power of the
 11 state or a delegated local governmental power.
 12 (3) Any entity or office that is subject to:
 13 (A) budget review by either the department of local
 14 government finance or the governing body of a county, city,
 15 town, township, or school corporation; or
 16 (B) an audit by the state board of accounts that is required by
 17 statute, rule, or regulation.
 18 (4) Any building corporation of a political subdivision that issues
 19 bonds for the purpose of constructing public facilities.
 20 (5) Any advisory commission, committee, or body created by
 21 statute, ordinance, or executive order to advise the governing
 22 body of a public agency, except medical staffs or the committees
 23 of any such staff.
 24 (6) Any law enforcement agency, which means an agency or a
 25 department of any level of government that engages in the
 26 investigation, apprehension, arrest, or prosecution of alleged
 27 criminal offenders, such as the state police department, the police
 28 or sheriff's department of a political subdivision, prosecuting
 29 attorneys, members of the excise police division of the alcohol
 30 and tobacco commission, conservation officers of the department
 31 of natural resources, gaming agents of the Indiana gaming
 32 commission, gaming control officers of the Indiana gaming
 33 commission, and the security division of the state lottery
 34 commission.
 35 (7) Any license branch operated under IC 9-14.1.
 36 (8) The state lottery commission established by IC 4-30-3-1,
 37 including any department, division, or office of the commission.
 38 (9) The Indiana gaming commission established under IC 4-33,
 39 including any department, division, or office of the commission.
 40 (10) The Indiana horse racing commission established by IC 4-31,
 41 including any department, division, or office of the commission.
 42 (11) A private university police department. The term does not



1 include the governing board of a private university or any other
 2 department, division, board, entity, or office of a private
 3 university.

4 (r) "Public record" means any writing, paper, report, study, map,
 5 photograph, book, card, tape recording, or other material that is
 6 created, received, retained, maintained, or filed by or with a public
 7 agency and which is generated on paper, paper substitutes,
 8 photographic media, chemically based media, magnetic or machine
 9 readable media, electronically stored data, or any other material,
 10 regardless of form or characteristics.

11 (s) "Standard-sized documents" includes all documents that can be
 12 mechanically reproduced (without mechanical reduction) on paper
 13 sized eight and one-half (8 1/2) inches by eleven (11) inches or eight
 14 and one-half (8 1/2) inches by fourteen (14) inches.

15 (t) "Trade secret" has the meaning set forth in IC 24-2-3-2.

16 (u) "Work product of an attorney" means information compiled by
 17 an attorney in reasonable anticipation of litigation. The term includes
 18 the attorney's:

19 (1) notes and statements taken during interviews of prospective
 20 witnesses; and

21 (2) legal research or records, correspondence, reports, or
 22 memoranda to the extent that each contains the attorney's
 23 opinions, theories, or conclusions.

24 This definition does not restrict the application of any exception under
 25 section 4 of this chapter.

26 SECTION 2. IC 5-14-3-3, AS AMENDED BY P.L.171-2018,
 27 SECTION 2, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 28 JULY 1, 2023]: Sec. 3. (a) Any person may inspect and copy the public
 29 records of any public agency during the regular business hours of the
 30 agency, except as provided in section 4 of this chapter. A request for
 31 inspection or copying must:

32 (1) identify with reasonable particularity the record being
 33 requested; and

34 (2) be, at the discretion of the agency, in writing on or in a form
 35 provided by the agency.

36 No request may be denied because the person making the request
 37 refuses to state the purpose of the request, unless such condition is
 38 required by other applicable statute. If a request is for inspection or
 39 copying of a law enforcement recording, the request must provide the
 40 information required under subsection (i).

41 (b) A public agency may not deny or interfere with the exercise of
 42 the right stated in subsection (a). **If the public agency does not deny**



1 **the request**, within a reasonable time after the request is received by
2 the agency the public agency shall either:

3 (1) provide the requested copies to the person making the request;

4 or

5 (2) allow the person to make copies:

6 (A) on the agency's equipment; or

7 (B) on the person's own equipment.

8 (c) Notwithstanding subsections (a) and (b), a public agency may or
9 may not do the following:

10 (1) In accordance with a contract described in section 3.5 of this
11 chapter, permit a person to inspect and copy through the use of
12 enhanced access public records containing information owned by
13 or entrusted to the public agency.

14 (2) Permit a governmental entity to use an electronic device to
15 inspect and copy public records containing information owned by
16 or entrusted to the public agency.

17 (d) Except as provided in subsection (e) and subject to subsection
18 (j), a public agency that maintains or contracts for the maintenance of
19 public records in an electronic data storage system shall make
20 reasonable efforts to provide to a person making a request a copy of all
21 disclosable data contained in the records on paper, disk, tape, drum, or
22 any other method of electronic retrieval if the medium requested is
23 compatible with the agency's data storage system. This subsection does
24 not apply to an electronic map.

25 (e) A state agency may adopt a rule under IC 4-22-2, and a political
26 subdivision may enact an ordinance, prescribing the conditions under
27 which a person who receives information on disk or tape under
28 subsection (d) may or may not use the information for commercial
29 purposes, including to sell, advertise, or solicit the purchase of
30 merchandise, goods, or services, or sell, loan, give away, or otherwise
31 deliver the information obtained by the request to any other person for
32 these purposes. Use of information received under subsection (d) in
33 connection with the preparation or publication of news, for nonprofit
34 activities, or for academic research is not prohibited. A person who
35 uses information in a manner contrary to a rule or ordinance adopted
36 under this subsection may be prohibited by the state agency or political
37 subdivision from obtaining a copy or any further data under subsection
38 (d).

39 (f) Notwithstanding the other provisions of this section, a public
40 agency is not required to create or provide copies of lists of names and
41 addresses (including electronic mail account addresses) unless the
42 public agency is required to publish such lists and disseminate them to



1 the public under a statute. However, if a public agency has created a
2 list of names and addresses (excluding electronic mail account
3 addresses), it must permit a person to inspect and make memoranda
4 abstracts from the list unless access to the list is prohibited by law. The
5 lists of names and addresses (including electronic mail account
6 addresses) described in subdivisions (1) through (3) may not be
7 disclosed by public agencies to any individual or entity for political
8 purposes and may not be used by any individual or entity for political
9 purposes. In addition, the lists of names and addresses (including
10 electronic mail account addresses) described in subdivisions (1)
11 through (3) may not be disclosed by public agencies to commercial
12 entities for commercial purposes and may not be used by commercial
13 entities for commercial purposes. The prohibition in this subsection
14 against the disclosure of lists for political or commercial purposes
15 applies to the following lists of names and addresses (including
16 electronic mail account addresses):

- 17 (1) A list of employees of a public agency.
- 18 (2) A list of persons attending conferences or meetings at a state
19 educational institution or of persons involved in programs or
20 activities conducted or supervised by the state educational
21 institution.
- 22 (3) A list of students who are enrolled in a public school
23 corporation if the governing body of the public school corporation
24 adopts a policy:
 - 25 (A) with respect to disclosure related to a commercial purpose,
26 prohibiting the disclosure of the list to commercial entities for
27 commercial purposes;
 - 28 (B) with respect to disclosure related to a commercial purpose,
29 specifying the classes or categories of commercial entities to
30 which the list may not be disclosed or by which the list may
31 not be used for commercial purposes; or
 - 32 (C) with respect to disclosure related to a political purpose,
33 prohibiting the disclosure of the list to individuals and entities
34 for political purposes.

35 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
36 and may not discriminate among similarly situated commercial entities.
37 For purposes of this subsection, "political purposes" means influencing
38 the election of a candidate for federal, state, legislative, local, or school
39 board office or the outcome of a public question or attempting to solicit
40 a contribution to influence the election of a candidate for federal, state,
41 legislative, local, or school board office or the outcome of a public
42 question.



1 (g) A public agency may not enter into or renew a contract or an
2 obligation:

3 (1) for the storage or copying of public records; or

4 (2) that requires the public to obtain a license or pay copyright
5 royalties for obtaining the right to inspect and copy the records
6 unless otherwise provided by applicable statute;

7 if the contract, obligation, license, or copyright unreasonably impairs
8 the right of the public to inspect and copy the agency's public records.

9 (h) If this section conflicts with IC 3-7, the provisions of IC 3-7
10 apply.

11 (i) A request to inspect or copy a law enforcement recording must
12 be in writing. A request identifies a law enforcement recording with
13 reasonable particularity as required by this section only if the request
14 provides the following information regarding the law enforcement
15 activity depicted in the recording:

16 (1) The date and approximate time of the law enforcement
17 activity.

18 (2) The specific location where the law enforcement activity
19 occurred.

20 (3) The name of at least one (1) individual, other than a law
21 enforcement officer, who was directly involved in the law
22 enforcement activity.

23 (j) This subsection applies to a public record that is in an electronic
24 format. This subsection does not apply to a public record recorded in
25 the office of the county recorder. A public agency shall provide an
26 electronic copy or a paper copy of a public record, at the option of the
27 person making the request for the public record. This subsection does
28 not require a public agency to change the format of a public record.

29 SECTION 3. IC 5-14-3-5.2, AS AMENDED BY P.L.85-2017,
30 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
31 JULY 1, 2023]: Sec. 5.2. (a) A public agency shall permit any person
32 to inspect or copy a law enforcement recording unless one (1) or more
33 of the following circumstances apply:

34 (1) Section 4(b)(19) of this chapter applies and the person has not
35 demonstrated that the public agency that owns, occupies, leases,
36 or maintains the airport approves the disclosure of the recording.

37 (2) The public agency finds, after due consideration of the facts
38 of the particular case, that access to or dissemination of the
39 recording:

40 (A) creates a significant risk of substantial harm to any person
41 or to the general public;

42 (B) is likely to interfere with the ability of a person to receive



1 a fair trial by creating prejudice or bias concerning the person
 2 or a claim or defense presented by the person;
 3 (C) may affect an ongoing investigation, if the recording is a
 4 investigatory record of a law enforcement agency as defined
 5 in section 2 of this chapter and notwithstanding its exclusion
 6 under section 4(b)(1) of this chapter; or
 7 (D) would not serve the public interest.

8 However, before permitting a person to inspect or copy the recording,
 9 the public agency must comply with the obscuring provisions of
 10 subsection (e), if applicable.

11 (b) If a public agency denies a person the opportunity to inspect or
 12 copy a law enforcement recording under subsection (a), the person may
 13 petition the circuit or superior court of the county in which the law
 14 enforcement recording was made for an order permitting inspection or
 15 copying of a law enforcement recording. The court shall review the
 16 decision of the public agency de novo and grant the order unless one
 17 (1) or more of the following apply:

18 (1) If section 4(b)(19) of this chapter applies, the petitioner fails
 19 to establish by a preponderance of the evidence that the public
 20 agency that owns, occupies, leases, or maintains the airport
 21 approves the disclosure of the recording.

22 (2) The public agency establishes by a preponderance of the
 23 evidence in light of the facts of the particular case, that access to
 24 or dissemination of the recording:

25 (A) creates a significant risk of substantial harm to any person
 26 or to the general public;

27 (B) is likely to interfere with the ability of a person to receive
 28 a fair trial by creating prejudice or bias concerning the person
 29 or a claim or defense presented by the person;

30 (C) may affect an ongoing investigation, if the recording is an
 31 investigatory record of a law enforcement agency, as defined
 32 in section 2 of this chapter, notwithstanding its exclusion
 33 under section 4 of this chapter; or

34 (D) would not serve the public interest.

35 (c) Notwithstanding section 9(i) of this chapter, a person that
 36 obtains an order for inspection of or to copy a law enforcement
 37 recording under this section may not be awarded attorney's fees, court
 38 costs, and other reasonable expenses of litigation. The penalty
 39 provisions of section 9.5 of this chapter do not apply to a petition filed
 40 under this section.

41 (d) If the court grants a petition for inspection of or to copy the law
 42 enforcement recording, the public agency shall disclose the recording.



1 However, before disclosing the recording, the public agency must
 2 comply with the obscuring provisions of subsection (e), if applicable.

3 **Any copy of the recording must be made by the public agency.**

4 (e) A public agency that discloses a law enforcement recording
 5 under this section:

6 (1) shall obscure:

7 (A) any information that is required to be obscured under
 8 section 4(a) of this chapter; and

9 (B) depictions of:

10 (i) an individual's death or a dead body;

11 (ii) acts of severe violence that are against any individual
 12 who is clearly visible and that result in serious bodily injury
 13 (as defined in IC 35-31.5-2-292);

14 (iii) serious bodily injury (as defined in IC 35-31.5-2-292);

15 (iv) nudity (as defined in IC 35-49-1-5);

16 (v) an individual whom the public agency reasonably
 17 believes is less than eighteen (18) years of age;

18 (vi) personal medical information;

19 (vii) a victim of a crime, or any information identifying the
 20 victim of a crime, if the public agency finds that obscuring
 21 this information is necessary for the victim's safety; and

22 (viii) a witness to a crime or an individual who reports a
 23 crime, or any information identifying a witness to a crime or
 24 an individual who reports a crime, if the public agency finds
 25 that obscuring this information is necessary for the safety of
 26 the witness or individual who reports a crime; and

27 (2) may obscure:

28 (A) any information identifying:

29 (i) a law enforcement officer operating in an undercover
 30 capacity; or

31 (ii) a confidential informant; and

32 (B) any information that the public agency may withhold from
 33 disclosure under section 4(b)(2) through 4(b)(26) of this
 34 chapter.

35 (f) A court shall expedite a proceeding filed under this section.
 36 Unless prevented by extraordinary circumstances, the court shall
 37 conduct a hearing (if required) and rule on a petition filed under this
 38 section not later than thirty (30) days after the date the petition is filed.



COMMITTEE REPORT

Mr. Speaker: Your Committee on Government and Regulatory Reform, to which was referred House Bill 1142, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1142 as introduced.)

MILLER D

Committee Vote: Yeas 10, Nays 0

COMMITTEE REPORT

Madam President: The Senate Committee on Corrections and Criminal Law, to which was referred House Bill No. 1142, has had the same under consideration and begs leave to report the same back to the Senate with the recommendation that said bill be AMENDED as follows:

Page 2, line 11, after "chapter." insert "**However, if the labor described in subdivision (3) is performed by an attorney, the cost under subdivision (3) may not exceed reasonable attorney's fees.**".

Page 3, line 32, strike "state" and insert "**Indiana**".

and when so amended that said bill do pass.

(Reference is to HB 1142 as printed January 31, 2023.)

FREEMAN, Chairperson

Committee Vote: Yeas 7, Nays 0.

