



97TH GENERAL ASSEMBLY

State of Illinois

2011 and 2012

HB1936

by Rep. William Cunningham

SYNOPSIS AS INTRODUCED:

725 ILCS 5/108B-1	from Ch. 38, par. 108B-1
725 ILCS 5/108B-3	from Ch. 38, par. 108B-3
725 ILCS 5/108B-9	from Ch. 38, par. 108B-9

Amends the Electronic Criminal Surveillance Article of the Code of Criminal Procedure of 1963. Includes in the definition of "electronic criminal surveillance officer" an individual operating under contract with a law enforcement agency who is acting under the supervision of an investigative or law enforcement officer authorized to conduct the interception. Provides that the State's Attorney, or a person designated in writing or by law to act for him or her and to perform his or her duties during his or her absence or disability, may authorize, in writing, an ex parte application to the chief judge of a court of competent jurisdiction for an order authorizing the interception of a private communication when no party has consented to the interception and the interception may provide evidence of, or may assist in the apprehension of a person who has committed, is committing or is about to commit the offense of knowingly manufacturing or delivering cannabis, possessing cannabis with intent to deliver or manufacture cannabis or the offense of cannabis trafficking. Effective immediately.

LRB097 08786 RLC 48916 b

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 5. The Code of Criminal Procedure of 1963 is
5 amended by changing Sections 108B-1, 108B-3, and 108B-9 as
6 follows:

7 (725 ILCS 5/108B-1) (from Ch. 38, par. 108B-1)

8 Sec. 108B-1. Definitions. For the purpose of this Article:

9 (a) "Aggrieved person" means a person who was a party to
10 any intercepted private communication or any person against
11 whom the intercept was directed.

12 (b) "Chief Judge" means, when referring to a judge
13 authorized to receive application for, and to enter orders
14 authorizing, interceptions of private communications, the
15 Chief Judge of the Circuit Court wherein the application for
16 order of interception is filed, or a Circuit Judge designated
17 by the Chief Judge to enter these orders. In circuits other
18 than the Cook County Circuit, "Chief Judge" also means, when
19 referring to a judge authorized to receive application for, and
20 to enter orders authorizing, interceptions of private
21 communications, an Associate Judge authorized by Supreme Court
22 Rule to try felony cases who is assigned by the Chief Judge to
23 enter these orders. After assignment by the Chief Judge, an

1 Associate Judge shall have plenary authority to issue orders
2 without additional authorization for each specific application
3 made to him by the State's Attorney until the time the
4 Associate Judge's power is rescinded by the Chief Judge.

5 (c) "Communications common carrier" means any person
6 engaged as a common carrier in the transmission of
7 communications by wire or radio, not including radio
8 broadcasting.

9 (d) "Contents" includes information obtained from a
10 private communication concerning the existence, substance,
11 purport or meaning of the communication, or the identity of a
12 party of the communication.

13 (e) "Court of competent jurisdiction" means any circuit
14 court.

15 (f) "Department" means Illinois Department of State
16 Police.

17 (g) "Director" means Director of the Illinois Department of
18 State Police.

19 (g-1) "Electronic communication" means any transfer of
20 signs, signals, writing, images, sounds, data, or intelligence
21 of any nature transmitted in whole or part by a wire, radio,
22 pager, computer, or electromagnetic, photo electronic, or
23 photo optical system where the sending and receiving parties
24 intend the electronic communication to be private and the
25 interception, recording, or transcription of the electronic
26 communication is accomplished by a device in a surreptitious

1 manner contrary to the provisions of this Article. "Electronic
2 communication" does not include:

3 (1) any wire or oral communication; or

4 (2) any communication from a tracking device.

5 (h) "Electronic criminal surveillance device" or
6 "eavesdropping device" means any device or apparatus, or
7 computer program including an induction coil, that can be used
8 to intercept private communication other than:

9 (1) Any telephone, telegraph or telecommunication
10 instrument, equipment or facility, or any component of it,
11 furnished to the subscriber or user by a communication
12 common carrier in the ordinary course of its business, or
13 purchased by any person and being used by the subscriber,
14 user or person in the ordinary course of his business, or
15 being used by a communications common carrier in the
16 ordinary course of its business, or by an investigative or
17 law enforcement officer in the ordinary course of his
18 duties; or

19 (2) A hearing aid or similar device being used to
20 correct subnormal hearing to not better than normal.

21 (i) "Electronic criminal surveillance officer" means any
22 law enforcement officer or retired law enforcement officer of
23 the United States or of the State or political subdivision of
24 it, or of another State, or of a political subdivision of it,
25 who is certified by the Illinois Department of State Police to
26 intercept private communications, or an individual operating

1 under contract with a law enforcement agency who is acting
2 under the supervision of an investigative or law enforcement
3 officer authorized to conduct the interception. A retired law
4 enforcement officer may be certified by the Illinois State
5 Police only to (i) prepare petitions for the authority to
6 intercept private communications in accordance with the
7 provisions of this Act; (ii) intercept and supervise the
8 interception of private communications; (iii) handle,
9 safeguard, and use evidence derived from such private
10 communications; and (iv) operate and maintain equipment used to
11 intercept private communications.

12 (j) "In-progress trace" means to determine the origin of a
13 wire communication to a telephone or telegraph instrument,
14 equipment or facility during the course of the communication.

15 (k) "Intercept" means the aural or other acquisition of the
16 contents of any private communication through the use of any
17 electronic criminal surveillance device.

18 (l) "Journalist" means a person engaged in, connected with,
19 or employed by news media, including newspapers, magazines,
20 press associations, news agencies, wire services, radio,
21 television or other similar media, for the purpose of
22 gathering, processing, transmitting, compiling, editing or
23 disseminating news for the general public.

24 (m) "Law enforcement agency" means any law enforcement
25 agency of the United States, or the State or a political
26 subdivision of it.

1 (n) "Oral communication" means human speech used to
2 communicate by one party to another, in person, by wire
3 communication or by any other means.

4 (o) "Private communication" means a wire, oral, or
5 electronic communication uttered or transmitted by a person
6 exhibiting an expectation that the communication is not subject
7 to interception, under circumstances reasonably justifying the
8 expectation. Circumstances that reasonably justify the
9 expectation that a communication is not subject to interception
10 include the use of a cordless telephone or cellular
11 communication device.

12 (p) "Wire communication" means any human speech used to
13 communicate by one party to another in whole or in part through
14 the use of facilities for the transmission of communications by
15 wire, cable or other like connection between the point of
16 origin and the point of reception furnished or operated by a
17 communications common carrier.

18 (q) "Privileged communications" means a private
19 communication between:

20 (1) a licensed and practicing physician and a patient
21 within the scope of the profession of the physician;

22 (2) a licensed and practicing psychologist to a patient
23 within the scope of the profession of the psychologist;

24 (3) a licensed and practicing attorney-at-law and a
25 client within the scope of the profession of the lawyer;

26 (4) a practicing clergyman and a confidant within the

1 scope of the profession of the clergyman;

2 (5) a practicing journalist within the scope of his
3 profession;

4 (6) spouses within the scope of their marital
5 relationship; or

6 (7) a licensed and practicing social worker to a client
7 within the scope of the profession of the social worker.

8 (r) "Retired law enforcement officer" means a person: (1)
9 who is a graduate of a police training institute or academy,
10 who after graduating served for at least 15 consecutive years
11 as a sworn, full-time peace officer qualified to carry firearms
12 for any federal or State department or agency or for any unit
13 of local government of Illinois; (2) who has retired as a
14 local, State, or federal peace officer in a publicly created
15 peace officer retirement system; and (3) whose service in law
16 enforcement was honorably terminated through retirement or
17 disability and not as a result of discipline, suspension, or
18 discharge.

19 (Source: P.A. 95-331, eff. 8-21-07.)

20 (725 ILCS 5/108B-3) (from Ch. 38, par. 108B-3)

21 Sec. 108B-3. Authorization for the interception of private
22 communication.

23 (a) The State's Attorney, or a person designated in writing
24 or by law to act for him and to perform his duties during his
25 absence or disability, may authorize, in writing, an ex parte

1 application to the chief judge of a court of competent
2 jurisdiction for an order authorizing the interception of a
3 private communication when no party has consented to the
4 interception and (i) the interception may provide evidence of,
5 or may assist in the apprehension of a person who has
6 committed, is committing or is about to commit, a violation of
7 Section 8-1(b) (solicitation of murder), 8-1.2 (solicitation
8 of murder for hire), 9-1 (first degree murder), 10-9
9 (involuntary servitude, involuntary sexual servitude of a
10 minor, or trafficking in persons for forced labor or services),
11 11-15.1 (soliciting for a minor engaged in prostitution), 11-16
12 (pandering), 11-17.1 (keeping a place of juvenile
13 prostitution), 11-18.1 (patronizing a minor engaged in
14 prostitution), 11-19.1 (juvenile pimping and aggravated
15 juvenile pimping), or 29B-1 (money laundering) of the Criminal
16 Code of 1961, Section 5 or 5.1 of the Cannabis Control Act,
17 Section 401, 401.1 (controlled substance trafficking), 405,
18 405.1 (criminal drug conspiracy) or 407 of the Illinois
19 Controlled Substances Act or any Section of the Methamphetamine
20 Control and Community Protection Act, a violation of Section
21 24-2.1, 24-2.2, 24-3, 24-3.1, 24-3.3, 24-3.4, 24-4, or 24-5 or
22 subsection 24-1(a)(4), 24-1(a)(6), 24-1(a)(7), 24-1(a)(9),
23 24-1(a)(10), or 24-1(c) of the Criminal Code of 1961 or
24 conspiracy to commit money laundering or conspiracy to commit
25 first degree murder; (ii) in response to a clear and present
26 danger of imminent death or great bodily harm to persons

1 resulting from: (1) a kidnapping or the holding of a hostage by
2 force or the threat of the imminent use of force; or (2) the
3 occupation by force or the threat of the imminent use of force
4 of any premises, place, vehicle, vessel or aircraft; (iii) to
5 aid an investigation or prosecution of a civil action brought
6 under the Illinois Streetgang Terrorism Omnibus Prevention Act
7 when there is probable cause to believe the interception of the
8 private communication will provide evidence that a streetgang
9 is committing, has committed, or will commit a second or
10 subsequent gang-related offense or that the interception of the
11 private communication will aid in the collection of a judgment
12 entered under that Act; or (iv) upon information and belief
13 that a streetgang has committed, is committing, or is about to
14 commit a felony.

15 (b) The State's Attorney or a person designated in writing
16 or by law to act for the State's Attorney and to perform his or
17 her duties during his or her absence or disability, may
18 authorize, in writing, an ex parte application to the chief
19 judge of a circuit court for an order authorizing the
20 interception of a private communication when no party has
21 consented to the interception and the interception may provide
22 evidence of, or may assist in the apprehension of a person who
23 has committed, is committing or is about to commit, a violation
24 of an offense under Article 29D of the Criminal Code of 1961.

25 (b-1) Subsection (b) is inoperative on and after January 1,
26 2005.

1 (b-2) No conversations recorded or monitored pursuant to
2 subsection (b) shall be made inadmissible in a court of law by
3 virtue of subsection (b-1).

4 (c) As used in this Section, "streetgang" and
5 "gang-related" have the meanings ascribed to them in Section 10
6 of the Illinois Streetgang Terrorism Omnibus Prevention Act.

7 (Source: P.A. 95-331, eff. 8-21-07; 96-710, eff. 1-1-10;
8 96-1464, eff. 8-20-10.)

9 (725 ILCS 5/108B-9) (from Ch. 38, par. 108B-9)

10 Sec. 108B-9. Recordings, records and custody.

11 (a) Any private communication intercepted in accordance
12 with this Article shall, if practicable, be recorded by tape or
13 other comparable method. The recording shall, if practicable,
14 be done in such a way as will protect it from editing or other
15 alteration. During an interception, the interception shall be
16 carried out by an electronic criminal surveillance officer,
17 and, if practicable, such officer shall keep a signed, written
18 record, including:

19 (1) the date and hours of surveillance;

20 (2) the time and duration of each intercepted
21 communication;

22 (3) the parties, if known, to each intercepted
23 conversation; and

24 (4) a summary of the contents of each intercepted
25 communication.

1 (b) Immediately upon the expiration of the order or its
2 extensions, the tapes and other recordings shall be transferred
3 to the chief judge issuing the order and sealed under his
4 direction. Custody of the tapes, or other recordings, shall be
5 maintained wherever the chief judge directs. They shall not be
6 destroyed except upon an order of a court of competent
7 jurisdiction and in any event shall be kept for 10 years.
8 Duplicate tapes or other recordings may be made for disclosure
9 or use under paragraph (a) or (b) of Section 108B-2a of this
10 Article. The presence of the seal provided by this Section, or
11 a satisfactory explanation for its absence, shall be a
12 prerequisite for the disclosure of the contents of any private
13 communication, or evidence derived from it, under paragraph (b)
14 of Section 108B-2a of this Article.

15 (Source: P.A. 92-854, eff. 12-5-02.)

16 Section 99. Effective date. This Act takes effect upon
17 becoming law.