

# SENATE BILL No. 231

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 35-31.5-2-110; IC 35-33-5; IC 35-33.5.

**Synopsis:** Electronic communications. Provides that the definition of "electronic communication" includes metadata that relates to an electronic communication. Requires that the search or seizure of an electronic communication must be conducted under a warrant, even if the electronic communication is in the custody of a third party, and makes it a Level 5 felony to search or seize an electronic communication without a warrant. Prohibits the state, state agencies, political subdivisions, and local units of government from: (1) assisting a federal agency that collects an electronic communication without a warrant; and (2) using information that relates to an electronic communication in an investigation or criminal prosecution if the information was obtained from a federal agency that collected the electronic communication without a warrant. Makes knowingly or intentionally: (1) assisting a federal agency that collects electronic communications without a warrant; or (2) using information obtained from a federal agency that collects electronic communications without a warrant in a criminal investigation or prosecution; a Level 5 felony.

**Effective:** July 1, 2014.

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January 9, 2014, read first time and referred to Committee on Corrections & Criminal Law.

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Second Regular Session 118th General Assembly (2014)

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 2013 Regular Session and 2013 First Regular Technical Session of the General Assembly.

## SENATE BILL No. 231

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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, 2014]: 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 **The term includes metadata that relates to an electronic  
13 communication.**  
14 (b) "Electronic communication", for purposes of IC 35-33.5, means  
15 any transfer of signs, signals, writing, images, sounds, data, oral  
16 communication, digital information, or intelligence of any nature



1 transmitted in whole or in part by a wire, a radio, or an electromagnetic,  
 2 a photoelectronic, or a photo-optical system. **The term includes**  
 3 **metadata that relates to an electronic communication.**

4 SECTION 2. IC 35-33-5-0.2 IS ADDED TO THE INDIANA CODE  
 5 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 6 1, 2014]: **Sec. 0.2. (a) The general assembly finds that it is against**  
 7 **public policy for any law enforcement agency, state agency, or**  
 8 **political subdivision to collect electronic communications or**  
 9 **metadata of any person lawfully residing in Indiana, unless the**  
 10 **collection is based on a warrant that particularly describes the**  
 11 **person, place, and thing to be searched or seized.**

12 **(b) The general assembly finds that it is against public policy to**  
 13 **provide material support, participation, or assistance to any**  
 14 **federal agency that collects, attempts to collect, or intends to collect**  
 15 **electronic communications or metadata of any person lawfully**  
 16 **residing in Indiana, unless the collection is based on a warrant that**  
 17 **particularly describes the person, place, and thing to be searched**  
 18 **or seized.**

19 SECTION 3. IC 35-33-5-7.5 IS ADDED TO THE INDIANA CODE  
 20 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 21 1, 2014]: **Sec. 7.5. (a) The search or seizure of an electronic**  
 22 **communication may be conducted only under a warrant issued**  
 23 **under this chapter.**

24 **(b) A warrant issued under this chapter is required for the**  
 25 **search or seizure of an electronic communication, even if the**  
 26 **electronic communication is in the custody of a third party.**

27 **(c) A person who knowingly or intentionally searches or seizes**  
 28 **an electronic communication without a warrant commits a Level**  
 29 **5 felony.**

30 SECTION 4. IC 35-33-5-8.5 IS ADDED TO THE INDIANA CODE  
 31 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 1, 2014]: **Sec. 8.5. (a) This section applies to:**

- 33 **(1) the state;**
- 34 **(2) a state agency;**
- 35 **(3) a political subdivision;**
- 36 **(4) a unit; and**
- 37 **(5) an employee of an entity described in subdivisions (1)**  
 38 **through (4).**

39 **(b) An individual or entity described in subsection (a) may not**  
 40 **do any of the following:**

- 41 **(1) Provide material support, participation, services, or**  
 42 **assistance in any form to any federal agency or employee of**



1 a federal agency that the individual or entity knows or has  
 2 reason to believe searches, seizes, or intercepts an electronic  
 3 communication without a warrant that particularly describes  
 4 the person, place, and thing to be searched, seized, or  
 5 intercepted.

6 (2) Use any:

7 (A) electronic communication; or

8 (B) information derived, directly or indirectly, from an  
 9 electronic communication;

10 in a criminal investigation or prosecution if the electronic  
 11 communication was not obtained under a warrant that  
 12 particularly describes the person, place, and thing to be  
 13 searched, seized, or intercepted.

14 (c) A person who knowingly or intentionally violates subsection  
 15 (b) commits a Level 5 felony.

16 SECTION 5. IC 35-33.5-2-6 IS ADDED TO THE INDIANA CODE  
 17 AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY  
 18 1, 2014]: Sec. 6. A warrant under this article is required for the  
 19 interception of an electronic communication, even if the electronic  
 20 communication is in the custody of a third party.

21 SECTION 6. IC 35-33.5-5-5, AS AMENDED BY P.L.158-2013,  
 22 SECTION 388, IS AMENDED TO READ AS FOLLOWS  
 23 [EFFECTIVE JULY 1, 2014]: Sec. 5. (a) This section does not apply  
 24 to a person who makes an interception authorized under federal law.

25 (b) (a) A person who knowingly or intentionally intercepts a  
 26 communication, **including an electronic communication**, in violation  
 27 of this article commits unlawful interception, a Level 5 felony.

28 (c) (b) A person who, by virtue of the person's employment or  
 29 official capacity in the criminal justice system, knowingly or  
 30 intentionally uses or discloses the contents of an interception,  
 31 **including an electronic communication**, in violation of this article  
 32 commits unlawful use or disclosure of an interception, a Level 5 felony.

