



Rep. Elgie R. Sims, Jr.

**Filed: 10/20/2017**

10000HB0185ham001

LRB100 03278 RLC 30052 a

1 AMENDMENT TO HOUSE BILL 185

2 AMENDMENT NO. \_\_\_\_\_. Amend House Bill 185 by replacing  
3 everything after the enacting clause with the following:

4 "Section 5. The Criminal Code of 2012 is amended by  
5 changing Section 14-3 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;

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

6           (d) Recording or listening with the aid of any device to  
7 any emergency communication made in the normal course of  
8 operations by any federal, state or local law enforcement  
9 agency or institutions dealing in emergency services,  
10 including, but not limited to, hospitals, clinics, ambulance  
11 services, fire fighting agencies, any public utility,  
12 emergency repair facility, civilian defense establishment or  
13 military installation;

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

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

1 this Section;

2 (g) With prior notification to the State's Attorney of the  
3 county in which it is to occur, recording or listening with the  
4 aid of any device to any conversation where a law enforcement  
5 officer, or any person acting at the direction of law  
6 enforcement, is a party to the conversation and has consented  
7 to it being intercepted or recorded under circumstances where  
8 the use of the device is necessary for the protection of the  
9 law enforcement officer or any person acting at the direction  
10 of law enforcement, in the course of an investigation of a  
11 forcible felony, a felony offense of involuntary servitude,  
12 involuntary sexual servitude of a minor, or trafficking in  
13 persons under Section 10-9 of this Code, an offense involving  
14 prostitution, solicitation of a sexual act, or pandering, a  
15 felony violation of the Illinois Controlled Substances Act, a  
16 felony violation of the Cannabis Control Act, a felony  
17 violation of the Methamphetamine Control and Community  
18 Protection Act, any "streetgang related" or "gang-related"  
19 felony as those terms are defined in the Illinois Streetgang  
20 Terrorism Omnibus Prevention Act, or any felony offense  
21 involving any weapon listed in paragraphs (1) through (11) of  
22 subsection (a) of Section 24-1 of this Code. Any recording or  
23 evidence derived as the result of this exemption shall be  
24 inadmissible in any proceeding, criminal, civil or  
25 administrative, except (i) where a party to the conversation  
26 suffers great bodily injury or is killed during such

1 conversation, or (ii) when used as direct impeachment of a  
2 witness concerning matters contained in the interception or  
3 recording. The Director of the Department of State Police shall  
4 issue regulations as are necessary concerning the use of  
5 devices, retention of tape recordings, and reports regarding  
6 their use;

7 (g-5) (Blank);

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

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

25 (h) Recordings made simultaneously with the use of an  
26 in-car video camera recording of an oral conversation between a

1 uniformed peace officer, who has identified his or her office,  
2 and a person in the presence of the peace officer whenever (i)  
3 an officer assigned a patrol vehicle is conducting an  
4 enforcement stop; or (ii) patrol vehicle emergency lights are  
5 activated or would otherwise be activated if not for the need  
6 to conceal the presence of law enforcement.

7 For the purposes of this subsection (h), "enforcement stop"  
8 means an action by a law enforcement officer in relation to  
9 enforcement and investigation duties, including but not  
10 limited to, traffic stops, pedestrian stops, abandoned vehicle  
11 contacts, motorist assists, commercial motor vehicle stops,  
12 roadside safety checks, requests for identification, or  
13 responses to requests for emergency assistance;

14 (h-5) Recordings of utterances made by a person while in  
15 the presence of a uniformed peace officer and while an occupant  
16 of a police vehicle including, but not limited to, (i)  
17 recordings made simultaneously with the use of an in-car video  
18 camera and (ii) recordings made in the presence of the peace  
19 officer utilizing video or audio systems, or both, authorized  
20 by the law enforcement agency;

21 (h-10) Recordings made simultaneously with a video camera  
22 recording during the use of a taser or similar weapon or device  
23 by a peace officer if the weapon or device is equipped with  
24 such camera;

25 (h-15) Recordings made under subsection (h), (h-5), or  
26 (h-10) shall be retained by the law enforcement agency that

1 employs the peace officer who made the recordings for a storage  
2 period of 90 days, unless the recordings are made as a part of  
3 an arrest or the recordings are deemed evidence in any  
4 criminal, civil, or administrative proceeding and then the  
5 recordings must only be destroyed upon a final disposition and  
6 an order from the court. Under no circumstances shall any  
7 recording be altered or erased prior to the expiration of the  
8 designated storage period. Upon completion of the storage  
9 period, the recording medium may be erased and reissued for  
10 operational use;

11 (i) Recording of a conversation made by or at the request  
12 of a person, not a law enforcement officer or agent of a law  
13 enforcement officer, who is a party to the conversation, under  
14 reasonable suspicion that another party to the conversation is  
15 committing, is about to commit, or has committed a criminal  
16 offense against the person or a member of his or her immediate  
17 household, and there is reason to believe that evidence of the  
18 criminal offense may be obtained by the recording;

19 (j) The use of a telephone monitoring device by either (1)  
20 a corporation or other business entity engaged in marketing or  
21 opinion research or (2) a corporation or other business entity  
22 engaged in telephone solicitation, as defined in this  
23 subsection, to record or listen to oral telephone solicitation  
24 conversations or marketing or opinion research conversations  
25 by an employee of the corporation or other business entity  
26 when:

1           (i) the monitoring is used for the purpose of service  
2           quality control of marketing or opinion research or  
3           telephone solicitation, the education or training of  
4           employees or contractors engaged in marketing or opinion  
5           research or telephone solicitation, or internal research  
6           related to marketing or opinion research or telephone  
7           solicitation; and

8           (ii) the monitoring is used with the consent of at  
9           least one person who is an active party to the marketing or  
10          opinion research conversation or telephone solicitation  
11          conversation being monitored.

12          No communication or conversation or any part, portion, or  
13          aspect of the communication or conversation made, acquired, or  
14          obtained, directly or indirectly, under this exemption (j), may  
15          be, directly or indirectly, furnished to any law enforcement  
16          officer, agency, or official for any purpose or used in any  
17          inquiry or investigation, or used, directly or indirectly, in  
18          any administrative, judicial, or other proceeding, or divulged  
19          to any third party.

20          When recording or listening authorized by this subsection  
21          (j) on telephone lines used for marketing or opinion research  
22          or telephone solicitation purposes results in recording or  
23          listening to a conversation that does not relate to marketing  
24          or opinion research or telephone solicitation; the person  
25          recording or listening shall, immediately upon determining  
26          that the conversation does not relate to marketing or opinion



1 research or telephone solicitation, terminate the recording or  
2 listening and destroy any such recording as soon as is  
3 practicable.

4 Business entities that use a telephone monitoring or  
5 telephone recording system pursuant to this exemption (j) shall  
6 provide current and prospective employees with notice that the  
7 monitoring or recordings may occur during the course of their  
8 employment. The notice shall include prominent signage  
9 notification within the workplace.

10 Business entities that use a telephone monitoring or  
11 telephone recording system pursuant to this exemption (j) shall  
12 provide their employees or agents with access to personal-only  
13 telephone lines which may be pay telephones, that are not  
14 subject to telephone monitoring or telephone recording.

15 For the purposes of this subsection (j), "telephone  
16 solicitation" means a communication through the use of a  
17 telephone by live operators:

- 18 (i) soliciting the sale of goods or services;  
19 (ii) receiving orders for the sale of goods or  
20 services;  
21 (iii) assisting in the use of goods or services; or  
22 (iv) engaging in the solicitation, administration, or  
23 collection of bank or retail credit accounts.

24 For the purposes of this subsection (j), "marketing or  
25 opinion research" means a marketing or opinion research  
26 interview conducted by a live telephone interviewer engaged by

1 a corporation or other business entity whose principal business  
2 is the design, conduct, and analysis of polls and surveys  
3 measuring the opinions, attitudes, and responses of  
4 respondents toward products and services, or social or  
5 political issues, or both;

6 (k) Electronic recordings, including but not limited to, a  
7 motion picture, videotape, digital, or other visual or audio  
8 recording, made of a custodial interrogation of an individual  
9 at a police station or other place of detention by a law  
10 enforcement officer under Section 5-401.5 of the Juvenile Court  
11 Act of 1987 or Section 103-2.1 of the Code of Criminal  
12 Procedure of 1963;

13 (l) Recording the interview or statement of any person when  
14 the person knows that the interview is being conducted by a law  
15 enforcement officer or prosecutor and the interview takes place  
16 at a police station that is currently participating in the  
17 Custodial Interview Pilot Program established under the  
18 Illinois Criminal Justice Information Act;

19 (m) An electronic recording, including but not limited to,  
20 a motion picture, videotape, digital, or other visual or audio  
21 recording, made of the interior of a school bus while the  
22 school bus is being used in the transportation of students to  
23 and from school and school-sponsored activities, when the  
24 school board has adopted a policy authorizing such recording,  
25 notice of such recording policy is included in student  
26 handbooks and other documents including the policies of the

1 school, notice of the policy regarding recording is provided to  
2 parents of students, and notice of such recording is clearly  
3 posted on the door of and inside the school bus.

4 Recordings made pursuant to this subsection (m) shall be  
5 confidential records and may only be used by school officials  
6 (or their designees) and law enforcement personnel for  
7 investigations, school disciplinary actions and hearings,  
8 proceedings under the Juvenile Court Act of 1987, and criminal  
9 prosecutions, related to incidents occurring in or around the  
10 school bus;

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

15 (o) The use of an eavesdropping camera or audio device  
16 during an ongoing hostage or barricade situation by a law  
17 enforcement officer or individual acting on behalf of a law  
18 enforcement officer when the use of such device is necessary to  
19 protect the safety of the general public, hostages, or law  
20 enforcement officers or anyone acting on their behalf;

21 (p) Recording or listening with the aid of any device to  
22 incoming telephone calls of phone lines publicly listed or  
23 advertised as the "CPS Violence Prevention Hotline", but only  
24 where the notice of recording is given at the beginning of each  
25 call as required by Section 34-21.8 of the School Code. The  
26 recordings may be retained only by the Chicago Police

1 Department or other law enforcement authorities, and shall not  
2 be otherwise retained or disseminated;

3 (q) (1) With prior request to and written or verbal approval  
4 of the State's Attorney of the county in which the conversation  
5 is anticipated to occur, recording or listening with the aid of  
6 an eavesdropping device to a conversation in which a law  
7 enforcement officer, or any person acting at the direction of a  
8 law enforcement officer, is a party to the conversation and has  
9 consented to the conversation being intercepted or recorded in  
10 the course of an investigation of a qualified offense. The  
11 State's Attorney may grant this approval only after determining  
12 that reasonable cause exists to believe that inculpatory  
13 conversations concerning a qualified offense will occur with a  
14 specified individual or individuals within a designated period  
15 of time.

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

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

1 (B) a physical description; or

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

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

10 (A) a recording or interception conducted by a  
11 specified law enforcement officer or person acting at the  
12 direction of a law enforcement officer;

13 (B) recording or intercepting conversations with the  
14 individuals specified in the request for approval,  
15 provided that the verbal approval shall be deemed to  
16 include the recording or intercepting of conversations  
17 with other individuals, unknown to the law enforcement  
18 officer at the time of the request for approval, who are  
19 acting in conjunction with or as co-conspirators with the  
20 individuals specified in the request for approval in the  
21 commission of a qualified offense;

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

24 (D) the written request for approval, if applicable, or  
25 the written memorialization must be filed, along with the  
26 written approval, with the circuit clerk of the

1 jurisdiction on the next business day following the  
2 expiration of the authorized period of time, and shall be  
3 subject to review by the Chief Judge or his or her designee  
4 as deemed appropriate by the court.

5 (3.5) The written memorialization of the request for  
6 approval and the written approval by the State's Attorney may  
7 be in any format, including via facsimile, email, or otherwise,  
8 so long as it is capable of being filed with the circuit clerk.

9 (3.10) Beginning March 1, 2015, each State's Attorney shall  
10 annually submit a report to the General Assembly disclosing:

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

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

15 (4) Admissibility of evidence. No part of the contents of  
16 any wire, electronic, or oral communication that has been  
17 recorded or intercepted as a result of this exception may be  
18 received in evidence in any trial, hearing, or other proceeding  
19 in or before any court, grand jury, department, officer,  
20 agency, regulatory body, legislative committee, or other  
21 authority of this State, or a political subdivision of the  
22 State, other than in a prosecution of:

23 (A) the qualified offense for which approval was given  
24 to record or intercept a conversation under this subsection  
25 (q);

26 (B) a forcible felony committed directly in the course

1 of the investigation of the qualified offense for which  
2 approval was given to record or intercept a conversation  
3 under this subsection (q); or

4 (C) any other forcible felony committed while the  
5 recording or interception was approved in accordance with  
6 this subsection (q), but for this specific category of  
7 prosecutions, only if the law enforcement officer or person  
8 acting at the direction of a law enforcement officer who  
9 has consented to the conversation being intercepted or  
10 recorded suffers great bodily injury or is killed during  
11 the commission of the charged forcible felony.

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

23 (6) Use of recordings or intercepts unrelated to qualified  
24 offenses. Whenever any private conversation or private  
25 electronic communication has been recorded or intercepted as a  
26 result of this exception that is not related to an offense for

1 which the recording or intercept is admissible under paragraph  
2 (4) of this subsection (q), no part of the contents of the  
3 communication and evidence derived from the communication may  
4 be received in evidence in any trial, hearing, or other  
5 proceeding in or before any court, grand jury, department,  
6 officer, agency, regulatory body, legislative committee, or  
7 other authority of this State, or a political subdivision of  
8 the State, nor may it be publicly disclosed in any way.

9 (6.5) The Department of State Police shall adopt rules as  
10 are necessary concerning the use of devices, retention of  
11 recordings, and reports regarding their use under this  
12 subsection (q).

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

15 "Forcible felony" includes and is limited to those  
16 offenses contained in Section 2-8 of the Criminal Code of  
17 1961 as of the effective date of this amendatory Act of the  
18 97th General Assembly, and only as those offenses have been  
19 defined by law or judicial interpretation as of that date.

20 "Qualified offense" means and is limited to:

21 (A) a felony violation of the Cannabis Control Act,  
22 the Illinois Controlled Substances Act, or the  
23 Methamphetamine Control and Community Protection Act,  
24 except for violations of:

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

26 (ii) Section 402 of the Illinois Controlled



1 Substances Act; and

2 (iii) Section 60 of the Methamphetamine  
3 Control and Community Protection Act; and

4 (B) first degree murder, solicitation of murder  
5 for hire, predatory criminal sexual assault of a child,  
6 criminal sexual assault, aggravated criminal sexual  
7 assault, aggravated arson, kidnapping, aggravated  
8 kidnapping, child abduction, trafficking in persons,  
9 involuntary servitude, involuntary sexual servitude of  
10 a minor, or gunrunning.

11 "State's Attorney" includes and is limited to the  
12 State's Attorney or an assistant State's Attorney  
13 designated by the State's Attorney to provide verbal  
14 approval to record or intercept conversations under this  
15 subsection (q).

16 (8) Sunset. This subsection (q) is inoperative on and after  
17 January 1, 2020 ~~2018~~. No conversations intercepted pursuant to  
18 this subsection (q), while operative, shall be inadmissible in  
19 a court of law by virtue of the inoperability of this  
20 subsection (q) on January 1, 2020 ~~2018~~.

21 (9) Recordings, records, and custody. Any private  
22 conversation or private electronic communication intercepted  
23 by a law enforcement officer or a person acting at the  
24 direction of law enforcement shall, if practicable, be recorded  
25 in such a way as will protect the recording from editing or  
26 other alteration. Any and all original recordings made under

1 this subsection (q) shall be inventoried without unnecessary  
2 delay pursuant to the law enforcement agency's policies for  
3 inventorying evidence. The original recordings shall not be  
4 destroyed except upon an order of a court of competent  
5 jurisdiction; and

6 (r) Electronic recordings, including but not limited to,  
7 motion picture, videotape, digital, or other visual or audio  
8 recording, made of a lineup under Section 107A-2 of the Code of  
9 Criminal Procedure of 1963.

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

13 Section 99. Effective date. This Act takes effect upon  
14 becoming law."