



94TH GENERAL ASSEMBLY
State of Illinois
2005 and 2006
HB5810

Introduced 07/28/06, by Rep. Tom Cross

SYNOPSIS AS INTRODUCED:

720 ILCS 5/14-3

from Ch. 38, par. 14-3

Amends the Criminal Code of 1961. Includes, in the activities that are exempt from the Eavesdropping Article of the Code, intercepting, recording, or listening to, with the approval of the State's Attorney, a conversation or electronic communication where a law enforcement officer, or a person acting at the direction of law enforcement, is a party to the conversation or electronic communication and has consented to it being intercepted or recorded in the course of an investigation of child pornography. Effective March 1, 2007.

LRB094 21119 DRH 59485 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 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 (g-6) With approval of the State's Attorney of the county
27 in which it is to occur, intercepting, recording, or listening
28 with the aid of any device to any conversation or electronic
29 communication where a law enforcement officer, or any person
30 acting at the direction of law enforcement, is a party to the
31 conversation or electronic communication and has consented to
32 it being intercepted or recorded in the course of an
33 investigation of child pornography;

34 (h) Recordings made simultaneously with a video recording
35 of an oral conversation between a peace officer, who has
36 identified his or her office, and a person stopped for an

1 investigation of an offense under the Illinois Vehicle Code;

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

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

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

25 (ii) the monitoring is used with the consent of at
26 least one person who is an active party to the marketing or
27 opinion research conversation or telephone solicitation
28 conversation being monitored.

29 No communication or conversation or any part, portion, or
30 aspect of the communication or conversation made, acquired, or
31 obtained, directly or indirectly, under this exemption (j), may
32 be, directly or indirectly, furnished to any law enforcement
33 officer, agency, or official for any purpose or used in any
34 inquiry or investigation, or used, directly or indirectly, in
35 any administrative, judicial, or other proceeding, or divulged
36 to any third party.

1 When recording or listening authorized by this subsection
2 (j) on telephone lines used for marketing or opinion research
3 or telephone solicitation purposes results in recording or
4 listening to a conversation that does not relate to marketing
5 or opinion research or telephone solicitation; the person
6 recording or listening shall, immediately upon determining
7 that the conversation does not relate to marketing or opinion
8 research or telephone solicitation, terminate the recording or
9 listening and destroy any such recording as soon as is
10 practicable.

11 Business entities that use a telephone monitoring or
12 telephone recording system pursuant to this exemption (j) shall
13 provide current and prospective employees with notice that the
14 monitoring or recordings may occur during the course of their
15 employment. The notice shall include prominent signage
16 notification within the workplace.

17 Business entities that use a telephone monitoring or
18 telephone recording system pursuant to this exemption (j) shall
19 provide their employees or agents with access to personal-only
20 telephone lines which may be pay telephones, that are not
21 subject to telephone monitoring or telephone recording.

22 For the purposes of this subsection (j), "telephone
23 solicitation" means a communication through the use of a
24 telephone by live operators:

- 25 (i) soliciting the sale of goods or services;
26 (ii) receiving orders for the sale of goods or
27 services;
28 (iii) assisting in the use of goods or services; or
29 (iv) engaging in the solicitation, administration, or
30 collection of bank or retail credit accounts.

31 For the purposes of this subsection (j), "marketing or
32 opinion research" means a marketing or opinion research
33 interview conducted by a live telephone interviewer engaged by
34 a corporation or other business entity whose principal business
35 is the design, conduct, and analysis of polls and surveys
36 measuring the opinions, attitudes, and responses of

1 respondents toward products and services, or social or
2 political issues, or both;

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

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

16 (Source: P.A. 93-206, eff. 7-18-03; 93-517, eff. 8-6-03;
17 93-605, eff. 11-19-03; 94-556, eff. 9-11-05.)

18 Section 99. Effective date. This Act takes effect March 1,
19 2007.