



February 15, 2019

HOUSE BILL No. 1398

DIGEST OF HB 1398 (Updated February 12, 2019 12:29 pm - DI 131)

Citations Affected: IC 5-14; IC 20-33; IC 34-30.

Synopsis: Information concerning threats to school safety. Requires a law enforcement agency or private university police department to share private investigatory records with a school corporation, charter school, or nonpublic school for the purpose of enhancing the safety of a student or school facility, without losing the discretion to keep the records confidential from other records requesters. Provides that a school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent to appropriate officials in cases of health and safety emergencies as determined by school officials. Provides immunity from civil liability concerning the disclosure or report of education records of a student. Provides that in the case of a health or safety emergency, a law enforcement officer shall disclose or report a child's personally identifiable information contained in law enforcement records to a school corporation or an appropriate official.

Effective: July 1, 2019.

Cook, Cherry, McNamara

January 14, 2019, read first time and referred to Committee on Veterans Affairs and Public Safety.
February 14, 2019, amended, reported — Do Pass.

HB 1398—LS 6425/DI 106



February 15, 2019

First Regular Session of the 121st General Assembly (2019)

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 2018 Regular and Special Session of the General Assembly.

HOUSE BILL No. 1398

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 5-14-3-4, AS AMENDED BY P.L.197-2017,
2 SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
3 JULY 1, 2019]: Sec. 4. (a) The following public records are excepted
4 from section 3 of this chapter and may not be disclosed by a public
5 agency, unless access to the records is specifically required by a state
6 or federal statute or is ordered by a court under the rules of discovery:
7 (1) Those declared confidential by state statute.
8 (2) Those declared confidential by rule adopted by a public
9 agency under specific authority to classify public records as
10 confidential granted to the public agency by statute.
11 (3) Those required to be kept confidential by federal law.
12 (4) Records containing trade secrets.
13 (5) Confidential financial information obtained, upon request,
14 from a person. However, this does not include information that is
15 filed with or received by a public agency pursuant to state statute.
16 (6) Information concerning research, including actual research
17 documents, conducted under the auspices of a state educational

HB 1398—LS 6425/DI 106



- 1 institution, including information:
- 2 (A) concerning any negotiations made with respect to the
- 3 research; and
- 4 (B) received from another party involved in the research.
- 5 (7) Grade transcripts and license examination scores obtained as
- 6 part of a licensure process.
- 7 (8) Those declared confidential by or under rules adopted by the
- 8 supreme court of Indiana.
- 9 (9) Patient medical records and charts created by a provider,
- 10 unless the patient gives written consent under IC 16-39 or as
- 11 provided under IC 16-41-8.
- 12 (10) Application information declared confidential by the Indiana
- 13 economic development corporation under IC 5-28-16.
- 14 (11) A photograph, a video recording, or an audio recording of an
- 15 autopsy, except as provided in IC 36-2-14-10.
- 16 (12) A Social Security number contained in the records of a
- 17 public agency.
- 18 (13) The following information that is part of a foreclosure action
- 19 subject to IC 32-30-10.5:
- 20 (A) Contact information for a debtor, as described in
- 21 IC 32-30-10.5-8(d)(1)(B).
- 22 (B) Any document submitted to the court as part of the debtor's
- 23 loss mitigation package under IC 32-30-10.5-10(a)(3).
- 24 (14) The following information obtained from a call made to a
- 25 fraud hotline established under IC 36-1-8-8.5:
- 26 (A) The identity of any individual who makes a call to the
- 27 fraud hotline.
- 28 (B) A report, transcript, audio recording, or other information
- 29 concerning a call to the fraud hotline.
- 30 However, records described in this subdivision may be disclosed
- 31 to a law enforcement agency, a private university police
- 32 department, the attorney general, the inspector general, the state
- 33 examiner, or a prosecuting attorney.
- 34 (b) Except as otherwise provided by subsection (a), the following
- 35 public records shall be excepted from section 3 of this chapter at the
- 36 discretion of a public agency:
- 37 (1) Investigatory records of law enforcement agencies or private
- 38 university police departments. For purposes of this chapter, a law
- 39 enforcement recording is not an investigatory record. Law
- 40 enforcement agencies or private university police departments
- 41 ~~may~~ **shall** share investigatory records with a:
- 42 (A) person who advocates on behalf of a crime victim,



- 1 including a victim advocate (as defined in IC 35-37-6-3.5) or
 2 a victim service provider (as defined in IC 35-37-6-5), for the
 3 purposes of providing services to a victim or describing
 4 services that may be available to a victim; **and**
 5 **(B) school corporation (as defined by IC 20-18-2-16(a)),**
 6 **charter school (as defined by IC 20-24-1-4), or nonpublic**
 7 **school (as defined by IC 20-18-2-12), for the purpose of**
 8 **enhancing the safety or security of a student or a school**
 9 **facility;**
- 10 without the law enforcement agency or private university police
 11 department losing its discretion to keep those records confidential
 12 from other records requesters. However, certain law enforcement
 13 records must be made available for inspection and copying as
 14 provided in section 5 of this chapter.
- 15 (2) The work product of an attorney representing, pursuant to
 16 state employment or an appointment by a public agency:
- 17 (A) a public agency;
 18 (B) the state; or
 19 (C) an individual.
- 20 (3) Test questions, scoring keys, and other examination data used
 21 in administering a licensing examination, examination for
 22 employment, or academic examination before the examination is
 23 given or if it is to be given again.
- 24 (4) Scores of tests if the person is identified by name and has not
 25 consented to the release of the person's scores.
- 26 (5) The following:
- 27 (A) Records relating to negotiations between:
 28 (i) the Indiana economic development corporation;
 29 (ii) the ports of Indiana;
 30 (iii) the Indiana state department of agriculture;
 31 (iv) the Indiana finance authority;
 32 (v) an economic development commission;
 33 (vi) a local economic development organization that is a
 34 nonprofit corporation established under state law whose
 35 primary purpose is the promotion of industrial or business
 36 development in Indiana, the retention or expansion of
 37 Indiana businesses, or the development of entrepreneurial
 38 activities in Indiana; or
 39 (vii) a governing body of a political subdivision;
 40 with industrial, research, or commercial prospects, if the
 41 records are created while negotiations are in progress.
 42 However, this clause does not apply to records regarding



- 1 research that is prohibited under IC 16-34.5-1-2 or any other
 2 law.
- 3 (B) Notwithstanding clause (A), the terms of the final offer of
 4 public financial resources communicated by the Indiana
 5 economic development corporation, the ports of Indiana, the
 6 Indiana finance authority, an economic development
 7 commission, or a governing body of a political subdivision to
 8 an industrial, a research, or a commercial prospect shall be
 9 available for inspection and copying under section 3 of this
 10 chapter after negotiations with that prospect have terminated.
- 11 (C) When disclosing a final offer under clause (B), the Indiana
 12 economic development corporation shall certify that the
 13 information being disclosed accurately and completely
 14 represents the terms of the final offer.
- 15 (D) Notwithstanding clause (A), an incentive agreement with
 16 an incentive recipient shall be available for inspection and
 17 copying under section 3 of this chapter after the date the
 18 incentive recipient and the Indiana economic development
 19 corporation execute the incentive agreement regardless of
 20 whether negotiations are in progress with the recipient after
 21 that date regarding a modification or extension of the incentive
 22 agreement.
- 23 (6) Records that are intra-agency or interagency advisory or
 24 deliberative material, including material developed by a private
 25 contractor under a contract with a public agency, that are
 26 expressions of opinion or are of a speculative nature, and that are
 27 communicated for the purpose of decision making.
- 28 (7) Diaries, journals, or other personal notes serving as the
 29 functional equivalent of a diary or journal.
- 30 (8) Personnel files of public employees and files of applicants for
 31 public employment, except for:
- 32 (A) the name, compensation, job title, business address,
 33 business telephone number, job description, education and
 34 training background, previous work experience, or dates of
 35 first and last employment of present or former officers or
 36 employees of the agency;
- 37 (B) information relating to the status of any formal charges
 38 against the employee; and
- 39 (C) the factual basis for a disciplinary action in which final
 40 action has been taken and that resulted in the employee being
 41 suspended, demoted, or discharged.
- 42 However, all personnel file information shall be made available



- 1 to the affected employee or the employee's representative. This
 2 subdivision does not apply to disclosure of personnel information
 3 generally on all employees or for groups of employees without the
 4 request being particularized by employee name.
- 5 (9) Minutes or records of hospital medical staff meetings.
- 6 (10) Administrative or technical information that would
 7 jeopardize a record keeping or security system.
- 8 (11) Computer programs, computer codes, computer filing
 9 systems, and other software that are owned by the public agency
 10 or entrusted to it and portions of electronic maps entrusted to a
 11 public agency by a utility.
- 12 (12) Records specifically prepared for discussion or developed
 13 during discussion in an executive session under IC 5-14-1.5-6.1.
 14 However, this subdivision does not apply to that information
 15 required to be available for inspection and copying under
 16 subdivision (8).
- 17 (13) The work product of the legislative services agency under
 18 personnel rules approved by the legislative council.
- 19 (14) The work product of individual members and the partisan
 20 staffs of the general assembly.
- 21 (15) The identity of a donor of a gift made to a public agency if:
 22 (A) the donor requires nondisclosure of the donor's identity as
 23 a condition of making the gift; or
 24 (B) after the gift is made, the donor or a member of the donor's
 25 family requests nondisclosure.
- 26 (16) Library or archival records:
 27 (A) which can be used to identify any library patron; or
 28 (B) deposited with or acquired by a library upon a condition
 29 that the records be disclosed only:
 30 (i) to qualified researchers;
 31 (ii) after the passing of a period of years that is specified in
 32 the documents under which the deposit or acquisition is
 33 made; or
 34 (iii) after the death of persons specified at the time of the
 35 acquisition or deposit.
- 36 However, nothing in this subdivision shall limit or affect contracts
 37 entered into by the Indiana state library pursuant to IC 4-1-6-8.
- 38 (17) The identity of any person who contacts the bureau of motor
 39 vehicles concerning the ability of a driver to operate a motor
 40 vehicle safely and the medical records and evaluations made by
 41 the bureau of motor vehicles staff or members of the driver
 42 licensing medical advisory board regarding the ability of a driver



1 to operate a motor vehicle safely. However, upon written request
2 to the commissioner of the bureau of motor vehicles, the driver
3 must be given copies of the driver's medical records and
4 evaluations.

5 (18) School safety and security measures, plans, and systems,
6 including emergency preparedness plans developed under 511
7 IAC 6.1-2-2.5.

8 (19) A record or a part of a record, the public disclosure of which
9 would have a reasonable likelihood of threatening public safety
10 by exposing a vulnerability to terrorist attack. A record described
11 under this subdivision includes the following:

12 (A) A record assembled, prepared, or maintained to prevent,
13 mitigate, or respond to an act of terrorism under IC 35-47-12-1
14 or an act of agricultural terrorism under IC 35-47-12-2.

15 (B) Vulnerability assessments.

16 (C) Risk planning documents.

17 (D) Needs assessments.

18 (E) Threat assessments.

19 (F) Intelligence assessments.

20 (G) Domestic preparedness strategies.

21 (H) The location of community drinking water wells and
22 surface water intakes.

23 (I) The emergency contact information of emergency
24 responders and volunteers.

25 (J) Infrastructure records that disclose the configuration of
26 critical systems such as communication, electrical, ventilation,
27 water, and wastewater systems.

28 (K) Detailed drawings or specifications of structural elements,
29 floor plans, and operating, utility, or security systems, whether
30 in paper or electronic form, of any building or facility located
31 on an airport (as defined in IC 8-21-1-1) that is owned,
32 occupied, leased, or maintained by a public agency, or any part
33 of a law enforcement recording that captures information
34 about airport security procedures, areas, or systems. A record
35 described in this clause may not be released for public
36 inspection by any public agency without the prior approval of
37 the public agency that owns, occupies, leases, or maintains the
38 airport. Both of the following apply to the public agency that
39 owns, occupies, leases, or maintains the airport:

40 (i) The public agency is responsible for determining whether
41 the public disclosure of a record or a part of a record,
42 including a law enforcement recording, has a reasonable



- 1 likelihood of threatening public safety by exposing a
 2 security procedure, area, system, or vulnerability to terrorist
 3 attack.
- 4 (ii) The public agency must identify a record described
 5 under item (i) and clearly mark the record as "confidential
 6 and not subject to public disclosure under
 7 IC 5-14-3-4(b)(19)(J) without approval of (insert name of
 8 submitting public agency)". However, in the case of a law
 9 enforcement recording, the public agency must clearly mark
 10 the record as "confidential and not subject to public
 11 disclosure under IC 5-14-3-4(b)(19)(K) without approval of
 12 (insert name of the public agency that owns, occupies,
 13 leases, or maintains the airport)".
- 14 (L) The home address, home telephone number, and
 15 emergency contact information for any:
- 16 (i) emergency management worker (as defined in
 17 IC 10-14-3-3);
- 18 (ii) public safety officer (as defined in IC 35-47-4.5-3);
- 19 (iii) emergency medical responder (as defined in
 20 IC 16-18-2-109.8); or
- 21 (iv) advanced emergency medical technician (as defined in
 22 IC 16-18-2-6.5).
- 23 This subdivision does not apply to a record or portion of a record
 24 pertaining to a location or structure owned or protected by a
 25 public agency in the event that an act of terrorism under
 26 IC 35-47-12-1 or an act of agricultural terrorism under
 27 IC 35-47-12-2 has occurred at that location or structure, unless
 28 release of the record or portion of the record would have a
 29 reasonable likelihood of threatening public safety by exposing a
 30 vulnerability of other locations or structures to terrorist attack.
- 31 (20) The following personal information concerning a customer
 32 of a municipally owned utility (as defined in IC 8-1-2-1):
- 33 (A) Telephone number.
- 34 (B) Address.
- 35 (C) Social Security number.
- 36 (21) The following personal information about a complainant
 37 contained in records of a law enforcement agency:
- 38 (A) Telephone number.
- 39 (B) The complainant's address. However, if the complainant's
 40 address is the location of the suspected crime, infraction,
 41 accident, or complaint reported, the address shall be made
 42 available for public inspection and copying.



- 1 (22) Notwithstanding subdivision (8)(A), the name,
 2 compensation, job title, business address, business telephone
 3 number, job description, education and training background,
 4 previous work experience, or dates of first employment of a law
 5 enforcement officer who is operating in an undercover capacity.
 6 (23) Records requested by an offender that:
 7 (A) contain personal information relating to:
 8 (i) a correctional officer (as defined in IC 5-10-10-1.5);
 9 (ii) a law enforcement officer (as defined in
 10 IC 35-31.5-2-185);
 11 (iii) a judge (as defined in IC 33-38-12-3);
 12 (iv) the victim of a crime; or
 13 (v) a family member of a correctional officer, law
 14 enforcement officer (as defined in IC 35-31.5-2-185), judge
 15 (as defined in IC 33-38-12-3), or victim of a crime; or
 16 (B) concern or could affect the security of a jail or correctional
 17 facility.
 18 (24) Information concerning an individual less than eighteen (18)
 19 years of age who participates in a conference, meeting, program,
 20 or activity conducted or supervised by a state educational
 21 institution, including the following information regarding the
 22 individual or the individual's parent or guardian:
 23 (A) Name.
 24 (B) Address.
 25 (C) Telephone number.
 26 (D) Electronic mail account address.
 27 (25) Criminal intelligence information.
 28 (26) The following information contained in a report of unclaimed
 29 property under IC 32-34-1-26 or in a claim for unclaimed
 30 property under IC 32-34-1-36:
 31 (A) Date of birth.
 32 (B) Driver's license number.
 33 (C) Taxpayer identification number.
 34 (D) Employer identification number.
 35 (E) Account number.
 36 (27) Except as provided in subdivision (19) and sections 5.1 and
 37 5.2 of this chapter, a law enforcement recording. However, before
 38 disclosing the recording, the public agency must comply with the
 39 obscuring requirements of sections 5.1 and 5.2 of this chapter, if
 40 applicable.
 41 (28) Records relating to negotiations between a state educational
 42 institution and another entity concerning the establishment of a



1 collaborative relationship or venture to advance the research,
 2 engagement, or educational mission of the state educational
 3 institution, if the records are created while negotiations are in
 4 progress. The terms of the final offer of public financial resources
 5 communicated by the state educational institution to an industrial,
 6 a research, or a commercial prospect shall be available for
 7 inspection and copying under section 3 of this chapter after
 8 negotiations with that prospect have terminated. However, this
 9 subdivision does not apply to records regarding research
 10 prohibited under IC 16-34.5-1-2 or any other law.

11 (c) Nothing contained in subsection (b) shall limit or affect the right
 12 of a person to inspect and copy a public record required or directed to
 13 be made by any statute or by any rule of a public agency.

14 (d) Notwithstanding any other law, a public record that is classified
 15 as confidential, other than a record concerning an adoption or patient
 16 medical records, shall be made available for inspection and copying
 17 seventy-five (75) years after the creation of that record.

18 (e) Only the content of a public record may form the basis for the
 19 adoption by any public agency of a rule or procedure creating an
 20 exception from disclosure under this section.

21 (f) Except as provided by law, a public agency may not adopt a rule
 22 or procedure that creates an exception from disclosure under this
 23 section based upon whether a public record is stored or accessed using
 24 paper, electronic media, magnetic media, optical media, or other
 25 information storage technology.

26 (g) Except as provided by law, a public agency may not adopt a rule
 27 or procedure nor impose any costs or liabilities that impede or restrict
 28 the reproduction or dissemination of any public record.

29 (h) Notwithstanding subsection (d) and section 7 of this chapter:
 30 (1) public records subject to IC 5-15 may be destroyed only in
 31 accordance with record retention schedules under IC 5-15; or
 32 (2) public records not subject to IC 5-15 may be destroyed in the
 33 ordinary course of business.

34 SECTION 2. IC 20-33-7-4 IS ADDED TO THE INDIANA CODE
 35 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY
 36 1, 2019]: **Sec. 4. (a) As used in this section, "appropriate officials"**
 37 **include local or state law enforcement officials, department of child**
 38 **services officials, trained medical personnel, school administrators,**
 39 **and other persons whose knowledge of information described in**
 40 **subsection (b) or (d) is necessary to protect the health or safety of**
 41 **students or other persons on school corporation property.**

42 (b) A school corporation or other entity to which the education



1 records privacy provisions of the federal Family Educational
2 Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or
3 report on the education records of a child, including personally
4 identifiable information contained in the education records,
5 without the consent of the child's parent to appropriate officials in
6 cases of health and safety emergencies as determined by school
7 officials.

8 (c) A school corporation or other entity to which the education
9 records privacy provisions of the federal Family Educational
10 Rights and Privacy Act (20 U.S.C. 1232g) apply that:

11 (1) discloses or reports on the education records of a child,
12 including personally identifiable information contained in the
13 education records, in violation of this section; and

14 (2) makes a good faith effort to comply with this section;
15 is immune from civil liability.

16 (d) In the case of a health or safety emergency, a law
17 enforcement officer shall disclose or report a child's personally
18 identifiable information contained in law enforcement records to
19 a school corporation or an appropriate official.

20 SECTION 3. IC 34-30-2-84.9 IS ADDED TO THE INDIANA
21 CODE AS A NEW SECTION TO READ AS FOLLOWS
22 [EFFECTIVE JULY 1, 2019]: **Sec. 84.9. IC 20-33-7-4 (Concerning**
23 **the disclosure or report of education records of a student).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Veterans Affairs and Public Safety, to which was referred House Bill 1398, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill be amended as follows:

Page 2, line 41, strike "may" and insert "**shall**".

Page 9, after line 33, begin a new paragraph and insert:

"SECTION 2. IC 20-33-7-4 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS** [EFFECTIVE JULY 1, 2019]: **Sec. 4. (a) As used in this section, "appropriate officials" include local or state law enforcement officials, department of child services officials, trained medical personnel, school administrators, and other persons whose knowledge of information described in subsection (b) or (d) is necessary to protect the health or safety of students or other persons on school corporation property.**

(b) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply may disclose or report on the education records of a child, including personally identifiable information contained in the education records, without the consent of the child's parent to appropriate officials in cases of health and safety emergencies as determined by school officials.

(c) A school corporation or other entity to which the education records privacy provisions of the federal Family Educational Rights and Privacy Act (20 U.S.C. 1232g) apply that:

(1) discloses or reports on the education records of a child, including personally identifiable information contained in the education records, in violation of this section; and

(2) makes a good faith effort to comply with this section;

is immune from civil liability.

(d) In the case of a health or safety emergency, a law enforcement officer shall disclose or report a child's personally identifiable information contained in law enforcement records to a school corporation or an appropriate official.

SECTION 3. IC 34-30-2-84.9 IS ADDED TO THE INDIANA CODE AS A **NEW SECTION TO READ AS FOLLOWS**



[EFFECTIVE JULY 1, 2019]: **Sec. 84.9. IC 20-33-7-4 (Concerning the disclosure or report of education records of a student).**"

Renumber all SECTIONS consecutively
and when so amended that said bill do pass.

(Reference is to HB 1398 as introduced.)

FRYE R

Committee Vote: yeas 12, nays 0.

