
HOUSE BILL No. 1142

AM114202 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.
 12 (e) "Electronic map" means copyrighted data provided by a public
 13 agency from an electronic geographic information system.
 14 (f) "Enhanced access" means the inspection of a public record by
 15 a person other than a governmental entity and that:
 16 (1) is by means of an electronic device other than an electronic
 17 device provided by a public agency in the office of the public
 18 agency; or
 19 (2) requires the compilation or creation of a list or report that
 20 does not result in the permanent electronic storage of the
 21 information.
 22 (g) "Facsimile machine" means a machine that electronically
 23 transmits exact images through connection with a telephone network.
 24 (h) "Inspect" includes the right to do the following:
 25 (1) Manually transcribe and make notes, abstracts, or
 26 memoranda.
 27 (2) In the case of tape recordings or other aural public records,
 28 to 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
 37 transcribe and make notes, abstracts, or memoranda or to
 38 duplicate the data onto a disk, tape, drum, or any other medium
 39 of electronic storage.
 40 (i) "Investigatory record" means information compiled in the
 41 course of the investigation of a crime.
 42 (j) "Law enforcement activity" means:

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- 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
 31 officers 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

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1 whatever name designated, exercising any part of the executive,
 2 administrative, judicial, or legislative power of the state.

3 (2) Any:

4 (A) county, township, school corporation, city, or town, or
 5 any board, commission, department, division, bureau,
 6 committee, office, instrumentality, or authority of any
 7 county, township, school corporation, city, or town;

8 (B) political subdivision (as defined by IC 36-1-2-13); or

9 (C) other entity, or any office thereof, by whatever name
 10 designated, exercising in a limited geographical area the
 11 executive, administrative, judicial, or legislative power of
 12 the state or a delegated local governmental power.

13 (3) Any entity or office that is subject to:

14 (A) budget review by either the department of local
 15 government finance or the governing body of a county, city,
 16 town, township, or school corporation; or

17 (B) an audit by the state board of accounts that is required
 18 by statute, rule, or regulation.

19 (4) Any building corporation of a political subdivision that issues
 20 bonds for the purpose of constructing public facilities.

21 (5) Any advisory commission, committee, or body created by
 22 statute, ordinance, or executive order to advise the governing
 23 body of a public agency, except medical staffs or the committees
 24 of any such staff.

25 (6) Any law enforcement agency, which means an agency or a
 26 department of any level of government that engages in the
 27 investigation, apprehension, arrest, or prosecution of alleged
 28 criminal offenders, such as the state police department, the
 29 police or sheriff's department of a political subdivision,
 30 prosecuting attorneys, members of the excise police division of
 31 the alcohol and tobacco commission, conservation officers of the
 32 department of natural resources, gaming agents of the Indiana
 33 gaming commission, gaming control officers of the Indiana
 34 gaming commission, and the security division of the state lottery
 35 commission.

36 (7) Any license branch operated under IC 9-14.1.

37 (8) The state lottery commission established by IC 4-30-3-1,
 38 including any department, division, or office of the commission.

39 (9) The Indiana gaming commission established under IC 4-33,
 40 including any department, division, or office of the commission.

41 (10) The Indiana horse racing commission established by

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1 IC 4-31, including any department, division, or office of the
2 commission.

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

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

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

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

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

22 (1) notes and statements taken during interviews of prospective
23 witnesses; and

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

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

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

35 (1) identify with reasonable particularity the record being
36 requested; and

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

39 No request may be denied because the person making the request
40 refuses to state the purpose of the request, unless such condition is
41 required by other applicable statute. If a request is for inspection or

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1 copying of a law enforcement recording, the request must provide the
2 information required under subsection (i).

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

7 (1) provide the requested copies to the person making the
8 request; or

9 (2) allow the person to make copies:

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

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

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

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

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

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

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

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1 further data under subsection (d).

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

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

40 A policy adopted under subdivision (3)(A) or (3)(B) must be uniform
 41 and may not discriminate among similarly situated commercial entities.

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1 For purposes of this subsection, "political purposes" means influencing
2 the election of a candidate for federal, state, legislative, local, or school
3 board office or the outcome of a public question or attempting to solicit
4 a contribution to influence the election of a candidate for federal, state,
5 legislative, local, or school board office or the outcome of a public
6 question.

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

- 9 (1) for the storage or copying of public records; or
- 10 (2) that requires the public to obtain a license or pay copyright
11 royalties for obtaining the right to inspect and copy the records
12 unless otherwise provided by applicable statute;

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

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

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

- 22 (1) The date and approximate time of the law enforcement
23 activity.
- 24 (2) The specific location where the law enforcement activity
25 occurred.
- 26 (3) The name of at least one (1) individual, other than a law
27 enforcement officer, who was directly involved in the law
28 enforcement activity.

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

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

- 41 (1) Section 4(b)(19) of this chapter applies and the person has

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1 not demonstrated that the public agency that owns, occupies,
2 leases, or maintains the airport approves the disclosure of the
3 recording.

4 (2) The public agency finds, after due consideration of the facts
5 of the particular case, that access to or dissemination of the
6 recording:

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

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

12 (C) may affect an ongoing investigation, if the recording is
13 an investigatory record of a law enforcement agency as
14 defined in section 2 of this chapter and notwithstanding its
15 exclusion under section 4(b)(1) of this chapter; or

16 (D) would not serve the public interest.

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

20 (b) If a public agency denies a person the opportunity to inspect or
21 copy a law enforcement recording under subsection (a), the person may
22 petition the circuit or superior court of the county in which the law
23 enforcement recording was made for an order permitting inspection or
24 copying of a law enforcement recording. The court shall review the
25 decision of the public agency de novo and grant the order unless one
26 (1) or more of the following apply:

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

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

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

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

39 (C) may affect an ongoing investigation, if the recording is
40 an investigatory record of a law enforcement agency, as
41 defined in section 2 of this chapter, notwithstanding its

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- 1 exclusion under section 4 of this chapter; or
- 2 (D) would not serve the public interest.
- 3 (c) Notwithstanding section 9(i) of this chapter, a person that
- 4 obtains an order for inspection of or to copy a law enforcement
- 5 recording under this section may not be awarded attorney's fees, court
- 6 costs, and other reasonable expenses of litigation. The penalty
- 7 provisions of section 9.5 of this chapter do not apply to a petition filed
- 8 under this section.
- 9 (d) If the court grants a petition for inspection of or to copy the law
- 10 enforcement recording, the public agency shall disclose the recording.
- 11 However, before disclosing the recording, the public agency must
- 12 comply with the obscuring provisions of subsection (e), if applicable.
- 13 **Any copy of the recording must be made by the public agency.**
- 14 (e) A public agency that discloses a law enforcement recording
- 15 under this section:
- 16 (1) shall obscure:
- 17 (A) any information that is required to be obscured under
- 18 section 4(a) of this chapter; and
- 19 (B) depictions of:
- 20 (i) an individual's death or a dead body;
- 21 (ii) acts of severe violence that are against any
- 22 individual who is clearly visible and that result in
- 23 serious bodily injury (as defined in IC 35-31.5-2-292);
- 24 (iii) serious bodily injury (as defined in
- 25 IC 35-31.5-2-292);
- 26 (iv) nudity (as defined in IC 35-49-1-5);
- 27 (v) an individual whom the public agency reasonably
- 28 believes is less than eighteen (18) years of age;
- 29 (vi) personal medical information;
- 30 (vii) a victim of a crime, or any information identifying
- 31 the victim of a crime, if the public agency finds that
- 32 obscuring this information is necessary for the victim's
- 33 safety; and
- 34 (viii) a witness to a crime or an individual who reports
- 35 a crime, or any information identifying a witness to a
- 36 crime or an individual who reports a crime, if the
- 37 public agency finds that obscuring this information is
- 38 necessary for the safety of the witness or individual
- 39 who reports a crime; and
- 40 (2) may obscure:
- 41 (A) any information identifying:

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

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