
HOUSE BILL No. 1142

AM114201 has been incorporated into January 31, 2023 printing.

Synopsis: Law enforcement recordings.

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January 31, 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.

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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
16 sum 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
 17 a 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
 22 does not result in the permanent electronic storage of the
 23 information.
 24 (g) "Facsimile machine" means a machine that electronically
 25 transmits exact images through connection with a telephone network.
 26 (h) "Inspect" includes the right to do the following:
 27 (1) Manually transcribe and make notes, abstracts, or
 28 memoranda.
 29 (2) In the case of tape recordings or other aural public records,
 30 to listen and manually transcribe or duplicate, or make notes,
 31 abstracts, or other memoranda from them.
 32 (3) In the case of public records available:
 33 (A) by enhanced access under section 3.5 of this chapter; or
 34 (B) to a governmental entity under section 3(c)(2) of this
 35 chapter;
 36 to examine and copy the public records by use of an electronic
 37 device.
 38 (4) In the case of electronically stored data, to manually
 39 transcribe and make notes, abstracts, or memoranda or to
 40 duplicate the data onto a disk, tape, drum, or any other medium
 41 of electronic storage.
 42 (i) "Investigatory record" means information compiled in the

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- 1 course of the investigation of a crime.
- 2 (j) "Law enforcement activity" means:
- 3 (1) a traffic stop;
- 4 (2) a pedestrian stop;
- 5 (3) an arrest;
- 6 (4) a search;
- 7 (5) an investigation;
- 8 (6) a pursuit;
- 9 (7) crowd control;
- 10 (8) traffic control; or
- 11 (9) any other instance in which a law enforcement officer is
- 12 enforcing the law.
- 13 The term does not include an administrative activity, including the
- 14 completion of paperwork related to a law enforcement activity, or a
- 15 custodial interrogation conducted in a place of detention as described
- 16 in Indiana Evidence Rule 617, regardless of the ultimate admissibility
- 17 of a statement made during the custodial interrogation.
- 18 (k) "Law enforcement recording" means an audio, visual, or
- 19 audiovisual recording of a law enforcement activity captured by a
- 20 camera or other device that is:
- 21 (1) provided to or used by a law enforcement officer in the scope
- 22 of the officer's duties; and
- 23 (2) designed to be worn by a law enforcement officer or attached
- 24 to the vehicle or transportation of a law enforcement officer.
- 25 (l) "Offender" means a person confined in a prison, county jail,
- 26 detention facility, penal institution, or in a community corrections
- 27 program as the result of the person's arrest or conviction for a crime.
- 28 (m) "Patient" has the meaning set out in IC 16-18-2-272(d).
- 29 (n) "Person" means an individual, a corporation, a limited liability
- 30 company, a partnership, an unincorporated association, or a
- 31 governmental entity.
- 32 (o) "Private university police department" means the police
- 33 officers appointed by the governing board of a private university under
- 34 IC 21-17-5.
- 35 (p) "Provider" has the meaning set out in IC 16-18-2-295(b) and
- 36 includes employees of the state department of health or local boards of
- 37 health who create patient records at the request of another provider or
- 38 who are social workers and create records concerning the family
- 39 background of children who may need assistance.
- 40 (q) "Public agency", except as provided in section 2.1 of this
- 41 chapter, means the following:

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- 1 (1) Any board, commission, department, division, bureau,
 2 committee, agency, office, instrumentality, or authority, by
 3 whatever name designated, exercising any part of the executive,
 4 administrative, judicial, or legislative power of the state.
 5 (2) Any:
 6 (A) county, township, school corporation, city, or town, or
 7 any board, commission, department, division, bureau,
 8 committee, office, instrumentality, or authority of any
 9 county, township, school corporation, city, or town;
 10 (B) political subdivision (as defined by IC 36-1-2-13); or
 11 (C) other entity, or any office thereof, by whatever name
 12 designated, exercising in a limited geographical area the
 13 executive, administrative, judicial, or legislative power of
 14 the state or a delegated local governmental power.
 15 (3) Any entity or office that is subject to:
 16 (A) budget review by either the department of local
 17 government finance or the governing body of a county, city,
 18 town, township, or school corporation; or
 19 (B) an audit by the state board of accounts that is required
 20 by statute, rule, or regulation.
 21 (4) Any building corporation of a political subdivision that issues
 22 bonds for the purpose of constructing public facilities.
 23 (5) Any advisory commission, committee, or body created by
 24 statute, ordinance, or executive order to advise the governing
 25 body of a public agency, except medical staffs or the committees
 26 of any such staff.
 27 (6) Any law enforcement agency, which means an agency or a
 28 department of any level of government that engages in the
 29 investigation, apprehension, arrest, or prosecution of alleged
 30 criminal offenders, such as the state police department, the
 31 police or sheriff's department of a political subdivision,
 32 prosecuting attorneys, members of the excise police division of
 33 the alcohol and tobacco commission, conservation officers of the
 34 department of natural resources, gaming agents of the Indiana
 35 gaming commission, gaming control officers of the Indiana
 36 gaming commission, and the security division of the state lottery
 37 commission.
 38 (7) Any license branch operated under IC 9-14.1.
 39 (8) The state lottery commission established by IC 4-30-3-1,
 40 including any department, division, or office of the commission.
 41 (9) The Indiana gaming commission established under IC 4-33,

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1 including any department, division, or office of the commission.
2 (10) The Indiana horse racing commission established by
3 IC 4-31, including any department, division, or office of the
4 commission.

5 (11) A private university police department. The term does not
6 include the governing board of a private university or any other
7 department, division, board, entity, or office of a private
8 university.

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

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

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

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

- 24 (1) notes and statements taken during interviews of prospective
- 25 witnesses; and
- 26 (2) legal research or records, correspondence, reports, or
- 27 memoranda to the extent that each contains the attorney's
- 28 opinions, theories, or conclusions.

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

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

- 37 (1) identify with reasonable particularity the record being
- 38 requested; and
- 39 (2) be, at the discretion of the agency, in writing on or in a form
- 40 provided by the agency.

41 No request may be denied because the person making the request

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1 refuses to state the purpose of the request, unless such condition is
 2 required by other applicable statute. If a request is for inspection or
 3 copying of a law enforcement recording, the request must provide the
 4 information required under subsection (i).

5 (b) A public agency may not deny or interfere with the exercise of
 6 the right stated in subsection (a). **If the public agency does not deny**
 7 **the request**, within a reasonable time after the request is received by
 8 the agency the public agency shall either:

9 (1) provide the requested copies to the person making the
 10 request; or

11 (2) allow the person to make copies:

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

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

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

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

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

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

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

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1 rule or ordinance adopted under this subsection may be prohibited by
2 the state agency or political subdivision from obtaining a copy or any
3 further data under subsection (d).

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

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

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1 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
 2 and may not discriminate among similarly situated commercial entities.
 3 For purposes of this subsection, "political purposes" means influencing
 4 the election of a candidate for federal, state, legislative, local, or school
 5 board office or the outcome of a public question or attempting to solicit
 6 a contribution to influence the election of a candidate for federal, state,
 7 legislative, local, or school board office or the outcome of a public
 8 question.

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

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

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

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

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

19 (i) A request to inspect or copy a law enforcement recording must
 20 be in writing. A request identifies a law enforcement recording with
 21 reasonable particularity as required by this section only if the request
 22 provides the following information regarding the law enforcement
 23 activity depicted in the recording:

24 (1) The date and approximate time of the law enforcement
 25 activity.

26 (2) The specific location where the law enforcement activity
 27 occurred.

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

31 (j) This subsection applies to a public record that is in an
 32 electronic format. This subsection does not apply to a public record
 33 recorded in the office of the county recorder. A public agency shall
 34 provide an electronic copy or a paper copy of a public record, at the
 35 option of the person making the request for the public record. This
 36 subsection does not require a public agency to change the format of a
 37 public record.

38 SECTION 3. IC 5-14-3-5.2, AS AMENDED BY P.L.85-2017,
 39 SECTION 13, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2023]: Sec. 5.2. (a) A public agency shall permit any person
 41 to inspect or copy a law enforcement recording unless one (1) or more

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- 1 of the following circumstances apply:
- 2 (1) Section 4(b)(19) of this chapter applies and the person has
- 3 not demonstrated that the public agency that owns, occupies,
- 4 leases, or maintains the airport approves the disclosure of the
- 5 recording.
- 6 (2) The public agency finds, after due consideration of the facts
- 7 of the particular case, that access to or dissemination of the
- 8 recording:
- 9 (A) creates a significant risk of substantial harm to any
- 10 person or to the general public;
- 11 (B) is likely to interfere with the ability of a person to
- 12 receive a fair trial by creating prejudice or bias concerning
- 13 the person or a claim or defense presented by the person;
- 14 (C) may affect an ongoing investigation, if the recording is
- 15 an investigatory record of a law enforcement agency as
- 16 defined in section 2 of this chapter and notwithstanding its
- 17 exclusion under section 4(b)(1) of this chapter; or
- 18 (D) would not serve the public interest.
- 19 However, before permitting a person to inspect or copy the recording,
- 20 the public agency must comply with the obscuring provisions of
- 21 subsection (e), if applicable.
- 22 (b) If a public agency denies a person the opportunity to inspect or
- 23 copy a law enforcement recording under subsection (a), the person may
- 24 petition the circuit or superior court of the county in which the law
- 25 enforcement recording was made for an order permitting inspection or
- 26 copying of a law enforcement recording. The court shall review the
- 27 decision of the public agency de novo and grant the order unless one
- 28 (1) or more of the following apply:
- 29 (1) If section 4(b)(19) of this chapter applies, the petitioner fails
- 30 to establish by a preponderance of the evidence that the public
- 31 agency that owns, occupies, leases, or maintains the airport
- 32 approves the disclosure of the recording.
- 33 (2) The public agency establishes by a preponderance of the
- 34 evidence in light of the facts of the particular case, that access to
- 35 or dissemination of the recording:
- 36 (A) creates a significant risk of substantial harm to any
- 37 person or to the general public;
- 38 (B) is likely to interfere with the ability of a person to
- 39 receive a fair trial by creating prejudice or bias concerning
- 40 the person or a claim or defense presented by the person;
- 41 (C) may affect an ongoing investigation, if the recording is

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1 an investigatory record of a law enforcement agency, as
 2 defined in section 2 of this chapter, notwithstanding its
 3 exclusion under section 4 of this chapter; or
 4 (D) would not serve the public interest.

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

11 (d) If the court grants a petition for inspection of or to copy the law
 12 enforcement recording, the public agency shall disclose the recording.
 13 However, before disclosing the recording, the public agency must
 14 comply with the obscuring provisions of subsection (e), if applicable.
 15 **Any copy of the recording must be made by the public agency.**

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

18 (1) shall obscure:

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

21 (B) depictions of:

22 (i) an individual's death or a dead body;
 23 (ii) acts of severe violence that are against any
 24 individual who is clearly visible and that result in
 25 serious bodily injury (as defined in IC 35-31.5-2-292);
 26 (iii) serious bodily injury (as defined in
 27 IC 35-31.5-2-292);
 28 (iv) nudity (as defined in IC 35-49-1-5);
 29 (v) an individual whom the public agency reasonably
 30 believes is less than eighteen (18) years of age;
 31 (vi) personal medical information;
 32 (vii) a victim of a crime, or any information identifying
 33 the victim of a crime, if the public agency finds that
 34 obscuring this information is necessary for the victim's
 35 safety; and
 36 (viii) a witness to a crime or an individual who reports
 37 a crime, or any information identifying a witness to a
 38 crime or an individual who reports a crime, if the
 39 public agency finds that obscuring this information is
 40 necessary for the safety of the witness or individual
 41 who reports a crime; and

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- 1 (2) may obscure:
- 2 (A) any information identifying:
- 3 (i) a law enforcement officer operating in an
- 4 undercover capacity; or
- 5 (ii) a confidential informant; and
- 6 (B) any information that the public agency may withhold
- 7 from disclosure under section 4(b)(2) through 4(b)(26) of
- 8 this chapter.
- 9 (f) A court shall expedite a proceeding filed under this section.
- 10 Unless prevented by extraordinary circumstances, the court shall
- 11 conduct a hearing (if required) and rule on a petition filed under this
- 12 section not later than thirty (30) days after the date the petition is filed.

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