



## 94TH GENERAL ASSEMBLY

### State of Illinois

2005 and 2006

HB4372

Introduced 1/4/2006, by Rep. Careen M Gordon

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

from Ch. 38, par. 14-3

Amends the Criminal Code of 1961. Exempts from an eavesdropping violation, when prior notification to and verbal approval of the State's Attorney of the county in which the conversation is anticipated to occur, or his or her designee is granted, recording or listening with the aid of an eavesdropping device to a conversation in which a law enforcement officer, or any person acting at the direction of law enforcement, is a party to an undercover conversation and has consented to the conversation being intercepted or recorded in the course of an investigation of a felony violation of the Illinois Controlled Substances Act, a felony violation of the Methamphetamine Control and Community Protection Act, a felony violation of the Methamphetamine Precursor Control Act, or a felony violation of the Cannabis Control Act. Provides that the Director of State Police shall adopt any necessary rules concerning the use of eavesdropping devices, retention of recording media, and reports regarding their use.

LRB094 15750 RLC 50963 b

1 AN ACT in relation to 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 1961 is amended by changing  
5 Section 14-3 as follows:

6 (720 ILCS 5/14-3) (from Ch. 38, par. 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 and television  
10 communications of any sort where the same are publicly made;

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

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

21 (d) Recording or listening with the aid of any device to  
22 any emergency communication made in the normal course of  
23 operations by any federal, state or local law enforcement  
24 agency or institutions dealing in emergency services,  
25 including, but not limited to, hospitals, clinics, ambulance  
26 services, fire fighting agencies, any public utility,  
27 emergency repair facility, civilian defense establishment or  
28 military installation;

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

31 (f) Recording or listening with the aid of any device to  
32 incoming telephone calls of phone lines publicly listed or

1 advertised as consumer "hotlines" by manufacturers or  
2 retailers of food and drug products. Such recordings must be  
3 destroyed, erased or turned over to local law enforcement  
4 authorities within 24 hours from the time of such recording and  
5 shall not be otherwise disseminated. Failure on the part of the  
6 individual or business operating any such recording or  
7 listening device to comply with the requirements of this  
8 subsection shall eliminate any civil or criminal immunity  
9 conferred upon that individual or business by the operation of  
10 this Section;

11 (g) With prior notification to the State's Attorney of the  
12 county in which it is to occur, recording or listening with the  
13 aid of any device to any conversation where a law enforcement  
14 officer, or any person acting at the direction of law  
15 enforcement, is a party to the conversation and has consented  
16 to it being intercepted or recorded under circumstances where  
17 the use of the device is necessary for the protection of the  
18 law enforcement officer or any person acting at the direction  
19 of law enforcement, in the course of an investigation of a  
20 forcible felony, a felony violation of the Illinois Controlled  
21 Substances Act, a felony violation of the Cannabis Control Act,  
22 a felony violation of the Methamphetamine Control and Community  
23 Protection Act, or any "streetgang related" or "gang-related"  
24 felony as those terms are defined in the Illinois Streetgang  
25 Terrorism Omnibus Prevention Act. Any recording or evidence  
26 derived as the result of this exemption shall be inadmissible  
27 in any proceeding, criminal, civil or administrative, except  
28 (i) where a party to the conversation suffers great bodily  
29 injury or is killed during such conversation, or (ii) when used  
30 as direct impeachment of a witness concerning matters contained  
31 in the interception or recording. The Director of the  
32 Department of State Police shall issue regulations as are  
33 necessary concerning the use of devices, retention of tape  
34 recordings, and reports regarding their use;

35 (g-5) With approval of the State's Attorney of the county  
36 in which it is to occur, recording or listening with the aid of

1 any device to any conversation where a law enforcement officer,  
2 or any person acting at the direction of law enforcement, is a  
3 party to the conversation and has consented to it being  
4 intercepted or recorded in the course of an investigation of  
5 any offense defined in Article 29D of this Code. In all such  
6 cases, an application for an order approving the previous or  
7 continuing use of an eavesdropping device must be made within  
8 48 hours of the commencement of such use. In the absence of  
9 such an order, or upon its denial, any continuing use shall  
10 immediately terminate. The Director of State Police shall issue  
11 rules as are necessary concerning the use of devices, retention  
12 of tape recordings, and reports regarding their use.

13 Any recording or evidence obtained or derived in the course  
14 of an investigation of any offense defined in Article 29D of  
15 this Code shall, upon motion of the State's Attorney or  
16 Attorney General prosecuting any violation of Article 29D, be  
17 reviewed in camera with notice to all parties present by the  
18 court presiding over the criminal case, and, if ruled by the  
19 court to be relevant and otherwise admissible, it shall be  
20 admissible at the trial of the criminal case.

21 This subsection (g-5) is inoperative on and after January  
22 1, 2005. No conversations recorded or monitored pursuant to  
23 this subsection (g-5) shall be inadmissible in a court of law  
24 by virtue of the repeal of this subsection (g-5) on January 1,  
25 2005;

26 (h) Recordings made simultaneously with a video recording  
27 of an oral conversation between a peace officer, who has  
28 identified his or her office, and a person stopped for an  
29 investigation of an offense under the Illinois Vehicle Code;

30 (i) Recording of a conversation made by or at the request  
31 of a person, not a law enforcement officer or agent of a law  
32 enforcement officer, who is a party to the conversation, under  
33 reasonable suspicion that another party to the conversation is  
34 committing, is about to commit, or has committed a criminal  
35 offense against the person or a member of his or her immediate  
36 household, and there is reason to believe that evidence of the

1 criminal offense may be obtained by the recording;

2 (j) The use of a telephone monitoring device by either (1)  
3 a corporation or other business entity engaged in marketing or  
4 opinion research or (2) a corporation or other business entity  
5 engaged in telephone solicitation, as defined in this  
6 subsection, to record or listen to oral telephone solicitation  
7 conversations or marketing or opinion research conversations  
8 by an employee of the corporation or other business entity  
9 when:

10 (i) the monitoring is used for the purpose of service  
11 quality control of marketing or opinion research or  
12 telephone solicitation, the education or training of  
13 employees or contractors engaged in marketing or opinion  
14 research or telephone solicitation, or internal research  
15 related to marketing or opinion research or telephone  
16 solicitation; and

17 (ii) the monitoring is used with the consent of at  
18 least one person who is an active party to the marketing or  
19 opinion research conversation or telephone solicitation  
20 conversation being monitored.

21 No communication or conversation or any part, portion, or  
22 aspect of the communication or conversation made, acquired, or  
23 obtained, directly or indirectly, under this exemption (j), may  
24 be, directly or indirectly, furnished to any law enforcement  
25 officer, agency, or official for any purpose or used in any  
26 inquiry or investigation, or used, directly or indirectly, in  
27 any administrative, judicial, or other proceeding, or divulged  
28 to any third party.

29 When recording or listening authorized by this subsection  
30 (j) on telephone lines used for marketing or opinion research  
31 or telephone solicitation purposes results in recording or  
32 listening to a conversation that does not relate to marketing  
33 or opinion research or telephone solicitation; the person  
34 recording or listening shall, immediately upon determining  
35 that the conversation does not relate to marketing or opinion  
36 research or telephone solicitation, terminate the recording or

1 listening and destroy any such recording as soon as is  
2 practicable.

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

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

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

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

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

31 (k) Electronic recordings, including but not limited to, a  
32 motion picture, videotape, digital, or other visual or audio  
33 recording, made of a custodial interrogation of an individual  
34 at a police station or other place of detention by a law  
35 enforcement officer under Section 5-401.5 of the Juvenile Court  
36 Act of 1987 or Section 103-2.1 of the Code of Criminal

1 Procedure of 1963; ~~and~~

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

8 (m) With prior notification to and verbal approval of the  
9 State's Attorney of the county in which the conversation is  
10 anticipated to occur, or a designee of the State's Attorney,  
11 recording or listening with the aid of an eavesdropping device  
12 to a conversation in which a law enforcement officer, or any  
13 person acting at the direction of a law enforcement officer, is  
14 a party to an undercover conversation and has consented to the  
15 conversation being intercepted or recorded in the course of an  
16 investigation of a felony violation of the Illinois Controlled  
17 Substances Act, a felony violation of the Methamphetamine  
18 Control and Community Protection Act, a felony violation of the  
19 Methamphetamine Precursor Control Act, or a felony violation of  
20 the Cannabis Control Act. The Director of State Police shall  
21 adopt any necessary rules concerning the use of eavesdropping  
22 devices, retention of recording media, and reports regarding  
23 their use.

24 (Source: P.A. 93-206, eff. 7-18-03; 93-517, eff. 8-6-03;  
25 93-605, eff. 11-19-03; 94-556, eff. 9-11-05.)