

HOUSE BILL No. 1394

DIGEST OF INTRODUCED BILL

Citations Affected: IC 5-14-3-2; IC 34-30-2-154.8; IC 35-46; IC 36-8-3.3.

Synopsis: Use of personal body cameras by police officers. Allows a law enforcement officer of a police department (department) of a county, city, or town (unit) to use the officer's personal body camera in the course of the officer's official duties. Provides that a personal body camera recording is not a public record unless the law enforcement officer provides the recording to the department. Provides that an officer who discloses the recording to a person or agency other than the department is civilly liable to certain individuals depicted in the body camera recording, if the officer uses the recording for a purpose other than: (1) the performance of the officer's official duties; or (2) to prepare the officer's defense or response in a disciplinary action or criminal action. Provides that if the officer gives the recording to the department without first altering, displaying, or transmitting the recording to another person, the officer is immune from civil liability for disclosure of the recording to individuals depicted in the body camera recording.

Effective: July 1, 2018.

Mayfield

January 16, 2018, read first time and referred to Committee on Government and Regulatory Reform.



Second Regular Session of the 120th General Assembly (2018)

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 2017 Regular Session of the General Assembly.

HOUSE BILL No. 1394

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.85-2017,
2 SECTION 12, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2018]: 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;



- 1 (2) the labor required to retrieve electronically stored data; and
 2 (3) any medium used for electronic output;
 3 for providing a duplicate of electronically stored data onto a disk, tape,
 4 drum, or other medium of electronic data retrieval under section 8(g)
 5 of this chapter, or for reprogramming a computer system under section
 6 6(c) of this chapter.
- 7 (e) "Electronic map" means copyrighted data provided by a public
 8 agency from an electronic geographic information system.
- 9 (f) "Enhanced access" means the inspection of a public record by a
 10 person other than a governmental entity and that:
 11 (1) is by means of an electronic device other than an electronic
 12 device provided by a public agency in the office of the public
 13 agency; or
 14 (2) requires the compilation or creation of a list or report that does
 15 not result in the permanent electronic storage of the information.
- 16 (g) "Facsimile machine" means a machine that electronically
 17 transmits exact images through connection with a telephone network.
- 18 (h) "Inspect" includes the right to do the following:
 19 (1) Manually transcribe and make notes, abstracts, or memoranda.
 20 (2) In the case of tape recordings or other aural public records, to
 21 listen and manually transcribe or duplicate, or make notes,
 22 abstracts, or other memoranda from them.
 23 (3) In the case of public records available:
 24 (A) by enhanced access under section 3.5 of this chapter; or
 25 (B) to a governmental entity under section 3(c)(2) of this
 26 chapter;
 27 to examine and copy the public records by use of an electronic
 28 device.
 29 (4) In the case of electronically stored data, to manually transcribe
 30 and make notes, abstracts, or memoranda or to duplicate the data
 31 onto a disk, tape, drum, or any other medium of electronic
 32 storage.
- 33 (i) "Investigatory record" means information compiled in the course
 34 of the investigation of a crime.
- 35 (j) "Law enforcement activity" means:
 36 (1) a traffic stop;
 37 (2) a pedestrian stop;
 38 (3) an arrest;
 39 (4) a search;
 40 (5) an investigation;
 41 (6) a pursuit;
 42 (7) crowd control;



1 (8) traffic control; or

2 (9) any other instance in which a law enforcement officer is
3 enforcing the law.

4 The term does not include an administrative activity, including the
5 completion of paperwork related to a law enforcement activity, or a
6 custodial interrogation conducted in a place of detention as described
7 in Indiana Evidence Rule 617, regardless of the ultimate admissibility
8 of a statement made during the custodial interrogation.

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

12 (1) **either:**

13 (A) provided to; or

14 (B) used **under IC 36-8-3.3-4** by;

15 a law enforcement officer in the scope of the officer's duties; and
16 (2) designed to be worn by a law enforcement officer or attached
17 to the vehicle or transportation of a law enforcement officer.

18 (l) "Offender" means a person confined in a penal institution as the
19 result of the conviction for a crime.

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

21 (n) "Person" means an individual, a corporation, a limited liability
22 company, a partnership, an unincorporated association, or a
23 governmental entity.

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

27 (p) "Provider" has the meaning set out in IC 16-18-2-295(b) and
28 includes employees of the state department of health or local boards of
29 health who create patient records at the request of another provider or
30 who are social workers and create records concerning the family
31 background of children who may need assistance.

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

34 (1) Any board, commission, department, division, bureau,
35 committee, agency, office, instrumentality, or authority, by
36 whatever name designated, exercising any part of the executive,
37 administrative, judicial, or legislative power of the state.

38 (2) Any:

39 (A) county, township, school corporation, city, or town, or any
40 board, commission, department, division, bureau, committee,
41 office, instrumentality, or authority of any county, township,
42 school corporation, city, or town;



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



1 agency and which is generated on paper, paper substitutes,
 2 photographic media, chemically based media, magnetic or machine
 3 readable media, electronically stored data, or any other material,
 4 regardless of form or characteristics.

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

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

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

13 (1) notes and statements taken during interviews of prospective
 14 witnesses; and

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

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

20 SECTION 2. IC 34-30-2-154.8 IS ADDED TO THE INDIANA
 21 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
 22 [EFFECTIVE JULY 1, 2018]: **Sec. 154.8. IC 36-8-3.3-8 (Concerning**
 23 **use or disclosure of personal body camera recordings by law**
 24 **enforcement).**

25 SECTION 3. IC 35-46-8-1, AS ADDED BY P.L.94-2005,
 26 SECTION 6, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 27 JULY 1, 2018]: Sec. 1. This chapter does not apply to a law
 28 enforcement officer acting within the scope of the officer's
 29 employment, **including a law enforcement officer using a personal**
 30 **body camera under IC 36-8-3.3.**

31 SECTION 4. IC 35-46-8.5-1, AS AMENDED BY P.L.58-2016,
 32 SECTION 10, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
 33 JULY 1, 2018]: Sec. 1. (a) This section does not apply to any of the
 34 following:

35 (1) Electronic or video toll collection facilities or activities
 36 authorized under any of the following:

37 (A) IC 8-15-2.

38 (B) IC 8-15-3.

39 (C) IC 8-15.5.

40 (D) IC 8-15.7.

41 (E) IC 8-16.

42 (F) IC 9-21-3.5.



1 (2) A law enforcement officer who has obtained:

2 (A) a search warrant; or

3 (B) the consent of the owner or private property;

4 to place a camera or electronic surveillance equipment on private
5 property.

6 (3) A law enforcement officer who uses a law enforcement
7 recording device **or the law enforcement officer's personal law**
8 **enforcement recording device under IC 36-8-3.3** in
9 performance of the officer's duties.

10 (b) A person who knowingly or intentionally places a camera or
11 electronic surveillance equipment that records images or data of any
12 kind while unattended on the private property of another person
13 without the consent of the owner or tenant of the private property
14 commits a Class A misdemeanor.

15 SECTION 5. IC 36-8-3.3 IS ADDED TO THE INDIANA CODE
16 AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE
17 JULY 1, 2018]:

18 **Chapter 3.3. Use of Personal Body Cameras**

19 **Sec. 1. "Body camera" means a camera or other recording**
20 **device worn on the body that makes a law enforcement recording**
21 **(as defined in IC 5-14-3-2).**

22 **Sec. 2. "Department" means a police department of a unit.**

23 **Sec. 3. "Member" means a police officer appointed to a police**
24 **department of a unit, including a reserve officer.**

25 **Sec. 4. A member may use a personal body camera, purchased**
26 **by the member for the member's own use while performing a law**
27 **enforcement activity (as defined in IC 5-14-3-2), regardless of**
28 **whether the department or unit:**

29 (1) has adopted a policy authorizing or requiring the use of:

30 (A) personal body cameras; or

31 (B) department or unit purchased or issued body cameras;
32 by members of the department; or

33 (2) provides or pays for body cameras for members of the
34 department to use while performing law enforcement
35 activities.

36 **Sec. 5. A policy adopted by the department or unit may not**
37 **require a member to use a body camera while performing law**
38 **enforcement activities unless the department or unit provides all**
39 **of the following at no cost to the member:**

40 (1) A body camera and any required equipment.

41 (2) Storage of law enforcement recordings made by the body
42 camera.



1 **Sec. 6.** Except as provided in section 7 of this chapter, a law
2 enforcement recording made by a member's personal body camera
3 is not a public record under IC 5-14-3.

4 **Sec. 7.** If a member provides or discloses to the department,
5 including disclosure to the department for a purpose under section
6 9 of this chapter, a law enforcement recording that was recorded
7 in the course of the member's official duties, the law enforcement
8 recording is a public record under IC 5-14-3 and is subject to that
9 chapter.

10 **Sec. 8.** If a member provides to the member's department a law
11 enforcement recording that has not been:

12 (1) altered, copied, exhibited, posted, displayed, redacted,
13 edited, or obscured; or

14 (2) distributed or transmitted to any person or agency other
15 than:

16 (A) the department for routine storage by the department,
17 if the department provides storage of law enforcement
18 recordings; or

19 (B) the department for purposes of an investigation or
20 proceeding under section 9 of this chapter;

21 the member is immune from civil liability under section 10 of this
22 chapter.

23 **Sec. 9.** A member may use or disclose the contents of a law
24 enforcement recording made by the member's personal body
25 camera only to the extent that the use or disclosure is:

26 (1) within the performance of the member's duties as a law
27 enforcement officer; or

28 (2) for purposes of preparing the defense of or the response of
29 the member in:

30 (A) a department disciplinary investigation or proceeding;

31 or

32 (B) a criminal investigation or proceeding;

33 against the member.

34 **Sec. 10.** The following persons have a civil cause of action to
35 recover damages for personal injury, wrongful death, or property
36 damage against a member of the department who knowingly,
37 recklessly, or negligently uses or discloses a law enforcement
38 recording made by the member's personal body camera in
39 violation of section 9 of this chapter:

40 (1) An individual depicted in a law enforcement recording,
41 including:

42 (A) a depiction of the individual's death or a dead body;



- 1 **(B) an act of severe violence against the individual who is**
 2 **clearly visible and that results in serious bodily injury (as**
 3 **defined in IC 35-31.5-2-292);**
 4 **(C) serious bodily injury (as defined in IC 35-31.5-2-292)**
 5 **to the individual depicted;**
 6 **(D) the nudity of the individual (as defined in**
 7 **IC 35-49-1-5);**
 8 **(E) an individual who is less than eighteen (18) years of**
 9 **age;**
 10 **(F) the individual's personal medical information;**
 11 **(G) a victim of a crime, or any information identifying the**
 12 **victim of a crime, if disclosure of the law enforcement**
 13 **recording endangers the safety of the victim;**
 14 **(H) a witness to a crime or an individual who reports a**
 15 **crime, or any information identifying a witness to a crime**
 16 **or an individual who reports a crime;**
 17 **(I) a law enforcement officer operating in an undercover**
 18 **capacity; or**
 19 **(J) a confidential informant.**
 20 **(2) If the individual described in subdivision (1) is deceased:**
 21 **(A) the surviving spouse, father, mother, brother, sister,**
 22 **son, or daughter of the individual; or**
 23 **(B) the personal representative (as defined in IC 6-4.1-1-9)**
 24 **of or an attorney representing the deceased individual's**
 25 **estate.**
 26 **(3) If the individual described in subdivision (1) is an**
 27 **incapacitated person (as defined in IC 29-3-1-7.5), the legal**
 28 **guardian, attorney, or attorney in fact of the incapacitated**
 29 **person.**
 30 **(4) A person that is an owner, tenant, lessee, or occupant of**
 31 **real property, if the interior of the real property is depicted in**
 32 **the recording.**
 33 **(5) A person who:**
 34 **(A) is the victim of a crime; or**
 35 **(B) suffers a loss due to personal injury or property**
 36 **damage;**
 37 **if the events depicted in the law enforcement recording are**
 38 **relevant to the person's loss or to the crime committed against**
 39 **the person.**

