



## 95TH GENERAL ASSEMBLY

### State of Illinois

2007 and 2008

HB0963

Introduced 2/8/2007, by Rep. Linda Chapa LaVia

#### SYNOPSIS AS INTRODUCED:

725 ILCS 5/108A-6  
725 ILCS 5/108A-8

from Ch. 38, par. 108A-6  
from Ch. 38, par. 108A-8

Amends the Code of Criminal Procedure of 1963. Provides that an emergency situation in which a law enforcement officer may use an eavesdropping device without prior judicial approval also occurs in a situation involving an investigation of cannabis trafficking under the Cannabis Control Act, controlled substance trafficking under the Illinois Controlled Substances Act, or a gang-related offense as defined in the Illinois Streetgang Terrorism Omnibus Prevention Act. Provides that in all such cases, an application for an order approving the previous or continuing use of an eavesdropping device must be made within 96 (rather than 48) hours of the commencement of such use. Deletes language providing that notice to the parties whose conversations are overheard with the use of an eavesdropping device must be made no later than 90 days after the filing of an application for an order of authorization.

LRB095 06261 RLC 26947 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 108A-6 and 108A-8 as follows:

6 (725 ILCS 5/108A-6) (from Ch. 38, par. 108A-6)

7 Sec. 108A-6. Emergency Exception to Procedures. (a)  
8 Notwithstanding any other provisions of this Article, any  
9 investigative or law enforcement officer, upon approval of a  
10 State's Attorney, or without it if a reasonable effort has been  
11 made to contact the appropriate State's Attorney, may use an  
12 eavesdropping device in an emergency situation as defined in  
13 this Section. Such use must be in accordance with the  
14 provisions of this Section and may be allowed only where the  
15 officer reasonably believes that an order permitting the use of  
16 the device would issue were there a prior hearing.

17 An emergency situation exists when, without previous  
18 notice to the law enforcement officer sufficient to obtain  
19 prior judicial approval, the conversation to be overheard or  
20 recorded will occur within a short period of time, the use of  
21 the device is necessary for the protection of the law  
22 enforcement officer or it will occur in a situation involving a  
23 clear and present danger of imminent death or great bodily harm

1 to persons resulting from: (1) a kidnapping or the holding of a  
2 hostage by force or the threat of the imminent use of force; or  
3 (2) the occupation by force or the threat of the imminent use  
4 of force of any premises, place, vehicle, vessel or aircraft;  
5 or (3) any violation of Article 29D; or in a situation  
6 involving an investigation of an alleged violation of Section  
7 5.1 of the Cannabis Control Act (cannabis trafficking), Section  
8 401.1 of the Illinois Controlled Substances Act (controlled  
9 substance trafficking), or a gang-related offense as defined in  
10 Section 10 of the Illinois Streetgang Terrorism Omnibus  
11 Prevention Act.

12 (b) In all such cases, an application for an order  
13 approving the previous or continuing use of an eavesdropping  
14 device must be made within 96 ~~48~~ hours of the commencement of  
15 such use. In the absence of such an order, or upon its denial,  
16 any continuing use shall immediately terminate.

17 In order to approve such emergency use, the judge must make  
18 a determination (1) that he would have granted an order had the  
19 information been before the court prior to the use of the  
20 device and (2) that there was an emergency situation as defined  
21 in this Section.

22 (c) In the event that an application for approval under  
23 this Section is denied the contents of the conversations  
24 overheard or recorded shall be treated as having been obtained  
25 in violation of this Article.

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

1 (725 ILCS 5/108A-8) (from Ch. 38, par. 108A-8)

2 Sec. 108A-8. Notice to Parties Overheard.

3 (a) Within a reasonable time, but not later than 90 days  
4 after denial of an application for an order of authorization or  
5 approval ~~either the filing of an application for an order of~~  
6 ~~authorization or approval which is denied~~ or not later than 90  
7 days after the termination of the period of an order or  
8 extension thereof, the issuing or denying judge shall cause to  
9 be served on the persons named in the order or application and  
10 such other persons in the recorded conversation as the judge  
11 may determine that justice requires be notified, a notice of  
12 the transaction involving any requested or completed use of an  
13 eavesdropping device which shall include:

14 (1) notice of the entry of an order, of subsequent approval  
15 in an emergency situation, or the denial of an application;

16 (2) the date of the entry, approval, or denial;

17 (3) the period of the authorized use of any eavesdropping  
18 device; and

19 (4) notice of whether during the period of eavesdropping  
20 devices were or were not used to overhear and record various  
21 conversations and whether or not such conversations are  
22 recorded.

23 On an ex parte showing of good cause, the notice required  
24 by this subsection may be postponed.

25 (b) Upon the filing of a motion, the judge may in his

1 discretion make available to such person or his attorney for  
2 inspection such portions of the recorded conversations or the  
3 applications and orders as the judge determines it would be in  
4 the interest of justice to make available.

5 (c) The contents of any recorded conversation or evidence  
6 derived therefrom shall not be received in evidence or  
7 otherwise disclosed in any trial, hearing, or other judicial or  
8 administrative proceeding unless each party not less than 10  
9 days before such a proceeding has been furnished with a copy of  
10 the court order and accompanying application under which the  
11 recording was authorized or approved and has had an opportunity  
12 to examine the portion of the tapes to be introduced or relied  
13 upon. Such 10 day period may be waived by the judge if he finds  
14 that it was not possible to furnish the party with such  
15 information within the stated period and that the party will  
16 not be materially prejudiced by the delay in receiving such  
17 information.

18 (Source: P.A. 79-1159.)