



Rep. Susana A Mendoza

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09500HB4964ham002

LRB095 18221 RLC 49706 a

1 AMENDMENT TO HOUSE BILL 4964

2 AMENDMENT NO. _____. Amend House Bill 4964, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

5 "Section 5. The Criminal Code of 1961 is amended by
6 changing Section 14-3 as follows:

7 (720 ILCS 5/14-3)

8 (Text of Section after amendment by P.A. 95-463)

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

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

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

1 information obtained thereby is used or divulged by the hearer;

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

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

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

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

1 conferred upon that individual or business by the operation of
2 this Section;

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

1 (g-5) 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 any offense defined in Article 29D of this Code. In all such
8 cases, an application for an order approving the previous or
9 continuing use of an eavesdropping device must be made within
10 48 hours of the commencement of such use. In the absence of
11 such an order, or upon its denial, any continuing use shall
12 immediately terminate. The Director of State Police shall issue
13 rules as are necessary concerning the use of devices, retention
14 of tape recordings, and reports regarding their use.

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

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

1 2005;

2 (g-6) With approval of the State's Attorney of the county
3 in which it is to occur, recording or listening with the aid of
4 any device to any conversation where a law enforcement officer,
5 or any person acting at the direction of law enforcement, is a
6 party to the conversation and has consented to it being
7 intercepted or recorded in the course of an investigation of
8 child pornography. In all such cases, an application for an
9 order approving the previous or continuing use of an
10 eavesdropping device must be made within 48 hours of the
11 commencement of such use. In the absence of such an order, or
12 upon its denial, any continuing use shall immediately
13 terminate. The Director of State Police shall issue rules as
14 are necessary concerning the use of devices, retention of
15 recordings, and reports regarding their use. Any recording or
16 evidence obtained or derived in the course of an investigation
17 of child pornography shall, upon motion of the State's Attorney
18 or Attorney General prosecuting any case involving child
19 pornography, be reviewed in camera with notice to all parties
20 present by the court presiding over the criminal case, and, if
21 ruled by the court to be relevant and otherwise admissible, it
22 shall be admissible at the trial of the criminal case. Absent
23 such a ruling, any such recording or evidence shall not be
24 admissible at the trial of the criminal case;

25 (h) Recordings made simultaneously with a video recording
26 of an oral conversation between a peace officer, who has

1 identified his or her office, and a person stopped for an
2 investigation of an offense under the Illinois Vehicle Code;

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

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

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

26 (ii) the monitoring is used with the consent of at

1 least one person who is an active party to the marketing or
2 opinion research conversation or telephone solicitation
3 conversation being monitored.

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

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

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

1 notification within the workplace.

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

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

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

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

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

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

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

24 (k) Electronic recordings, including but not limited to, a
25 motion picture, videotape, digital, or other visual or audio
26 recording, made of a custodial interrogation of an individual

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

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

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

22 Recordings made pursuant to this subsection (m) shall be
23 confidential records and may only be used by school officials
24 (or their designees) and law enforcement personnel for
25 investigations, school disciplinary actions and hearings,
26 proceedings under the Juvenile Court Act of 1987, and criminal

1 prosecutions, related to incidents occurring in or around the
2 school bus; ~~;~~

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

7 (o) With prior written request under oath to, and with
8 written approval of, the State's Attorney or any of his or her
9 designees of the county in which the conversation is
10 anticipated to occur, recording or listening with the aid of an
11 eavesdropping device to a conversation in which a law
12 enforcement officer, or any person acting at the direction of a
13 law enforcement officer, is a party to an undercover
14 conversation and has consented to the conversation being
15 intercepted or recorded in the course of an investigation of a
16 felony violation of the Illinois Controlled Substances Act, a
17 felony violation of the Cannabis Control Act, or a felony
18 violation of the Methamphetamine Control and Community
19 Protection Act, or conspiracies related to violations of any of
20 those Acts. The written request must have been submitted in the
21 name of the Superintendent of Police, Chief of Police, Director
22 of the Illinois State Police, or Sheriff, and must be
23 authorized and signed by him or her or by any of his or her
24 designees. The written request under oath must establish
25 reasonable cause for believing that an individual is
26 committing, has committed, or is about to commit any of the

1 previously specified felony offenses, and that there is
2 reasonable cause for believing that particular conversations
3 concerning any of the previously specified felony offenses will
4 be obtained, and that the written request under oath contains
5 the information required pursuant to Section 108A-3 of the Code
6 of Criminal Procedure of 1963. The written approval must be
7 signed by the State's Attorney or his or her designee and
8 specify that one party to the conversation has or will have
9 consented to the use of the device, there is reasonable cause
10 for believing that an individual is committing, has committed,
11 or is about to commit any of the previously specified felony
12 offenses, and there is reasonable cause for believing that
13 particular conversations concerning any of the previously
14 specified felony offenses will be obtained through such use of
15 such device. The State's Attorney's written approval
16 authorizing use of an eavesdropping device shall include and
17 specify all information required pursuant to Section 108A-5 of
18 the Code of Criminal Procedure of 1963, except that no written
19 approval under this Article may authorize the use of an
20 eavesdropping device for any period longer than 72 hours. A
21 subsequent written request under oath to, and written approval
22 of, the State's Attorney or any of his or her designees of the
23 county in which a conversation is anticipated to occur may be
24 made only after a judicial order pursuant to subsection (o-1)
25 of this Section has been granted.

26 (o-1) An application for a judicial order approving the

1 State's Attorney's previous authorization of the use of an
2 eavesdropping device must be made to a Circuit Judge or an
3 Associate Judge of the county in which the conversation
4 occurred within 48 hours of the expiration of the 72-hour
5 period authorized in subsection (o). In the absence of such a
6 judicial order approving the State's Attorney's previous
7 authorization, or upon the denial of the judicial order, the
8 contents of the conversation overheard or recorded shall be
9 inadmissible as substantive evidence at any trial or hearing.
10 To approve the State's Attorney's previous authorization, the
11 Circuit Judge or Associate Judge must make the determination
12 and issue a written order that one party to the recorded
13 conversation consented to the use of the eavesdropping device,
14 there was reasonable cause for believing that an individual was
15 committing, had committed, or was about to commit any of the
16 previously specified felony offenses, and there was reasonable
17 cause for believing that particular conversations concerning
18 any of the previously specified felony offenses would have been
19 obtained through use of an eavesdropping device, and that the
20 judge would have granted an order had the information been
21 before the court prior to the use of the device.

22 (o-2) The retention and review of recordings, notice to
23 parties overheard, motion to suppress contents of recordings,
24 appeal by State, and reports concerning use of eavesdropping
25 devices under this Article shall be governed by the provisions
26 of Sections 108A-7, 108A-8, 108A-9, 108A-10, and 108A-11 of the

1 Code of Criminal Procedure of 1963.

2 (o-3) Whenever any wire, electronic, or oral communication
3 has been intercepted as a result of this exception that is not
4 related to felony violations of the Illinois Controlled
5 Substances Act, felony violations of the Cannabis Control Act,
6 or felony violations of the Methamphetamine Control and
7 Community Protection Act and conspiracies related to
8 violations of any of those Acts, no part of the contents of the
9 communication and no evidence derived from the communication
10 may be received in evidence in any trial, hearing, or other
11 proceeding in or before any court, grand jury, department,
12 officer, agency, regulatory body, legislative committee, or
13 other authority of this State, or a political subdivision of
14 this State if the disclosure of that information would be in
15 violation of this Article. The Director of State Police shall
16 issue rules as necessary concerning the use of devices and
17 reports regarding their use; and

18 (p) The use of eavesdropping cameras or audio devices
19 intended to ensure the safety of the general public or any law
20 enforcement officer in incidents involving hostages or
21 barricaded subjects.

22 (q) Notwithstanding any other rulemaking authority that
23 may exist, neither the Governor nor any agency or agency head
24 under the jurisdiction of the Governor has any authority to
25 make or promulgate rules to implement or enforce the provisions
26 of this amendatory Act of the 95th General Assembly. If,

1 however, the Governor believes that rules are necessary to
2 implement or enforce the provisions of this amendatory Act of
3 the 95th General Assembly, the Governor may suggest rules to
4 the General Assembly by filing them with the Clerk of the House
5 and the Secretary of the Senate and by requesting that the
6 General Assembly authorize such rulemaking by law, enact those
7 suggested rules into law, or take any other appropriate action
8 in the General Assembly's discretion. Nothing contained in this
9 amendatory Act of the 95th General Assembly shall be
10 interpreted to grant rulemaking authority under any other
11 Illinois statute where such authority is not otherwise
12 explicitly given. For the purposes of this Section, "rules" is
13 given the meaning contained in Section 1-70 of the Illinois
14 Administrative Procedure Act, and "agency" and "agency head"
15 are given the meanings contained in Sections 1-20 and 1-25 of
16 the Illinois Administrative Procedure Act to the extent that
17 such definitions apply to agencies or agency heads under the
18 jurisdiction of the Governor.

19 (Source: P.A. 94-556, eff. 9-11-05; 95-258, eff. 1-1-08;
20 95-352, eff. 8-23-07; 95-463, eff. 6-1-08; revised
21 11-19-07.)".