

## **IC 35-33-5**

### **Chapter 5. Search and Seizure**

#### **IC 35-33-5-0.1**

##### **Application of certain amendments to chapter**

Sec. 0.1. The amendments made to section 5 of this chapter by P.L.17-2001 apply to all actions of a law enforcement agency taken after June 30, 2001.

*As added by P.L.220-2011, SEC.584.*

#### **IC 35-33-5-0.5**

##### **Definitions**

Sec. 0.5. The following definitions apply throughout this chapter:

- (1) "Electronic communication service" means a service that provides users with the ability to send or receive wire or electronic communications.
- (2) "Electronic storage" means any storage of electronic user data on a computer, computer network, or computer system regardless of whether the data is subject to recall, further manipulation, deletion, or transmission. "Electronic storage" includes any storage or electronic communication by an electronic communication service or a remote computing service.
- (3) "Electronic user data" means any data or records that are in the possession, care, custody, or control of a provider of an electronic communication service, a remote computing service, or any other service or program that stores, uses, collects, or safeguards electronic user data.
- (4) "Governmental entity" has the meaning set forth in IC 35-31.5-2-144. For purposes of this chapter, "governmental entity" also includes a person authorized to act on behalf of a state or local agency.
- (5) "Intercept" means to acquire geolocation data through the use of an electronic device, mechanical device, or other device.
- (6) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communication service.
- (7) "Unmanned aerial vehicle" means an aircraft that:
  - (A) does not carry a human operator; and
  - (B) is capable of flight under remote control or autonomous programming.
- (8) "Use of an unmanned aerial vehicle" means the use of an unmanned aerial vehicle by a law enforcement officer to obtain evidence relevant to the enforcement of statutes, rules, or regulations. The term includes:
  - (A) the interception of wire, electronic, or oral communications; and
  - (B) the capture, collection, monitoring, or viewing of images.
- (9) "User" means any person who:
  - (A) uses an electronic communication service, remote

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

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

*As added by P.L.170-2014, SEC.16.*

### **IC 35-33-5-1**

#### **Issuance by court; probable cause; oath and affirmation; "place" defined; objects of search**

Sec. 1. (a) A court may issue warrants only upon probable cause, supported by oath or affirmation, to search any place for any of the following:

- (1) Property which is obtained unlawfully.
- (2) Property, the possession of which is unlawful.
- (3) Property used or possessed with intent to be used as the means of committing an offense or concealed to prevent an offense from being discovered.
- (4) Property constituting evidence of an offense or tending to show that a particular person committed an offense.
- (5) Any person.
- (6) Evidence necessary to enforce statutes enacted to prevent cruelty to or neglect of children.
- (7) A firearm possessed by a person who is dangerous (as defined in IC 35-47-14-1).

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

*As added by Acts 1981, P.L.298, SEC.2. Amended by Acts 1982, P.L.204, SEC.10; P.L.187-2005, SEC.1; P.L.1-2006, SEC.526.*

### **IC 35-33-5-2**

#### **Affidavit; descriptions; information to establish credibility of hearsay; form**

Sec. 2. (a) Except as provided in section 8 of this chapter, and subject to the requirements of section 11 of this chapter, if applicable, no warrant for search or arrest shall be issued until there is filed with the judge an affidavit:

- (1) particularly describing:
    - (A) the house or place to be searched and the things to be searched for; or
    - (B) particularly describing the person to be arrested;
  - (2) alleging substantially the offense in relation thereto and that the affiant believes and has good cause to believe that:
    - (A) the things sought are concealed there; or
    - (B) the person to be arrested committed the offense; and
  - (3) setting forth the facts known to the affiant through personal knowledge or based on hearsay, constituting the probable cause.
- (b) When based on hearsay, the affidavit must either:
- (1) contain reliable information establishing the credibility of the source and of each of the declarants of the hearsay and

establishing that there is a factual basis for the information furnished; or

(2) contain information that establishes that the totality of the circumstances corroborates the hearsay.

(c) An affidavit for search substantially in the following form shall be treated as sufficient:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

A B swears (or affirms, as the case may be) that he believes and has good cause to believe (here set forth the facts and information constituting the probable cause) that (here describe the things to be searched for and the offense in relation thereto) are concealed in or about the (here describe the house or place) of C D, situated in the county of \_\_\_\_\_, in said state.

In accordance with Indiana Trial Rule 11, I affirm under the penalties for perjury that the foregoing representations are true.

\_\_\_\_\_  
(Signed) Affiant Date

*As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.177-1984, SEC.1; P.L.161-1990, SEC.1; P.L.1-1991, SEC.190; P.L.2-2005, SEC.117; P.L.170-2014, SEC.17.*

**IC 35-33-5-3**

**Form**

Sec. 3. A search warrant in substantially the following form shall be sufficient:

STATE OF INDIANA )  
 ) SS:  
COUNTY OF \_\_\_\_\_ ) IN THE \_\_\_\_\_ COURT  
OF

To \_\_\_\_\_ (herein insert the name, department or classification of the law enforcement officer to whom it is addressed)

You are authorized and ordered, in the name of the State of Indiana, with the necessary and proper assistance to enter into or upon \_\_\_\_\_ (here describe the place to be searched), and there diligently search for \_\_\_\_\_ (here describe property which is the subject of the search). You are ordered to seize such property, or any part thereof, found on such search.

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, at the hour of \_\_\_\_ M.

\_\_\_\_\_  
(Signature of Judge)

Executed this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, at the hour of \_\_\_\_ M.

\_\_\_\_\_  
(Signature of Law Enforcement Officer)

*As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.2-2005,*

SEC.118.

**IC 35-33-5-4**

**Return; initial disposition of property seized**

Sec. 4. When the warrant is executed by the seizure of property or things described in it or of any other items:

- (1) The officer who executed the warrant shall make a return on it directed to the court or judge, who issued the warrant, and this return must indicate the date and time served and list the items seized.
- (2) The items so seized shall be securely held by the law enforcement agency whose officer executed the search warrant under the order of the court trying the cause, except as provided in section 6 of this chapter.

*As added by Acts 1981, P.L.298, SEC.2.*

**IC 35-33-5-5**

**Disposition of property held as evidence; records**

Sec. 5. (a) All items of property seized by any law enforcement agency as a result of an arrest, search warrant, or warrantless search, shall be securely held by the law enforcement agency under the order of the court trying the cause, except as provided in this section.

(b) Evidence that consists of property obtained unlawfully from its owner may be returned by the law enforcement agency to the owner before trial, in accordance with IC 35-43-4-4(h).

(c) Following the final disposition of the cause at trial level or any other final disposition the following shall be done:

- (1) Property which may be lawfully possessed shall be returned to its rightful owner, if known. If ownership is unknown, a reasonable attempt shall be made by the law enforcement agency holding the property to ascertain ownership of the property. After ninety (90) days from the time:

(A) the rightful owner has been notified to take possession of the property; or

(B) a reasonable effort has been made to ascertain ownership of the property;

the law enforcement agency holding the property shall, at a convenient time, dispose of this property at a public auction. The proceeds of this property shall be paid into the county general fund.

(2) Except as provided in subsection (e), property, the possession of which is unlawful, shall be destroyed by the law enforcement agency holding it sixty (60) days after final disposition of the cause.

(3) A firearm that has been seized from a person who is dangerous (as defined in IC 35-47-14-1) shall be retained, returned, or disposed of in accordance with IC 35-47-14.

(d) If any property described in subsection (c) was admitted into evidence in the cause, the property shall be disposed of in accordance with an order of the court trying the cause.

(e) A law enforcement agency may destroy or cause to be destroyed chemicals, controlled substances, or chemically contaminated equipment (including drug paraphernalia as described in IC 35-48-4-8.5) associated with the illegal manufacture of drugs or controlled substances without a court order if all the following conditions are met:

(1) The law enforcement agency collects and preserves a sufficient quantity of the chemicals, controlled substances, or chemically contaminated equipment to demonstrate that the chemicals, controlled substances, or chemically contaminated equipment was associated with the illegal manufacture of drugs or controlled substances.

(2) The law enforcement agency takes photographs of the illegal drug manufacturing site that accurately depict the presence and quantity of chemicals, controlled substances, and chemically contaminated equipment.

(3) The law enforcement agency completes a chemical inventory report that describes the type and quantities of chemicals, controlled substances, and chemically contaminated equipment present at the illegal manufacturing site.

The photographs and description of the property shall be admissible into evidence in place of the actual physical evidence.

(f) For purposes of preserving the record of any conviction on appeal, a photograph demonstrating the nature of the property, and an adequate description of the property must be obtained before the disposition of the property. In the event of a retrial, the photograph and description of the property shall be admissible into evidence in place of the actual physical evidence. All other rules of law governing the admissibility of evidence shall apply to the photographs.

(g) The law enforcement agency disposing of property in any manner provided in subsection (b), (c), or (e) shall maintain certified records of any disposition under subsection (b), (c), or (e). Disposition by destruction of property shall be witnessed by two (2) persons who shall also attest to the destruction.

(h) This section does not affect the procedure for the disposition of firearms seized by a law enforcement agency.

(i) A law enforcement agency that disposes of property by auction under this section shall permanently stamp or otherwise permanently identify the property as property sold by the law enforcement agency.

(j) Upon motion of the prosecuting attorney, the court shall order property seized under IC 34-24-1 transferred, subject to the perfected liens or other security interests of any person in the property, to the appropriate federal authority for disposition under 18 U.S.C. 981(e), 19 U.S.C. 1616a, or 21 U.S.C. 881(e) and any related regulations adopted by the United States Department of Justice.

*As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.320-1983, SEC.6; P.L.294-1989, SEC.1; P.L.174-1999, SEC.2; P.L.17-2001, SEC.11; P.L.187-2005, SEC.2; P.L.1-2006, SEC.527; P.L.151-2006, SEC.14; P.L.1-2007, SEC.225.*

### **IC 35-33-5-5.1**

#### **Repealed**

*(Repealed by P.L.227-2007, SEC.70.)*

### **IC 35-33-5-6**

#### **Dead body; search of building or place; affidavit**

Sec. 6. When an affidavit is filed before a judge alleging that the affiant has good reasons to believe, and does believe, that a dead human body is illegally secreted in a certain building, or other particularly specified place in the county, the judge may issue a search warrant authorizing a law enforcement officer to enter and search the building or other place for the dead body. While making the search, the law enforcement officer shall have the power of an officer executing a regular search warrant.

*As added by Acts 1981, P.L.298, SEC.2.*

### **IC 35-33-5-7**

#### **Execution of search warrant; forcible entry; wrongful entry; recovery of damages**

Sec. 7. (a) A search warrant issued by a court of record may be executed according to its terms anywhere in the state. A search warrant issued by a court that is not a court of record may be executed according to its terms anywhere in the county of the issuing court.

(b) A search warrant must be:

- (1) executed not more than ten (10) days after the date of issuance; and
- (2) returned to the court without unnecessary delay after the execution.

(c) A search warrant may be executed:

- (1) on any day of the week; and
- (2) at any time of the day or night.

(d) A law enforcement officer may break open any outer or inner door or window in order to execute a search warrant, if the officer is not admitted following an announcement of the officer's authority and purpose.

(e) A person or persons whose property is wrongfully damaged or whose person is wrongfully injured by any law enforcement officer or officers who wrongfully enter may recover such damage from the responsible authority and the law enforcement officer or officers as the court may determine. The action may be filed in the circuit court or superior court in the county where the wrongful entry took place.  
*As added by Acts 1981, P.L.298, SEC.2. Amended by P.L.320-1983, SEC.7; P.L.201-2011, SEC.111.*

### **IC 35-33-5-8**

#### **Issue of warrant without affidavit; types of sworn testimony; procedures; perjury**

Sec. 8. (a) A judge may issue a search or arrest warrant without the affidavit required under section 2 of this chapter, if the judge

receives testimony subject to the penalties for perjury of the same facts required for an affidavit:

- (1) in a nonadversarial, recorded hearing before the judge;
- (2) orally by telephone or radio;
- (3) in writing by facsimile transmission (FAX); or
- (4) in writing by electronic mail or other electronic transmission.

(b) If a warrant is issued under subsection (a)(1), the judge shall order the court reporter to type or transcribe the testimony from the hearing for entry in the record. The judge shall then certify the transcript.

(c) After reciting the facts required for an affidavit and verifying the facts recited under penalty of perjury, an applicant for a warrant under subsection (a)(2) shall read to the judge from a warrant form on which the applicant enters the information read by the applicant to the judge. The judge may direct the applicant to modify the warrant. If the judge agrees to issue the warrant, the judge shall direct the applicant to sign the judge's name to the warrant, adding the time of the issuance of the warrant.

(d) After transmitting an affidavit, an applicant for a warrant under subsection (a)(3) or (a)(4) shall transmit to the judge a copy of a warrant form completed by the applicant. The judge may modify the transmitted warrant. If the judge agrees to issue the warrant, the judge shall sign, affix the date and time, and transmit to the applicant a duplicate of the warrant.

(e) If a warrant is issued under subsection (a)(2), the judge shall record the conversation on audio tape and order the court reporter to type or transcribe the recording for entry in the record. The judge shall certify the audio tape, the transcription, and the warrant retained by the judge for entry in the record.

(f) If a warrant is issued under subsection (a)(3), the facsimile copy of the affidavit and warrant sent to the judge shall be retained as if they were the originals. If a warrant is issued under subsection (a)(4), the electronically transmitted copy of the affidavit and warrant sent to the judge shall be printed and retained as if they were the originals.

(g) The court reporter shall notify the applicant who received a warrant under subsection (a)(1) or (a)(2) when the transcription required under this section is entered in the record. The applicant shall sign the transcribed entry upon receiving notice from the court reporter.

(h) The affiant and the judge may use an electronic signature on the affidavit and warrant. An electronic signature may be indicated by "s/Affiant's Name" or "s/Judge's Name" or by any other electronic means that identifies the affiant or judge and indicates that the affiant or judge adopts the contents of the document to which the electronic signature is affixed.

*As added by P.L.161-1990, SEC.2. Amended by P.L.170-2014, SEC.18.*

### **IC 35-33-5-9**

#### **Unmanned aerial vehicles; search warrant; exceptions**

Sec. 9. (a) Except as provided in subsection (b), a law enforcement officer must obtain a search warrant in order to use an unmanned aerial vehicle.

(b) A law enforcement officer or governmental entity may use an unmanned aerial vehicle without obtaining a search warrant if the law enforcement officer determines that the use of the unmanned aerial vehicle:

(1) is required due to:

(A) the existence of exigent circumstances necessitating a warrantless search;

(B) the substantial likelihood of a terrorist attack;

(C) the need to conduct a search and rescue or recovery operation;

(D) the need to conduct efforts:

(i) in response to; or

(ii) to mitigate;

the results of a natural disaster or any other disaster; or

(E) the need to perform a geographical, an environmental, or any other survey for a purpose that is not a criminal justice purpose; or

(2) will be conducted with the consent of any affected property owner.

*As added by P.L.170-2014, SEC.19.*

### **IC 35-33-5-10**

#### **Admissibility of evidence; unmanned aerial vehicles**

Sec. 10. The following are not admissible as evidence in an administrative or judicial proceeding:

(1) A communication or an image that is obtained through the use of an unmanned aerial vehicle in violation of section 9 of this chapter.

(2) Evidence derived from a communication or an image described in subdivision (1).

*As added by P.L.170-2014, SEC.20.*

### **IC 35-33-5-11**

#### **Electronic user data held in electronic storage**

Sec. 11. (a) This subsection does not apply to electronic or video toll collection facilities or activities authorized under any of the following:

(1) IC 8-15-2.

(2) IC 8-15-3.

(3) IC 8-15.5.

(4) IC 8-15.7.

(5) IC 8-16.

(6) IC 9-21-3.5.

A law enforcement officer may not compel a user to provide a passkey, password, or keycode to any electronic communication



service, electronic device, or electronic storage, or any form of stored electronic user data, without a valid search warrant issued by a judge using search warrant procedures.

(b) A judge may issue a court order under this section for electronic user data held in electronic storage, including the records and information related to a wire communication or electronic communication held in electronic storage, by a provider of an electronic communication service or a provider of a remote computing service regardless of whether the user data is held at a location in Indiana or at a location in another state.

(c) A judge may issue a court order under this section on a service provider that is a corporation or entity that is incorporated or organized under the laws of Indiana or a company or business entity doing business in Indiana under a contract or terms of a service agreement with an Indiana resident. The service provider shall produce all information sought, as required by the court order.

(d) Any Indiana corporation that provides electronic communication services or remote computing services to the public shall comply with a valid court order issued in another state that is seeking the information described in this section, if the court order is served on the corporation.

*As added by P.L.170-2014, SEC.21.*

#### **IC 35-33-5-12**

##### **Use of real time tracking instruments; geolocation information**

Sec. 12. (a) A law enforcement officer or law enforcement agency may not use a real time tracking instrument that is capable of obtaining geolocation information concerning a cellular device or a device connected to a cellular network unless:

- (1) the law enforcement officer or law enforcement agency has obtained an order issued by a court based upon a finding of probable cause to use the tracking instrument; or
- (2) exigent circumstances exist that necessitate using the tracking instrument without first obtaining a court order.

(b) If a law enforcement officer or law enforcement agency uses a real time tracking instrument described in subsection (a) based upon the existence of exigent circumstances, the law enforcement officer or law enforcement agency shall seek to obtain an order issued by a court based upon a finding of probable cause not later than seventy-two (72) hours after the initial use of the real time tracking instrument.

*As added by P.L.170-2014, SEC.22.*

#### **IC 35-33-5-13**

##### **Immunity from civil or criminal liability**

Sec. 13. An electronic communication service, remote computing service, and geolocation information service are immune from civil or criminal liability for providing information or evidence as required by a court order under this chapter.

*As added by P.L.170-2014, SEC.23.*

**IC 35-33-5-14**

**Notice to news media concerning search warrants**

Sec. 14. (a) For purposes of IC 34-46-4 (Journalist's Privilege Against Disclosure of Information Source) and subject to subsection (b), if:

- (1) a governmental entity requests that a court issue a search warrant to a provider of:
  - (A) electronic communication service; or
  - (B) remote computing service; and
- (2) the search warrant seeks information or communications concerning a news media entity or a person otherwise described in IC 34-46-4-1;

the news media entity or person described in IC 34-46-4-1 shall be given reasonable and timely notice of the search warrant request and shall be given an opportunity to be heard by the court concerning the issuance of the search warrant before the search warrant is issued.

(b) If:

- (1) the search warrant that would be issued to a provider described in subsection (a)(1) concerns a criminal investigation in which the news media entity or person described in IC 34-46-4-1 is a target of the criminal investigation; and
- (2) the notice that would be provided to the news media entity or person described in IC 34-46-4-1 under subsection (a) would pose a clear and substantial threat to the integrity of the criminal investigation;

the governmental entity shall certify the threat to the court and notice of the search warrant shall be given to the news media entity or person described in IC 34-46-4-1 as soon as the court determines that the notice no longer poses a clear and substantial threat to the integrity of the criminal investigation.

*As added by P.L.170-2014, SEC.24.*