



January 28, 2012

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## HOUSE BILL No. 1217

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DIGEST OF HB 1217 (Updated January 25, 2012 8:08 pm - DI 69)

**Citations Affected:** IC 34-30; IC 35-33.

**Synopsis:** Disclosure of electronic communications. Establishes procedures for investigative and law enforcement officers to require providers of electronic communication services to disclose: (1) the contents of electronic communications that are held or maintained by the providers on behalf of subscribers or customers of the providers; and (2) records or other information pertaining to subscribers or customers of the providers.

**Effective:** July 1, 2012.

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### Kirchhofer, Borders

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January 9, 2012, read first time and referred to Committee on Courts and Criminal Code.  
January 27, 2012, reported — Do Pass.

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HB 1217—LS 6971/DI 69+



January 28, 2012

Second Regular Session 117th General Assembly (2012)

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 2011 Regular Session of the General Assembly.

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## HOUSE BILL No. 1217

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 34-30-2-147.6 IS ADDED TO THE INDIANA  
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS  
3 [EFFECTIVE JULY 1, 2012]: **Sec. 147.6. IC 35-33-15-16**  
4 **(Concerning disclosure of electronic communications).**  
5 SECTION 2. IC 35-33-15 IS ADDED TO THE INDIANA CODE  
6 AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE  
7 JULY 1, 2012]:  
8 **Chapter 15. Disclosure of Electronic Communications by**  
9 **Providers of Electronic Communication Services**  
10 **Sec. 1. As used in this chapter, "electronic communication"**  
11 **means a transfer of signs, signals, writing, images, sounds, data, or**  
12 **intelligence of any nature transmitted in whole or in part by a wire,**  
13 **a radio, an electromagnetic, a photoelectronic, or a photo-optical**  
14 **system.**  
15 **Sec. 2. As used in this chapter, "electronic communication**  
16 **services" means services that provide users with:**  
17 **(1) the ability to send or receive electronic communications;**

HB 1217—LS 6971/DI 69+



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or

(2) remote computing services.

Sec. 3. As used in this chapter, "electronic communication system" means:

(1) wire, radio, electromagnetic, photo-optical, or photoelectronic facilities used for the transmission of electronic communications; and

(2) any computer facilities or related electronic equipment used for the electronic storage of electronic communications.

Sec. 4. As used in this chapter, "electronic storage" means:

(1) temporary, intermediate storage of an electronic communication incidental to the electronic transmission of the communication; and

(2) storage of an electronic communication by an electronic communication service to provide backup protection for the communication.

Sec. 5. (a) As used in this chapter, "investigative or law enforcement officer" means an officer of:

(1) the United States;

(2) the state or a political subdivision of the state; or

(3) another state or a political subdivision of another state; who may conduct investigations of or make arrests for an offense established under the laws of Indiana or a substantially similar offense established under the laws of another jurisdiction.

(b) The term includes an attorney who is authorized to prosecute or participate in the prosecution of offenses described in subsection (a).

Sec. 6. As used in this chapter, "remote computing service" means the provision of computer storage or processing services:

(1) to the public; and

(2) by means of an electronic communications system.

Sec. 7. As used in this chapter, "user" means a person who:

(1) uses electronic communication services; and

(2) is authorized by the provider of the electronic communication services to engage in the use of the electronic communication services.

Sec. 8. (a) This section applies to an electronic communication that is held or maintained by a provider of electronic communication services:

(1) on behalf of a subscriber or customer of the provider, and:

(A) received by means of electronic transmission from; or

(B) created by means of computer processing of

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- 1           communications received by means of electronic  
2           transmission from;  
3           a subscriber or customer of the provider; and  
4           (2) solely for the purpose of providing storage or computer  
5           processing services to a subscriber or customer of the  
6           provider if the provider is not authorized to access the  
7           contents of the electronic communication for the purpose of  
8           providing any services other than storage or computer  
9           processing.
- 10          (b) An investigative or a law enforcement officer may require  
11          the provider of electronic communication services to disclose the  
12          contents of an electronic communication under a warrant issued  
13          under IC 35-33-5 if the electronic communication has been in  
14          electronic storage in an electronic communication system for not  
15          more than one hundred eighty (180) days.
- 16          (c) An investigative or a law enforcement officer may require a  
17          provider of electronic communication services to disclose the  
18          contents of an electronic communication that has been in electronic  
19          storage in an electronic communication system for more than one  
20          hundred eighty (180) days:
- 21               (1) without providing notice to the subscriber or customer of  
22               the provider if the investigative or law enforcement officer  
23               obtains a warrant issued under IC 35-33-5; or  
24               (2) with prior notice to the subscriber or customer of the  
25               provider from the investigative or law enforcement officer if  
26               the investigative or law enforcement officer:
- 27                   (A) uses:
- 28                       (i) an administrative subpoena authorized by a federal or  
29                       state statute; or  
30                       (ii) a subpoena issued upon the request of a federal or  
31                       state grand jury; or  
32                   (B) obtains a court order for the disclosure of the contents  
33                   under section 11 of this chapter.
- 34          However, delayed notice may be given to the subscriber or  
35          customer under this subdivision as provided in section 9 of  
36          this chapter.
- 37          Sec. 9. (a) An investigative or a law enforcement officer acting  
38          under section 8(c)(2) of this chapter may:
- 39               (1) if an administrative subpoena authorized by a federal or  
40               state statute or a subpoena issued by a federal or state grand  
41               jury is obtained, delay the notification to a subscriber or  
42               customer required under section 8(c)(2) of this chapter for not

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1 more than ninety (90) days upon the execution of a written  
 2 certification of the investigative or law enforcement officer  
 3 that there is reason to believe that notification of the existence  
 4 of the subpoena may have an adverse result as described in  
 5 subsection (b); or  
 6 (2) if a court order is sought, include in the application for the  
 7 court order a request:  
 8 (A) for an order that delays the notification to a subscriber  
 9 or customer required under section 8(c)(2) of this chapter  
 10 for not more than ninety (90) days; and  
 11 (B) that the court shall grant if the court determines there  
 12 is reason to believe that notification of the existence of the  
 13 court order may have an adverse result as described in  
 14 subsection (b).  
 15 (b) For purposes of subsection (a), an "adverse result" means:  
 16 (1) endangering the life or physical safety of an individual;  
 17 (2) a flight from prosecution by an individual;  
 18 (3) the destruction of or tampering with evidence;  
 19 (4) the intimidation of a potential witness; or  
 20 (5) otherwise seriously jeopardizing an investigation or  
 21 unduly delaying a trial.  
 22 (c) An investigative or law enforcement officer shall maintain a  
 23 true copy of the written certification required under subsection  
 24 (a)(1).  
 25 (d) The extension of a delay of notification under subsection (a)  
 26 of not more than ninety (90) days may be granted by a court:  
 27 (1) by written certification by an investigative or law  
 28 enforcement officer for purposes of subsection (a)(1); or  
 29 (2) upon application for purposes of subsection (a)(2);  
 30 only in accordance with section 12 of this chapter.  
 31 (e) When a period of delay of notification granted by a court  
 32 under subsection (a) or (d) expires, the investigative or law  
 33 enforcement officer shall serve upon, send by registered mail to, or  
 34 send by first class mail to the subscriber or customer of a provider  
 35 of electronic communication services a copy of the process or  
 36 request together with a notice that:  
 37 (1) states with reasonable specificity the nature of the law  
 38 enforcement inquiry; and  
 39 (2) informs the subscriber or customer of the following:  
 40 (A) That information maintained for the subscriber or  
 41 customer by the provider named in the process or request  
 42 was supplied to or requested by the investigative or law

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- 1 enforcement officer and the date on which the supply of or
- 2 request for information took place.
- 3 (B) That notification of the subscriber or customer was
- 4 delayed.
- 5 (C) The governmental entity or court that made the
- 6 certification or determination under which the delay was
- 7 made.
- 8 (D) The provision of this chapter that allowed the delay.

9 Sec. 10. (a) This section does not apply to the contents of an  
 10 electronic communication disclosed under section 8 of this chapter.

11 (b) A provider of an electronic communication service shall  
 12 disclose a record or other information pertaining to a subscriber  
 13 or customer of the provider to an investigative or law enforcement  
 14 officer if the investigative or law enforcement officer:

- 15 (1) uses:
  - 16 (A) an administrative subpoena authorized by a federal or
  - 17 state statute; or
  - 18 (B) a subpoena issued upon the request of a federal or state
  - 19 grand jury;
- 20 (2) obtains a warrant issued under IC 35-33-5;
- 21 (3) obtains a court order for the disclosure under section 11 of
- 22 this chapter; or
- 23 (4) has the consent of the subscriber or customer to disclose
- 24 the record or other information.

25 (c) An investigative or a law enforcement officer who receives  
 26 records or information under subsection (b) is not required to  
 27 provide notice to the customer or subscriber.

28 Sec. 11. (a) A court order for disclosure issued under section  
 29 8(c)(2)(B) or 10(b)(3) of this chapter may be issued only if an  
 30 investigative or law enforcement officer demonstrates that there  
 31 are specific facts that indicate there are reasonable grounds to  
 32 believe that the:

- 33 (1) contents of the electronic communication; or
  - 34 (2) records or other information sought;
- 35 are relevant and material to an ongoing criminal investigation.

36 (b) A court that issues an order under this section may quash or  
 37 modify the order on a motion made by a provider of electronic  
 38 communication services if:

- 39 (1) the information or records requested are unusually
- 40 voluminous; or
- 41 (2) compliance with the order would otherwise cause an
- 42 undue burden on the provider.

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1           **Sec. 12. (a) An investigative or law enforcement officer acting**  
 2 **under this chapter:**

3           **(1) when the officer is not required to notify a subscriber or**  
 4 **customer of a provider of electronic communication services**  
 5 **under section 8 of this chapter; or**

6           **(2) to the extent that the officer may delay the notice to a**  
 7 **subscriber or customer of a provider under section 9 of this**  
 8 **chapter;**

9           **may apply to a court for an order that requires a provider of**  
 10 **electronic communications services to whom a warrant, subpoena,**  
 11 **or court order is directed not to notify any other person of the**  
 12 **existence of the warrant, subpoena, or court order for a period of**  
 13 **time the court considers appropriate.**

14           **(b) The court shall enter an order under subsection (a) if the**  
 15 **court determines that there is reason to believe that notification of**  
 16 **the existence of the warrant, subpoena, or court order will result**  
 17 **in:**

18           **(1) endangering the life or physical safety of an individual;**

19           **(2) a flight from prosecution by an individual;**

20           **(3) the destruction of or tampering with evidence;**

21           **(4) the intimidation of a potential witness; or**

22           **(5) otherwise seriously jeopardizing an investigation or**  
 23 **unduly delaying a trial.**

24           **Sec. 13. (a) Upon the request of an investigative or law**  
 25 **enforcement officer, a provider of electronic communication**  
 26 **services shall take all necessary steps to preserve records and other**  
 27 **evidence in the provider's possession pending the issuance of a**  
 28 **court order or other process.**

29           **(b) Records referred to in subsection (a) shall be retained for**  
 30 **ninety (90) days. The records shall be retained for an additional**  
 31 **ninety (90) days if the investigative or law enforcement officer**  
 32 **makes a renewed request.**

33           **Sec. 14. An investigative or law enforcement officer is not**  
 34 **required to be present for the service or execution of a warrant or**  
 35 **subpoena:**

36           **(1) issued under this chapter; and**

37           **(2) that requires disclosure by a provider of electronic**  
 38 **communications services of the contents of communications**  
 39 **or records or other information that pertains to a subscriber**  
 40 **or customer of the provider.**

41           **Sec. 15. Notwithstanding any other provision of this chapter, a**  
 42 **provider of electronic communication services may divulge the**

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1 **contents of an electronic communication to:**  
 2 **(1) a law enforcement agency if the contents:**  
 3 **(A) were inadvertently obtained by the provider; and**  
 4 **(B) appear to pertain to the commission of a crime; or**  
 5 **(2) any governmental entity if the provider believes in good**  
 6 **faith that an emergency that involves the danger of:**  
 7 **(A) the death of; or**  
 8 **(B) serious bodily injury to;**  
 9 **an individual that requires the immediate disclosure of**  
 10 **electronic communications that relate to the emergency.**  
 11 **Sec. 16. A cause of action may not arise against:**  
 12 **(1) a provider of electronic communication services; or**  
 13 **(2) an officer, an employee, an agent, or another person**  
 14 **associated with the provider;**  
 15 **for providing information, facilities, or assistance in accordance**  
 16 **with the terms of an order, a warrant, or a subpoena issued under**  
 17 **this chapter.**

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COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1217, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

STEUERWALD, Chair

Committee Vote: yeas 10, nays 1.

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