

SENATE BILL No. 365

DIGEST OF INTRODUCED BILL

Citations Affected: IC 35-31.5-2; IC 35-33-5; IC 35-33.5-2-2.

Synopsis: Electronic documents. Defines "electronic document" and provides that an electronic document may be searched, seized, or intercepted only if it is particularly described in a warrant.

Effective: July 1, 2015.

Waltz

January 8, 2015, read first time and referred to Committee on Judiciary.



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. 365



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 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, digital information, or**
6 **intelligence of any nature that is 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 (b) "Electronic communication", for purposes of IC 35-33.5, means
13 any transfer of signs, signals, writing, images, sounds, data, oral
14 communication, digital information, or intelligence of any nature
15 transmitted in whole or in part by a wire, a radio, or an electromagnetic,
16 a photoelectronic, or a photo-optical system.



1 SECTION 2. IC 35-31.5-2-110.7 IS ADDED TO THE INDIANA
 2 CODE AS A NEW SECTION TO READ AS FOLLOWS
 3 [EFFECTIVE JULY 1, 2015]: **Sec. 110.7. (a) "Electronic document",**
 4 **for purposes of IC 35-33-5, has the meaning set forth in**
 5 **IC 35-33-5-0.5.**

6 **(b) "Electronic document", for purposes of IC 35-33.5, means**
 7 **an electronic communication (as defined in section 110(b) of this**
 8 **chapter) that is a document.**

9 SECTION 3. IC 35-31.5-2-111.5, AS ADDED BY P.L.170-2014,
 10 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 11 JULY 1, 2015]: Sec. 111.5. "Electronic storage", for purposes of
 12 IC 35-33-5, has the meaning set forth in ~~IC 35-33-5-0.5(2)~~.
 13 **IC 35-33-5-0.5.**

14 SECTION 4. IC 35-31.5-2-112.5, AS ADDED BY P.L.170-2014,
 15 SECTION 4, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 16 JULY 1, 2015]: Sec. 112.5. "Electronic user data", for purposes of
 17 IC 35-33-5, has the meaning set forth in ~~IC 35-33-5-0.5(3)~~.
 18 **IC 35-33-5-0.5.**

19 SECTION 5. IC 35-31.5-2-175.5, AS ADDED BY P.L.170-2014,
 20 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 21 JULY 1, 2015]: Sec. 175.5. "Intercept", for purposes of IC 35-33-5, has
 22 the meaning set forth in ~~IC 35-33-5-0.5(5)~~. **IC 35-33-5-0.5.**

23 SECTION 6. IC 35-31.5-2-273.8, AS ADDED BY P.L.170-2014,
 24 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 25 JULY 1, 2015]: Sec. 273.8. "Remote computing service", for purposes
 26 of IC 35-33-5, has the meaning set forth in ~~IC 35-33-5-0.5(6)~~.
 27 **IC 35-33-5-0.5.**

28 SECTION 7. IC 35-31.5-2-342.3, AS ADDED BY P.L.170-2014,
 29 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 30 JULY 1, 2015]: Sec. 342.3. "Unmanned aerial vehicle", for purposes
 31 of IC 35-33-5, has the meaning set forth in ~~IC 35-33-5-0.5(7)~~.
 32 **IC 35-33-5-0.5.**

33 SECTION 8. IC 35-31.5-2-343.7, AS ADDED BY P.L.170-2014,
 34 SECTION 14, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 35 JULY 1, 2015]: Sec. 343.7. "Use of an unmanned aerial vehicle", for
 36 purposes of IC 35-33-5, has the meaning set forth in ~~IC 35-33-5-0.5(8)~~.
 37 **IC 35-33-5-0.5.**

38 SECTION 9. IC 35-31.5-2-343.8, AS ADDED BY P.L.170-2014,
 39 SECTION 15, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 40 JULY 1, 2015]: Sec. 343.8. "User", for purposes of IC 35-33-5, has the
 41 meaning set forth in ~~IC 35-33-5-0.5(9)~~. **IC 35-33-5-0.5.**

42 SECTION 10. IC 35-33-5-0.5, AS ADDED BY P.L.170-2014,



1 SECTION 16, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
2 JULY 1, 2015]: Sec. 0.5. The following definitions apply throughout
3 this chapter:

4 (1) "Electronic communication service" means a service that
5 provides users with the ability to send or receive wire or
6 electronic communications.

7 **(2) "Electronic document" means an electronic
8 communication (as defined in IC 35-31.5-2-110(a)) that is a
9 document.**

10 ~~(2)~~ **(3)** "Electronic storage" means any storage of electronic user
11 data on a computer, computer network, or computer system
12 regardless of whether the data is subject to recall, further
13 manipulation, deletion, or transmission. "Electronic storage"
14 includes any storage or electronic communication by an electronic
15 communication service or a remote computing service.

16 ~~(3)~~ **(4)** "Electronic user data" means any data or records that are
17 in the possession, care, custody, or control of a provider of an
18 electronic communication service, a remote computing service, or
19 any other service or program that stores, uses, collects, or
20 safeguards electronic user data.

21 ~~(4)~~ **(5)** "Governmental entity" has the meaning set forth in
22 IC 35-31.5-2-144. For purposes of this chapter, "governmental
23 entity" also includes a person authorized to act on behalf of a state
24 or local agency.

25 ~~(5)~~ **(6)** "Intercept" means to acquire geolocation data through the
26 use of an electronic device, mechanical device, or other device.

27 ~~(6)~~ **(7)** "Remote computing service" means the provision to the
28 public of computer storage or processing services by means of an
29 electronic communication service.

30 ~~(7)~~ **(8)** "Unmanned aerial vehicle" means an aircraft that:

31 (A) does not carry a human operator; and

32 (B) is capable of flight under remote control or autonomous
33 programming.

34 ~~(8)~~ **(9)** "Use of an unmanned aerial vehicle" means the use of an
35 unmanned aerial vehicle by a law enforcement officer to obtain
36 evidence relevant to the enforcement of statutes, rules, or
37 regulations. The term includes:

38 (A) the interception of wire, electronic, or oral
39 communications; and

40 (B) the capture, collection, monitoring, or viewing of images.

41 ~~(9)~~ **(10)** "User" means any person who:

42 (A) uses an electronic communication service, remote



1 computing service, geolocation information service, or an
2 electronic device; and

3 (B) may or may not be the person or entity having legal title,
4 claim, or right to the electronic device or electronic user data.

5 SECTION 11. IC 35-33-5-1, AS AMENDED BY P.L.1-2006,
6 SECTION 526, IS AMENDED TO READ AS FOLLOWS
7 [EFFECTIVE JULY 1, 2015]: Sec. 1. (a) A court may issue warrants
8 only upon probable cause, supported by oath or affirmation, to search
9 any place for any of the following:

10 (1) Property which is obtained unlawfully.

11 (2) Property, the possession of which is unlawful.

12 (3) Property used or possessed with intent to be used as the means
13 of committing an offense or concealed to prevent an offense from
14 being discovered.

15 (4) Property constituting evidence of an offense or tending to
16 show that a particular person committed an offense.

17 (5) Any person.

18 (6) Evidence necessary to enforce statutes enacted to prevent
19 cruelty to or neglect of children.

20 (7) A firearm possessed by a person who is dangerous (as defined
21 in IC 35-47-14-1).

22 (b) As used in this section, "place" includes any location where
23 property might be secreted or hidden, including buildings, persons, or
24 vehicles.

25 **(c) An electronic document may be searched or seized only if it**
26 **is particularly described in a warrant issued under this chapter. A**
27 **warrant authorizing the search of a computer, hard drive, cellular**
28 **telephone, or other item containing an electronic document is not**
29 **sufficiently particular to permit the search or seizure of an**
30 **electronic document unless the electronic document is particularly**
31 **described in the warrant.**

32 SECTION 12. IC 35-33.5-2-2, AS AMENDED BY P.L.105-2007,
33 SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
34 JULY 1, 2015]: Sec. 2. (a) Except as provided in section 3.5 of this
35 chapter, an application for a warrant or extension must be made in
36 writing and upon oath or affirmation. Each application must also
37 include the following:

38 (1) The identity of the persons submitting the application.

39 (2) An affidavit setting forth the facts relied upon by an applicant
40 to show why a warrant should be issued or an extension granted,
41 including the following:

42 (A) Facts establishing probable cause for the belief that a



- 1 designated offense allegedly has been, is being, or may be
 2 committed.
- 3 (B) A description of the nature and location of the facility,
 4 place, or device from which the communication is to be
 5 intercepted.
- 6 (C) The identity, if known, of the person allegedly committing
 7 the designated offense whose communication is to be
 8 intercepted.
- 9 (D) A description of the type of communication to be
 10 intercepted.
- 11 (3) A statement specifying that other investigative procedures:
 12 (A) have been tried and failed; or
 13 (B) may not succeed or are too dangerous to attempt.
- 14 (4) A statement of the duration necessary for the interception.
 15 However, if the applicant requests that the authorization for
 16 interception not automatically terminate once the described type
 17 of communication is initially obtained, the application must also
 18 include a description of facts supporting the belief that additional
 19 communications of the same type will occur.
- 20 (5) A statement of facts and any action taken by the court
 21 concerning any previous application for a warrant or an extension
 22 that:
 23 (A) has been made to a court under this article;
 24 (B) sought to obtain communications from any of the same
 25 persons, places, or facilities as the current application; and
 26 (C) is known to exist by the persons making the current
 27 application.
- 28 (6) If it is reasonably necessary to make a secret entry upon
 29 private property to install an interception device, a statement
 30 describing the following:
 31 (A) The private property.
 32 (B) Who owns and who occupies the private property.
 33 (C) The reasons necessitating secret entry.
- 34 (b) In addition to the information required in subsection (a), if an
 35 application is for an extension, the application must contain a statement
 36 setting forth the results obtained from the original warrant or a
 37 reasonable explanation of the failure to obtain results under the original
 38 warrant.
- 39 (c) The court may require an applicant to furnish additional
 40 testimony or evidence in support of an application.
- 41 **(d) An electronic document may be intercepted only if it is**
 42 **particularly described in a warrant issued under this article. A**



1 **warrant authorizing the interception of an electronic**
2 **communication is not sufficiently particular to permit the**
3 **interception of an electronic document unless the electronic**
4 **document is particularly described in the warrant. An electronic**
5 **document intercepted in violation of this subsection may be**
6 **suppressed under IC 35-33.5-4-4.**

