

IC 35-33.5-5

Chapter 5. Confidentiality of Disclosure, Remedies, and Offenses

IC 35-33.5-5-1

Disclosure in court; information to parties in advance

Sec. 1. The contents of an interception under this article or evidence derived from the interception may not be received into evidence or otherwise disclosed during a court proceeding unless each party, not less than fourteen (14) days before the proceeding, has been furnished with a copy of the application, warrant, and any orders for an extension under which the interception was authorized. The fourteen (14) day period may be waived by the court if the court finds that:

- (1) it is not possible to furnish each party with the information at least fourteen (14) days before the proceeding; and
- (2) a party will not be prejudiced by the delay in receiving the information.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-5-2

Recording contents of authorized interception; sealing documents; disclosure; destruction of documents

Sec. 2. (a) The contents of an authorized interception under this article shall be recorded. Immediately upon the expiration of the warrant or extension, the court shall order that recordings be sealed. The court shall determine who is entitled to custody of the recordings. The court shall order that the recordings be kept for at least ten (10) years. The recordings may be destroyed after ten (10) years only upon an order of the court that issued the warrant.

(b) A warrant or an extension granted under this article, as well as the application for a warrant or extension, shall be sealed by the court to which the application is made. The court shall determine who is entitled to custody of the application and warrant or extension. An application and a warrant or an extension shall be disclosed only upon a showing of good cause before the issuing court. The court shall order that the application and warrant or extension may not be destroyed for at least ten (10) years after the date granted, and then only upon the order of the court that issued the warrant.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.13.

IC 35-33.5-5-3

Disclosure by law enforcement officer; persons other than officer; privileged character of communication; offenses not specified in order

Sec. 3. (a) A law enforcement officer who has obtained

knowledge under this article of the contents of an interception or of evidence derived from that interception may:

- (1) disclose the contents to another law enforcement officer; or
- (2) use the contents of the interception;

only to the extent that use or disclosure of the contents of the interception is appropriate to the proper performance of the official duties of the law enforcement officer.

(b) If a recorded interception is transcribed by order of a court or by a law enforcement agency, only that part of the interception that is relevant to the prosecution of a designated offense may be transcribed.

(c) A person, other than a law enforcement officer, who has received, by a means authorized by this article, information concerning an interception or evidence derived from an interception under this article may disclose the contents of the interception or evidence derived from the interception only while giving testimony under oath or affirmation in a criminal court proceeding or grand jury proceeding. This subsection does not apply to a disclosure by a person of the contents of reports submitted under IC 35-33.5-2-4 and IC 35-33.5-2-5 or to the contents of an interception or evidence derived from an interception that is either:

- (1) maintained in the record of a court proceeding and made accessible to the public; or
- (2) previously disclosed in a court proceeding that is open to the public.

(d) An otherwise privileged communication that is intercepted in accordance with or in violation of this article does not lose the communication's privileged character.

(e) When a law enforcement officer, while engaged in intercepting communications in a manner authorized by this article, intercepts communications relating to offenses other than those specified in the order of authorization, the contents of those interceptions, and evidence derived from those interceptions, may be disclosed or used as provided in subsections (a) and (c). The contents and evidence may be used under subsection (d) when authorized by the court upon a finding, on subsequent application, that the contents were otherwise intercepted in accordance with this article. A subsequent application shall be made as soon as practicable.

As added by P.L.161-1990, SEC.3.

IC 35-33.5-5-4

Violations; cause of action; damages and costs; defenses; statute of limitations

Sec. 4. (a) A person whose communications are intercepted, disclosed, or used in violation of this article:

- (1) has a civil cause of action against a person who intercepts, discloses, uses, or procures another person to intercept, disclose, or use a communication in violation of this article; and

- (2) is entitled to recover from that person the following:
- (A) The greater of:
 - (i) actual damages;
 - (ii) liquidated damages computed at a rate of one hundred dollars (\$100) each day for each day of violation; or
 - (iii) one thousand dollars (\$1,000).
 - (B) Court costs (including fees).
 - (C) Punitive damages, when determined to be appropriate by the court.
 - (D) Reasonable attorney's fees.

(b) A good faith reliance on a warrant or an extension issued under this article constitutes a complete defense to a civil action brought under this section.

(c) A person described in IC 34-46-4-1 has an affirmative defense under this section if the person was unaware that the communication was intercepted in violation of this article and:

- (1) has not intercepted the communication;
- (2) has not procured another person to intercept or disclose the communication; and
- (3) has used a communication for the purpose of assisting the person to independently confirm information contained in a communication.

(d) An action under this section must be brought within two (2) years after the date that the interception, disclosure, or use of a communication in violation of this article initially occurs whichever is later.

As added by P.L.161-1990, SEC.3. Amended by P.L.1-1998, SEC.194; P.L.106-2010, SEC.9.

IC 35-33.5-5-5

Nonapplicability to interceptions authorized under federal law; classification of offenses

Sec. 5. (a) This section does not apply to a person who makes an interception authorized under federal law.

(b) A person who knowingly or intentionally intercepts a communication in violation of this article commits unlawful interception, a Level 5 felony.

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

As added by P.L.161-1990, SEC.3. Amended by P.L.158-2013, SEC.388.

IC 35-33.5-5-6

Immunity

Sec. 6. The following persons are immune from civil and criminal

liability for an act or omission that relates to the provision of information, facilities, or technical assistance in accordance with this article:

(1) A person who provides services that relate to the provision of electronic communication.

(2) An employee, an officer, an agent, or a contractor of a person described in subdivision (1).

(3) A landlord, a custodian, a property owner, or other person who provides assistance in the interception of an electronic communication.

As added by P.L.161-1990, SEC.3. Amended by P.L.105-2007, SEC.14.