



99TH GENERAL ASSEMBLY

State of Illinois

2015 and 2016

HB2688

by Rep. Peter Breen

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

720 ILCS 5/14-4

from Ch. 38, par. 14-4

Amends the Criminal Code of 2012. Exempts from an eavesdropping violation any recording of a conversation that occurs in any place open to the public, if the recording is made by a person, not a law enforcement officer or agent of a law enforcement officer, who is a party to the conversation. Decreases the penalty for eavesdropping from a Class 4 felony for a first offense to a Class A misdemeanor and, for a second or subsequent offense from a Class 3 felony to a Class 4 felony. Deletes provision that the eavesdropping of an oral conversation or an electronic communication of any law enforcement officer, State's Attorney, Assistant State's Attorney, the Attorney General, Assistant Attorney General, or a judge, while in the performance of his or her official duties, if not authorized by the Eavesdropping Article or proper court order, is a Class 3 felony, and for a second or subsequent offense, is a Class 2 felony. Effective immediately.

LRB099 06753 RLC 26827 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 Criminal Code of 2012 is amended by changing
5 Sections 14-3 and 14-4 as follows:

6 (720 ILCS 5/14-3)

7 Sec. 14-3. Exemptions. The following activities shall be
8 exempt from the provisions of this Article:

9 (a) Listening to radio, wireless electronic
10 communications, and television communications of any sort
11 where the same are publicly made;

12 (b) Hearing conversation when heard by employees of any
13 common carrier by wire incidental to the normal course of their
14 employment in the operation, maintenance or repair of the
15 equipment of such common carrier by wire so long as no
16 information obtained thereby is used or divulged by the hearer;

17 (c) Any broadcast by radio, television or otherwise whether
18 it be a broadcast or recorded for the purpose of later
19 broadcasts of any function where the public is in attendance
20 and the conversations are overheard incidental to the main
21 purpose for which such broadcasts are then being made;

22 (d) Recording or listening with the aid of any device to
23 any emergency communication made in the normal course of

1 operations by any federal, state or local law enforcement
2 agency or institutions dealing in emergency services,
3 including, but not limited to, hospitals, clinics, ambulance
4 services, fire fighting agencies, any public utility,
5 emergency repair facility, civilian defense establishment or
6 military installation;

7 (e) Recording the proceedings of any meeting required to be
8 open by the Open Meetings Act, as amended;

9 (f) Recording or listening with the aid of any device to
10 incoming telephone calls of phone lines publicly listed or
11 advertised as consumer "hotlines" by manufacturers or
12 retailers of food and drug products. Such recordings must be
13 destroyed, erased or turned over to local law enforcement
14 authorities within 24 hours from the time of such recording and
15 shall not be otherwise disseminated. Failure on the part of the
16 individual or business operating any such recording or
17 listening device to comply with the requirements of this
18 subsection shall eliminate any civil or criminal immunity
19 conferred upon that individual or business by the operation of
20 this Section;

21 (g) With prior notification to the State's Attorney of the
22 county in which it is to occur, recording or listening with the
23 aid of any device to any conversation where a law enforcement
24 officer, or any person acting at the direction of law
25 enforcement, is a party to the conversation and has consented
26 to it being intercepted or recorded under circumstances where

1 the use of the device is necessary for the protection of the
2 law enforcement officer or any person acting at the direction
3 of law enforcement, in the course of an investigation of a
4 forcible felony, a felony offense of involuntary servitude,
5 involuntary sexual servitude of a minor, or trafficking in
6 persons under Section 10-9 of this Code, an offense involving
7 prostitution, solicitation of a sexual act, or pandering, a
8 felony violation of the Illinois Controlled Substances Act, a
9 felony violation of the Cannabis Control Act, a felony
10 violation of the Methamphetamine Control and Community
11 Protection Act, any "streetgang related" or "gang-related"
12 felony as those terms are defined in the Illinois Streetgang
13 Terrorism Omnibus Prevention Act, or any felony offense
14 involving any weapon listed in paragraphs (1) through (11) of
15 subsection (a) of Section 24-1 of this Code. Any recording or
16 evidence derived as the result of this exemption shall be
17 inadmissible in any proceeding, criminal, civil or
18 administrative, except (i) where a party to the conversation
19 suffers great bodily injury or is killed during such
20 conversation, or (ii) when used as direct impeachment of a
21 witness concerning matters contained in the interception or
22 recording. The Director of the Department of State Police shall
23 issue regulations as are necessary concerning the use of
24 devices, retention of tape recordings, and reports regarding
25 their use;

26 (g-5) (Blank);

1 (g-6) With approval of the State's Attorney of the county
2 in which it is to occur, recording or listening with the aid of
3 any device to any conversation where a law enforcement officer,
4 or any person acting at the direction of law enforcement, is a
5 party to the conversation and has consented to it being
6 intercepted or recorded in the course of an investigation of
7 child pornography, aggravated child pornography, indecent
8 solicitation of a child, luring of a minor, sexual exploitation
9 of a child, aggravated criminal sexual abuse in which the
10 victim of the offense was at the time of the commission of the
11 offense under 18 years of age, or criminal sexual abuse by
12 force or threat of force in which the victim of the offense was
13 at the time of the commission of the offense under 18 years of
14 age. In all such cases, an application for an order approving
15 the previous or continuing use of an eavesdropping device must
16 be made within 48 hours of the commencement of such use. In the
17 absence of such an order, or upon its denial, any continuing
18 use shall immediately terminate. The Director of State Police
19 shall issue rules as are necessary concerning the use of
20 devices, retention of recordings, and reports regarding their
21 use. Any recording or evidence obtained or derived in the
22 course of an investigation of child pornography, aggravated
23 child pornography, indecent solicitation of a child, luring of
24 a minor, sexual exploitation of a child, aggravated criminal
25 sexual abuse in which the victim of the offense was at the time
26 of the commission of the offense under 18 years of age, or

1 criminal sexual abuse by force or threat of force in which the
2 victim of the offense was at the time of the commission of the
3 offense under 18 years of age shall, upon motion of the State's
4 Attorney or Attorney General prosecuting any case involving
5 child pornography, aggravated child pornography, indecent
6 solicitation of a child, luring of a minor, sexual exploitation
7 of a child, aggravated criminal sexual abuse in which the
8 victim of the offense was at the time of the commission of the
9 offense under 18 years of age, or criminal sexual abuse by
10 force or threat of force in which the victim of the offense was
11 at the time of the commission of the offense under 18 years of
12 age be reviewed in camera with notice to all parties present by
13 the court presiding over the criminal case, and, if ruled by
14 the court to be relevant and otherwise admissible, it shall be
15 admissible at the trial of the criminal case. Absent such a
16 ruling, any such recording or evidence shall not be admissible
17 at the trial of the criminal case;

18 (h) Recordings made simultaneously with the use of an
19 in-car video camera recording of an oral conversation between a
20 uniformed peace officer, who has identified his or her office,
21 and a person in the presence of the peace officer whenever (i)
22 an officer assigned a patrol vehicle is conducting an
23 enforcement stop; or (ii) patrol vehicle emergency lights are
24 activated or would otherwise be activated if not for the need
25 to conceal the presence of law enforcement.

26 For the purposes of this subsection (h), "enforcement stop"

1 means an action by a law enforcement officer in relation to
2 enforcement and investigation duties, including but not
3 limited to, traffic stops, pedestrian stops, abandoned vehicle
4 contacts, motorist assists, commercial motor vehicle stops,
5 roadside safety checks, requests for identification, or
6 responses to requests for emergency assistance;

7 (h-5) Recordings of utterances made by a person while in
8 the presence of a uniformed peace officer and while an occupant
9 of a police vehicle including, but not limited to, (i)
10 recordings made simultaneously with the use of an in-car video
11 camera and (ii) recordings made in the presence of the peace
12 officer utilizing video or audio systems, or both, authorized
13 by the law enforcement agency;

14 (h-10) Recordings made simultaneously with a video camera
15 recording during the use of a taser or similar weapon or device
16 by a peace officer if the weapon or device is equipped with
17 such camera;

18 (h-15) Recordings made under subsection (h), (h-5), or
19 (h-10) shall be retained by the law enforcement agency that
20 employs the peace officer who made the recordings for a storage
21 period of 90 days, unless the recordings are made as a part of
22 an arrest or the recordings are deemed evidence in any
23 criminal, civil, or administrative proceeding and then the
24 recordings must only be destroyed upon a final disposition and
25 an order from the court. Under no circumstances shall any
26 recording be altered or erased prior to the expiration of the

1 designated storage period. Upon completion of the storage
2 period, the recording medium may be erased and reissued for
3 operational use;

4 (i) Recording of a conversation made by or at the request
5 of a person, not a law enforcement officer or agent of a law
6 enforcement officer, who is a party to the conversation, under
7 reasonable suspicion that another party to the conversation is
8 committing, is about to commit, or has committed a criminal
9 offense against the person or a member of his or her immediate
10 household, and there is reason to believe that evidence of the
11 criminal offense may be obtained by the recording;

12 (j) The use of a telephone monitoring device by either (1)
13 a corporation or other business entity engaged in marketing or
14 opinion research or (2) a corporation or other business entity
15 engaged in telephone solicitation, as defined in this
16 subsection, to record or listen to oral telephone solicitation
17 conversations or marketing or opinion research conversations
18 by an employee of the corporation or other business entity
19 when:

20 (i) the monitoring is used for the purpose of service
21 quality control of marketing or opinion research or
22 telephone solicitation, the education or training of
23 employees or contractors engaged in marketing or opinion
24 research or telephone solicitation, or internal research
25 related to marketing or opinion research or telephone
26 solicitation; and

1 (ii) the monitoring is used with the consent of at
2 least one person who is an active party to the marketing or
3 opinion research conversation or telephone solicitation
4 conversation being monitored.

5 No communication or conversation or any part, portion, or
6 aspect of the communication or conversation made, acquired, or
7 obtained, directly or indirectly, under this exemption (j), may
8 be, directly or indirectly, furnished to any law enforcement
9 officer, agency, or official for any purpose or used in any
10 inquiry or investigation, or used, directly or indirectly, in
11 any administrative, judicial, or other proceeding, or divulged
12 to any third party.

13 When recording or listening authorized by this subsection
14 (j) on telephone lines used for marketing or opinion research
15 or telephone solicitation purposes results in recording or
16 listening to a conversation that does not relate to marketing
17 or opinion research or telephone solicitation; the person
18 recording or listening shall, immediately upon determining
19 that the conversation does not relate to marketing or opinion
20 research or telephone solicitation, terminate the recording or
21 listening and destroy any such recording as soon as is
22 practicable.

23 Business entities that use a telephone monitoring or
24 telephone recording system pursuant to this exemption (j) shall
25 provide current and prospective employees with notice that the
26 monitoring or recordings may occur during the course of their

1 employment. The notice shall include prominent signage
2 notification within the workplace.

3 Business entities that use a telephone monitoring or
4 telephone recording system pursuant to this exemption (j) shall
5 provide their employees or agents with access to personal-only
6 telephone lines which may be pay telephones, that are not
7 subject to telephone monitoring or telephone recording.

8 For the purposes of this subsection (j), "telephone
9 solicitation" means a communication through the use of a
10 telephone by live operators:

11 (i) soliciting the sale of goods or services;

12 (ii) receiving orders for the sale of goods or
13 services;

14 (iii) assisting in the use of goods or services; or

15 (iv) engaging in the solicitation, administration, or
16 collection of bank or retail credit accounts.

17 For the purposes of this subsection (j), "marketing or
18 opinion research" means a marketing or opinion research
19 interview conducted by a live telephone interviewer engaged by
20 a corporation or other business entity whose principal business
21 is the design, conduct, and analysis of polls and surveys
22 measuring the opinions, attitudes, and responses of
23 respondents toward products and services, or social or
24 political issues, or both;

25 (k) Electronic recordings, including but not limited to, a
26 motion picture, videotape, digital, or other visual or audio

1 recording, made of a custodial interrogation of an individual
2 at a police station or other place of detention by a law
3 enforcement officer under Section 5-401.5 of the Juvenile Court
4 Act of 1987 or Section 103-2.1 of the Code of Criminal
5 Procedure of 1963;

6 (l) Recording the interview or statement of any person when
7 the person knows that the interview is being conducted by a law
8 enforcement officer or prosecutor and the interview takes place
9 at a police station that is currently participating in the
10 Custodial Interview Pilot Program established under the
11 Illinois Criminal Justice Information Act;

12 (m) An electronic recording, including but not limited to,
13 a motion picture, videotape, digital, or other visual or audio
14 recording, made of the interior of a school bus while the
15 school bus is being used in the transportation of students to
16 and from school and school-sponsored activities, when the
17 school board has adopted a policy authorizing such recording,
18 notice of such recording policy is included in student
19 handbooks and other documents including the policies of the
20 school, notice of the policy regarding recording is provided to
21 parents of students, and notice of such recording is clearly
22 posted on the door of and inside the school bus.

23 Recordings made pursuant to this subsection (m) shall be
24 confidential records and may only be used by school officials
25 (or their designees) and law enforcement personnel for
26 investigations, school disciplinary actions and hearings,

1 proceedings under the Juvenile Court Act of 1987, and criminal
2 prosecutions, related to incidents occurring in or around the
3 school bus;

4 (n) Recording or listening to an audio transmission from a
5 microphone placed by a person under the authority of a law
6 enforcement agency inside a bait car surveillance vehicle while
7 simultaneously capturing a photographic or video image;

8 (o) The use of an eavesdropping camera or audio device
9 during an ongoing hostage or barricade situation by a law
10 enforcement officer or individual acting on behalf of a law
11 enforcement officer when the use of such device is necessary to
12 protect the safety of the general public, hostages, or law
13 enforcement officers or anyone acting on their behalf;

14 (p) Recording or listening with the aid of any device to
15 incoming telephone calls of phone lines publicly listed or
16 advertised as the "CPS Violence Prevention Hotline", but only
17 where the notice of recording is given at the beginning of each
18 call as required by Section 34-21.8 of the School Code. The
19 recordings may be retained only by the Chicago Police
20 Department or other law enforcement authorities, and shall not
21 be otherwise retained or disseminated;

22 (q) (1) With prior request to and written or verbal approval
23 of the State's Attorney of the county in which the conversation
24 is anticipated to occur, recording or listening with the aid of
25 an eavesdropping device to a conversation in which a law
26 enforcement officer, or any person acting at the direction of a

1 law enforcement officer, is a party to the conversation and has
2 consented to the conversation being intercepted or recorded in
3 the course of an investigation of a qualified offense. The
4 State's Attorney may grant this approval only after determining
5 that reasonable cause exists to believe that inculpatory
6 conversations concerning a qualified offense will occur with a
7 specified individual or individuals within a designated period
8 of time.

9 (2) Request for approval. To invoke the exception contained
10 in this subsection (q), a law enforcement officer shall make a
11 request for approval to the appropriate State's Attorney. The
12 request may be written or verbal; however, a written
13 memorialization of the request must be made by the State's
14 Attorney. This request for approval shall include whatever
15 information is deemed necessary by the State's Attorney but
16 shall include, at a minimum, the following information about
17 each specified individual whom the law enforcement officer
18 believes will commit a qualified offense:

19 (A) his or her full or partial name, nickname or alias;

20 (B) a physical description; or

21 (C) failing either (A) or (B) of this paragraph (2),
22 any other supporting information known to the law
23 enforcement officer at the time of the request that gives
24 rise to reasonable cause to believe that the specified
25 individual will participate in an inculpatory conversation
26 concerning a qualified offense.

1 (3) Limitations on approval. Each written approval by the
2 State's Attorney under this subsection (q) shall be limited to:

3 (A) a recording or interception conducted by a
4 specified law enforcement officer or person acting at the
5 direction of a law enforcement officer;

6 (B) recording or intercepting conversations with the
7 individuals specified in the request for approval,
8 provided that the verbal approval shall be deemed to
9 include the recording or intercepting of conversations
10 with other individuals, unknown to the law enforcement
11 officer at the time of the request for approval, who are
12 acting in conjunction with or as co-conspirators with the
13 individuals specified in the request for approval in the
14 commission of a qualified offense;

15 (C) a reasonable period of time but in no event longer
16 than 24 consecutive hours;

17 (D) the written request for approval, if applicable, or
18 the written memorialization must be filed, along with the
19 written approval, with the circuit clerk of the
20 jurisdiction on the next business day following the
21 expiration of the authorized period of time, and shall be
22 subject to review by the Chief Judge or his or her designee
23 as deemed appropriate by the court.

24 (3.5) The written memorialization of the request for
25 approval and the written approval by the State's Attorney may
26 be in any format, including via facsimile, email, or otherwise,

1 so long as it is capable of being filed with the circuit clerk.

2 (3.10) Beginning March 1, 2015, each State's Attorney shall
3 annually submit a report to the General Assembly disclosing:

4 (A) the number of requests for each qualified offense
5 for approval under this subsection; and

6 (B) the number of approvals for each qualified offense
7 given by the State's Attorney.

8 (4) Admissibility of evidence. No part of the contents of
9 any wire, electronic, or oral communication that has been
10 recorded or intercepted as a result of this exception may be
11 received in evidence in any trial, hearing, or other proceeding
12 in or before any court, grand jury, department, officer,
13 agency, regulatory body, legislative committee, or other
14 authority of this State, or a political subdivision of the
15 State, other than in a prosecution of:

16 (A) the qualified offense for which approval was given
17 to record or intercept a conversation under this subsection
18 (q);

19 (B) a forcible felony committed directly in the course
20 of the investigation of the qualified offense for which
21 approval was given to record or intercept a conversation
22 under this subsection (q); or

23 (C) any other forcible felony committed while the
24 recording or interception was approved in accordance with
25 this subsection (q), but for this specific category of
26 prosecutions, only if the law enforcement officer or person

1 acting at the direction of a law enforcement officer who
2 has consented to the conversation being intercepted or
3 recorded suffers great bodily injury or is killed during
4 the commission of the charged forcible felony.

5 (5) Compliance with the provisions of this subsection is a
6 prerequisite to the admissibility in evidence of any part of
7 the contents of any wire, electronic or oral communication that
8 has been intercepted as a result of this exception, but nothing
9 in this subsection shall be deemed to prevent a court from
10 otherwise excluding the evidence on any other ground recognized
11 by State or federal law, nor shall anything in this subsection
12 be deemed to prevent a court from independently reviewing the
13 admissibility of the evidence for compliance with the Fourth
14 Amendment to the U.S. Constitution or with Article I, Section 6
15 of the Illinois Constitution.

16 (6) Use of recordings or intercepts unrelated to qualified
17 offenses. Whenever any private conversation or private
18 electronic communication has been recorded or intercepted as a
19 result of this exception that is not related to an offense for
20 which the recording or intercept is admissible under paragraph
21 (4) of this subsection (q), no part of the contents of the
22 communication and evidence derived from the communication may
23 be received in evidence in any trial, hearing, or other
24 proceeding in or before any court, grand jury, department,
25 officer, agency, regulatory body, legislative committee, or
26 other authority of this State, or a political subdivision of

1 the State, nor may it be publicly disclosed in any way.

2 (6.5) The Department of State Police shall adopt rules as
3 are necessary concerning the use of devices, retention of
4 recordings, and reports regarding their use under this
5 subsection (q).

6 (7) Definitions. For the purposes of this subsection (q)
7 only:

8 "Forcible felony" includes and is limited to those
9 offenses contained in Section 2-8 of the Criminal Code of
10 1961 as of the effective date of this amendatory Act of the
11 97th General Assembly, and only as those offenses have been
12 defined by law or judicial interpretation as of that date.

13 "Qualified offense" means and is limited to:

14 (A) a felony violation of the Cannabis Control Act,
15 the Illinois Controlled Substances Act, or the
16 Methamphetamine Control and Community Protection Act,
17 except for violations of:

18 (i) Section 4 of the Cannabis Control Act;

19 (ii) Section 402 of the Illinois Controlled
20 Substances Act; and

21 (iii) Section 60 of the Methamphetamine
22 Control and Community Protection Act; and

23 (B) first degree murder, solicitation of murder
24 for hire, predatory criminal sexual assault of a child,
25 criminal sexual assault, aggravated criminal sexual
26 assault, aggravated arson, kidnapping, aggravated

1 kidnapping, child abduction, trafficking in persons,
2 involuntary servitude, involuntary sexual servitude of
3 a minor, or gunrunning.

4 "State's Attorney" includes and is limited to the
5 State's Attorney or an assistant State's Attorney
6 designated by the State's Attorney to provide verbal
7 approval to record or intercept conversations under this
8 subsection (q).

9 (8) Sunset. This subsection (q) is inoperative on and after
10 January 1, 2018. No conversations intercepted pursuant to this
11 subsection (q), while operative, shall be inadmissible in a
12 court of law by virtue of the inoperability of this subsection
13 (q) on January 1, 2018.

14 (9) Recordings, records, and custody. Any private
15 conversation or private electronic communication intercepted
16 by a law enforcement officer or a person acting at the
17 direction of law enforcement shall, if practicable, be recorded
18 in such a way as will protect the recording from editing or
19 other alteration. Any and all original recordings made under
20 this subsection (q) shall be inventoried without unnecessary
21 delay pursuant to the law enforcement agency's policies for
22 inventorying evidence. The original recordings shall not be
23 destroyed except upon an order of a court of competent
24 jurisdiction; ~~and~~

25 (r) Electronic recordings, including but not limited to,
26 motion picture, videotape, digital, or other visual or audio

1 recording, made of a lineup under Section 107A-2 of the Code of
2 Criminal Procedure of 1963; and

3 (s) Any recording of a conversation that occurs in any
4 place open to the public, if the recording is made by a person,
5 not a law enforcement officer or agent of a law enforcement
6 officer, who is a party to the conversation.

7 (Source: P.A. 97-333, eff. 8-12-11; 97-846, eff. 1-1-13;
8 97-897, eff. 1-1-13; 98-463, eff. 8-16-13; 98-1014, eff.
9 1-1-15; 98-1142, eff. 12-30-14.)

10 (720 ILCS 5/14-4) (from Ch. 38, par. 14-4)

11 Sec. 14-4. Sentence.

12 (a) Eavesdropping, for a first offense, is a Class A
13 misdemeanor ~~4 felony~~ and, for a second or subsequent offense,
14 is a Class 4 ~~3~~ felony.

15 (b) (Blank). ~~The eavesdropping of an oral conversation or~~
16 ~~an electronic communication of any law enforcement officer,~~
17 ~~State's Attorney, Assistant State's Attorney, the Attorney~~
18 ~~General, Assistant Attorney General, or a judge, while in the~~
19 ~~performance of his or her official duties, if not authorized by~~
20 ~~this Article or proper court order, is a Class 3 felony, and~~
21 ~~for a second or subsequent offense, is a Class 2 felony.~~

22 (Source: P.A. 98-1142, eff. 12-30-14.)

23 Section 99. Effective date. This Act takes effect upon
24 becoming law.